

Implementation of the Legal Practice Act 28 of 2014



ADVISORY FROM THE LAW SOCIETY OF SOUTH AFRICA

Dear Colleagues

Tomorrow, 1 November 2018, will see the implementation of the Legal Practice Act 28 of 2014 (with some exclusions).

[Proclamation R 31 of 2018](#) was gazetted on 29 October 2018 proclaiming the commencement of certain sections of the Legal Practice Act 28 of 2014 (LPA). It fixes Wednesday, 31 October 2018 as the date on which Chapter 2 of the LPA, with the exclusion of s 14, comes into operation and Thursday, 1 November 2018 as the date on which the rest of the LPA (with some exclusions) comes into operation (see below) and the provincial law societies are abolished. The Legal Practice Council (LPC) will begin to regulate the profession.

We, as the Law Society of South Africa (LSSA), will continue to be there for you as a voluntary body to represent, support and assist attorneys. An amendment to our constitution was signed on 29 October 2018. The Black Lawyers Association and National Association of Democratic Lawyers remain our constituent members together with provincial attorneys' associations (which replace the four provincial law societies).

Please e-mail us on LSSA@LSSA.org.za or call us on (012) 366 8800.

We urge you to ensure that your details are kept updated on our database so that you can continue to receive newsletters and advisories from us, as well as the *Legalbrief LSSA Weekly* on Friday mornings and *De Rebus* on a monthly basis, if you are a practising attorney or candidate attorney.

What happened today, 31 October 2018

Chapter 2 of the LPA has been implemented and the Legal Practice Council (LPC) has been constituted. It elected its office bearers as follows: Johannesburg attorney Kathleen Matolo-Dlepu and Johannesburg advocate Anthea Platt SC as Chairperson and Deputy-Chairperson respectively. The members of the Executive Committee are Greg Harpur SC (advocate), Trudie Nichols (attorney), Lutendo Sigogo (attorney), Jan Stemmett (attorney) and Phillip Zilwa SC (advocate).

The National Forum on the Legal Profession has been wound up.

What will happen tomorrow, 1 November 2018

The rest of the LPA will be implemented (with exclusions as listed below, including most of s 35 which relates to fees). The Attorneys Act, 1979 will be repealed and the statutory provincial law societies abolished. The LPC will take over the provincial law societies' staff and assets and commence to regulate the legal profession (attorneys and advocates).

The LPA will come into operation as follows:

Chapter 1 - Definitions, application and purpose.

Chapter 3 - Regulation of legal practitioners: This includes **s 35 with the exclusion of subss 35(1), (2), (3) and (7) up to and including (12) which deal with fees for legal services**. The LSSA wrote to the Justice Minister some time ago requesting the suspension of these subsections until the investigation by the SA Law Reform Commission has been completed and there has been proper consultation. This means that only subss (4) and (5) of s 35 relating to the SA Law Reform Commission investigation on fees for legal services and (6) legal fees payable by Government, will come into operation.

Chapter 4 - Professional conduct and discipline, excluding:

s 37(5)(e)(ii) - lay persons on disciplinary committees (DCs);

s 40(1)(b)(ii) and (7)(b) and s 41 - right of appeal against DCs' findings

s 42 - monitoring of disciplinary functions by the Ombud.
Chapter 6 - Legal Practitioners' Fidelity Fund
Chapter 7 - Trust money and accounting
Chapter 8 - General provisions, excluding s 93(5) - Offences relating to the Ombud
Chapter 9 - Regulations and Rules, excluding s 95(2) which deals with the rules relating to the Ombud
Chapter 10 - Part 3 - Transitional provisions; and Part 4 - Repeal of laws.

Attorneys can continue to interact with and refer enquiries to their former provincial law societies, which will be the regional offices of the LPC, at the following numbers:
Bloemfontein: (051) 447 3237
Cape Town: (021) 443 6700
Pietermaritzburg: (033) 345 1304
Pretoria: (012) 338 5800

2019 Fidelity Fund certificates

2019 Fidelity Fund Certificates are to be dealt with in terms of the requirements of the LPA and its Rules (gazetted in [GG 41781 dated 20 July 2018](#)). The application process will commence on 1 November 2018, although **the new Fidelity Fund certificate online portal will be available only from 12 November 2018** on the Legal Practitioners' Fidelity Fund website at www.fidfund.co.za.

The requirements for obtaining a 2019 Fidelity Fund certificate in terms of the LPA are as follows:

- The annual fee of R345 (VAT incl) must have been paid for the issuing of the certificate, as set out in [Rule 48 of the LPA Rules](#). Timely payment of the annual contribution is essential before application is made (refer specifically to the invoice number when payment is made to ensure the correct allocation of the amount paid);
- practitioners applying for the first Fidelity Fund Certificate must submit proof of completion of [Practice Management Training](#), subject to the provisions of Rule 27.1 of the LPA Rules;
- timely submission of the trust account audit report approved by the Council; and
- the completed application is to be dealt with electronically on www.fidfund.co.za.

Dedicated staff members at the regional offices of the LPC (as above) have been made available to deal with enquiries relating to Fidelity Fund certificates.

Transitional provisions relating to candidate attorneys

Please consult the Memorandum on Candidate Attorneys currently serving under Articles of Clerkship. [Read / download here](#).

Code of Conduct and robing

The [Code of Conduct gazetted in February 2017](#) is not yet in operation. It will be gazetted for comment by the LPC prior to its finalisation and implementation. Please note that the **provisions relating to robing** in 12.18; 34.1 and 34.2, which require practitioners to robe in superior and lower courts in the same manner as they would robe in the superior courts, **are thus not in force**. Section 119(2) of the LPA states that

'Any -

- (a) regulation made under any law referred to in subs (1) and in force immediately before the date referred to in s 120(4); and
- (b) rule, code, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document promulgated, issued, given or granted and any other steps taken in terms of any such law immediately before the date referred to in s 120(4) and having the force of law, remain in force, except in so far as it is inconsistent with any of the provisions of this Act, until amended or revoked by the competent authority under the provisions of this Act.'

Regards

ANTHONY PILLAY
Acting CEO, Law Society of South Africa

LSSA Advisory 31 October 2018

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