

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) met on 30 June 2017 to finalise a number of matters in preparation for its recommendations to Justice Minister Michael Masutha on 1 August 2017.

In general the NF noted that, due to the looming deadline to make recommendations to the Minister, time was running out to reach consensus on matters where there is no agreement among stakeholders. On such matters, the different views will be submitted to the Minister for him to make a final decision. One such matter relates to the format and content of practical vocational training (PVT) for candidate legal practitioners. As no agreement has been reached between the attorneys' profession and some groups in the advocates' profession, different options will be submitted to the Minister.

The NF has reached agreement on the following issues, which it was enjoined to make recommendations on in terms of s 97(1) read with s 109 of the [Legal Practice Act 28 of 2014](#) (LPA):

- **An election procedure** to constitute the LPC: The NF is recommending two separate voters' rolls for attorneys and advocates, with attorneys voting for their 10 representatives and advocates for their 6 representatives on the LPC respectively. The attorneys' composition will be 70% black and 30% white attorneys; and half must be women. The advocates' representation will be two black women, one white woman, two black men and one white man.
- **Provincial councils** and their areas of jurisdiction: The NF will recommend 9 provincial councils; one in each province, with their areas of jurisdiction being within the official boundaries of the relevant province.
 - The LPC should be based in Midrand, with the provincial councils based as follows:
 - Eastern Cape - East London
 - Free State - Bloemfontein
 - Gauteng - Pretoria
 - KwaZulu-Natal - Durban
 - Limpopo - Polokwane
 - Mpumalanga - Nelspruit/Mbombela
 - North West - Mahikeng
 - Northern Cape - Kimberley
 - Western Cape - Cape Town
 - The LPC should establish a committee comprising two advocates and two attorneys at each seat of the High Court where there is no provincial council office.
- The composition, powers and functions of the provincial councils.
- The manner in which the provincial councils must be elected: The NF has drafted rules for the election of the provincial councils modelled on the election of practitioners to the LPC.
- **The right of appearance of candidate legal practitioners:** This is dealt with in s 25(5) of the LPA, but the NF plans to request an amendment to the LPA to afford pupil advocates the same rights as candidate attorneys. However, this is inextricably linked with the PVT aspects, which are yet to be finalised.
- The NF has conducted a **cost analysis** of the operation of the LPC and the provincial councils. Based on its analysis, and in an attempt to keep the levies affordable for legal practitioners, the NF foresees a

shortfall in the LPC's budget for the first year of some R28 million. The NF intends to request the Minister to consider recommending that the shortfall be subsidised by the Treasury via the Justice Department's budget. Some NF members expressed reservations that this could impact on the independence of the profession. However, generally the NF is concerned that, if this cannot be done, there will be no option but to increase the levies for practitioners. This, in turn, may have a detrimental effect on newly qualified practitioners entering the profession as well as on other practitioners to remain in the profession.

If accepted, the recommendations will enable the Minister to issue the required regulations, which need to be promulgated in time for the LPC to be established when Chapter 2 of the LPA comes into effect. This is envisaged to be on 1 February 2018.

The rules to be gazetted in terms of s 109(2) of the LPA have been completed save for those relating to PVT, where the Minister must decide on the model. The completed rules relate to procedures to be followed by disciplinary bodies as well as the manner and form in which complaints of misconduct relating to legal practitioners, candidate legal practitioners or juristic entities must be lodged with the LPC. The NF must gazette the rules for comment.

The LSSA will inform practitioners immediately once these are gazetted to give you an opportunity to comment to the NF.

Fees and charges: The NF has also prepared the fees and charges payable by legal practitioners to the LPC for various applications, enrolment, certificates and conversion of enrolment, right of appearance, fees for fidelity fund certificates, annual fees to be paid by practitioners etc. These too must be gazetted by the LPC.

Another aspect which still requires finalisation is the **agreement for the transfer of assets and staff** from the statutory provincial law societies to the LPC. Since the four law societies do not have consensus currently on the terms of the agreement, the Law Society of South Africa is to convene a meeting of the law societies in an attempt to find a consensus and uniform position by mid-July. There is no provision in the LPA for the Minister to make a decision regarding staff and assets, so this is an aspect which must be agreed between the law societies and the NF in order to move forward.

The timeframes for the implementation of the LPA are as follows:

1 August 2017

The NF is to make recommendations to the Minister (s 97(1)(a)).

Agreements between the NF and law societies with regard to transfers must be signed (s 97(2)(a)).

The NF is to issue rules on training and discipline through publication in the *Government Gazette* for comment (s 109(2)).

1 February 2018: Implementation of Chapter 2 in terms of s 120(3)

Minister's proclamation for the establishment of the LPC and provincial councils. (This is subject to the timeous amendment of the LPA in terms of the [Legal Practice Amendment Bill](#), currently before the Justice Portfolio Committee). The LPC and provincial councils will exist without jurisdiction and the provincial law societies will continue to regulate the attorneys' profession for 6 months to ensure a smooth transfer.

The NF is to make all the rules in terms of s 95(1)).

The Minister is to issue the regulations (s 109(1)).

1 August 2018: Implementation of the rest of the LPA in terms of s 120(4)

All rules and regulations need to be in place.

The provincial law societies will be abolished and the regulatory functions of advocates' structures will be transferred to the LPC.

The LPC and provincial councils will commence regulating the legal profession.

The NF will be wound up after a final meeting with the LPC in terms of s 105(3).

We undertake to continue to keep you informed throughout this journey to the new dispensation.

Regards

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Chairperson and Deputy Chairperson of the LSSA National Forum Committee

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