

Legal Practice Act Advisory



LAW SOCIETY
OF SOUTH AFRICA

ADVISORY FROM THE LAW SOCIETY OF SOUTH AFRICA

Dear Colleagues

The [National Forum on the Legal Profession](#) (NF) held its tenth plenary meeting on 14 October 2017. At this meeting the recommendations to be made to Justice Minister Michael Masutha in terms of s 97(1)(a) of the [Legal Practice Act 28 of 2014](#) (LPA) were finalised. The recommendations were submitted this week and deal with the following:

- Election of the Legal Practice Council (LPC)
- Establishment of Provincial Councils (PCs)
- Election of PCs and their composition, powers and functions
- Practical vocational training (PVT) requirements
- Right of appearance
- Winding up of the NF
- LPC funding model
- LPC structure

Recommendation 1: Election of the LPC

Briefly, on the election of councillors to the LPC, the NF has outlined the election procedure, which includes two separate voters' rolls (one for attorneys and one for advocates). Attorneys will vote for the 10 attorney representatives and advocates for the 6 advocates on the LPC. [Read more here.](#)

Recommendation 2: Establishment of Provincial Councils (PCs)

The NF has recommended the establishment of 9 PCs, one in each province, with the area of jurisdiction being the official boundary of the particular province.

The LPC should be situated in Midrand, and the PCs in the following cities:

Gauteng PC to be situated in Pretoria.

Western Cape PC to be situated in Cape Town.

Free State PC to be situated in Bloemfontein.

KwaZulu-Natal PC to be situated in Durban. (The Kwa-Zulu Natal Law Society had requested that the PC remain in Pietermaritzburg.)

Mpumalanga PC to be situated in Nelspruit.

Eastern Cape PC to be situated in East London.

Limpopo PC to be situated in Polokwane.

North West PC to be situated in Mahikeng.

Northern Cape PC to be situated in Kimberley. [Read more here.](#)

Recommendations 3 and 4: Election of PCs and their composition, powers and functions

The NF has recommended that the PC for Gauteng will have 12 legal practitioners and all the others 10 legal practitioners. In the recommendations, the NF sets out the gender and race composition of the legal practitioners and how many should be attorneys and advocates.

As regards the **election of the legal practitioners** to the PCs, the NF has outlined the procedure in draft Rule 16, which also includes the draft ballot papers. These are contained in [Appendix C](#).

The powers and functions of the PCs are set out in [Appendix D](#) to the recommendations.
[Read more here.](#)

Recommendation 5: Practical vocational training (PVT)

These are the requirements that candidate attorneys and pupils must comply with for admission. The NF could not find consensus on this aspect. As a result it has submitted three different sets of recommendations:

1. By the Law Society of South Africa (LSSA), supported by the National Bar Council of South Africa (NBCSA) [View here.](#)
2. By the General Council of the Bar of South Africa (GCB) and the Advocates for Transformation (AFT) [View here.](#)
3. By the National Forum of Advocates (NFA) [View here.](#)

At the NF plenary meeting on 14 October 2017, a draft compromise proposal ([Appendix E4](#)) containing elements of the three recommendations, was submitted. However, due to time constraints and in order to allow NF members to obtain mandates from their constituencies, it was decided to defer further discussions for a later date. It was also decided to inform the Minister of this development and to request more time to consider the draft compromise. The draft compromise was, therefore, not submitted to the Minister as a recommendation since it is still under consideration by the NF, but it was submitted to him for noting that the NF was seriously seeking a compromise.

[Read more on the PVT recommendations here.](#)

Recommendation 6: Right of appearance of candidate legal practitioners

The right of appearance of candidate attorneys is comprehensively dealt with in s25(5) of the LPA, but no similar provision relating to pupils (candidate legal practitioners who wish to become advocates) is contained in the LPA. The omission in the principal Act cannot be remedied in the regulations or the rules by the LPC; as the regulations and the rules cannot confer rights not provided for in the Act. The NF has therefore proposed an amendment to the LPA. The [Legal Practice Amendment Bill](#) is currently before Parliament.

This recommendation is also affected by the lack of agreement relating to PVT. [Read more here.](#)

Recommendation 7: Winding up of the NF

The NF has recommended that the balance of budgeted funds of the NF or monies defrayed from the budget vote of the Justice Department should be returned to the Department; and assets acquired by the NF and staff of the NF should be transferred to the LPC. [Read more here.](#)

Recommendation 8: LPC cost structure and funding

The income and funding model for the LPC was developed following a comprehensive investigation into the existing governing structures in the legal profession as well as the infrastructural and staffing requirements of the LPC and the PCs. The model ([Appendix H](#)) was developed taking into account the sources of funding of the existing governing structures of the profession, the assets of the profession, the funding requirements; the purpose of the Act and the objects of the LPC, including the need to promote access to the legal profession, in pursuit of a legal profession that broadly reflects the demographics of the Republic.

The model was adjusted following discussions with the statutory provincial law societies about the staffing requirements of the new structures and the transfer of staff and assets from the law societies. From these discussions, the staffing structure of the Council and Provincial Councils in [Appendix I](#) was developed. This structure formed the basis of negotiations with the law societies, of transfer agreements in terms of s 97(2) of the LPA.

Annual levies: As regards income, the NF has recommended that the annual levy payable by legal practitioners in the first year of operation should be R3 500 (plus VAT) for practising legal practitioners and R800 for non-practising legal practitioners.

[Read more here.](#)

Download the full set of the [NF Recommendations to the Minister here.](#)

Agreement not yet reached between NF and law societies on transfer of assets

In terms of s 97(2)(a) the NF must reach agreement with the four statutory provincial law societies in respect of the transfer of their assets, rights, liabilities, obligations and staff to the LPC and PCs.

The four law societies have resolved to retain a portion of their cash assets to be handed to the Law Society of South Africa or its successor in title to support a body that will represent the interests of legal practitioners in the new dispensation. This is still under negotiation with the NF.

The way forward

The [Legal Practice Amendment Bill](#) is currently before Parliament. Among the changes it seeks is an extension to the coming into operation of the LPC to ensure that the infrastructure is in place for it to assume the regulation of the profession. It also allows the provincial law societies to keep regulating attorneys for a period of six months to ensure a proper transfer of staff and handover process to the LPC. It is envisaged that the LPC will come into full operation on 1 October 2018.

- View the [timeframes here](#).

- Download the full set of the [NF Recommendations to the Minister here](#).

Regards

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Chairperson and Deputy Chairperson of the LSSA National Forum Committee

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