

REPUBLIC OF SOUTH AFRICA

---

**LEGAL PRACTICE BILL  
(TASK TEAM PROPOSAL)**

---

*(As introduced)*

---

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B -2002]

---

REPUBLIEK VAN SUID-AFRIKA

---

**WETSONTWERP OP DIE REGSPRAKTYK**

---

*(Soos ingedien)*

---

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[W -2002]

---

**BILL**

**To provide for the establishment of the Legal Practice Council of South Africa; the admission and enrolment of legal practitioners and paralegal practitioners; the regulation of legal services; and to provide for matters connected therewith.**

---

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:–

## **ARRANGEMENT OF ACT**

### **CHAPTER 1**

#### **DEFINITIONS, INTERPRETATION AND PURPOSE OF ACT**

##### **Section**

1. Definitions and interpretation of Act
2. Purpose of Act

### **CHAPTER 2**

#### **STRUCTURES REGULATING LEGAL PRACTICE**

##### *Part 1*

##### *Legal Practice Council*

3. Establishment of Council
4. Composition of Council and appointment of members
5. Appointment of chairperson and vice-chairperson
6. Terms of office
7. Vacancies in Council
8. Removal from office
9. Objects of Council
10. Powers and functions of Council
11. Meetings and resolutions of Council
12. Committees of Council
13. Allowances and expenses of members of Council and committees
14. Appointment, powers and functions of Executive Director and staff of Council
15. Appointment of staff of Council
16. Finances, expenditure and accountability

17. Reports by Council
18. Validity of decisions taken by or acts performed under authority of Council

***Part 2***

***Accredited organisations***

19. Types of accredited organisations
20. Establishment and accreditation of organisations
21. Powers and functions of accredited organisations
22. Renewal of accreditation
23. Withdrawal of accreditation

**CHAPTER 3**

**REGULATION OF LEGAL SERVICES AND LEGAL PRACTITIONERS**

24. Authority to render legal services
25. Admission as legal practitioner
26. Enrolment of legal practitioners
27. Qualifications for admission
28. Practical legal training
29. Assessment of practical legal training
30. Prescription of community service
31. Right of appearance of candidate legal practitioners
32. Conveyancers
33. Notaries
34. Panel for Recognition of Legal Qualifications
35. Functioning of Panel
36. Legal practitioners, conveyancers and notaries entitled to practise throughout the Republic
37. Striking off and suspension
38. Readmission and re-enrolment
39. Notification to Council
40. Forms of legal practice
41. Multi-disciplinary practice
42. Shareholding in legal practice by person other than legal practitioner

**CHAPTER 4**

**PARALEGAL PRACTICE**

43. Rendering of paralegal services
44. Establishment and objects of Paralegal Committee
45. Constitution and functioning of Paralegal Committee
46. Powers and functions of Paralegal Committee
47. Criteria with regard to qualifications of paralegal practitioners
48. Accreditation of legal advice offices

## **CHAPTER 5**

### **PROFESSIONAL CONDUCT, ESTABLISHMENT OF DISCIPLINARY BODIES AND OFFICE OF LEGAL SERVICES PROTECTOR**

#### ***PART 1***

##### ***Professional conduct and establishment of disciplinary bodies***

49. Professional conduct
50. Establishment of disciplinary bodies

#### ***PART 2***

##### ***Legal Services Protector***

51. Establishment of Office of Legal Services Protector
52. Objects of Legal Services Protector
53. Appointment and independence of Legal Services Protector
54. Remuneration and other terms and conditions of employment of Legal Services Protector
55. Powers and functions of Legal Services Protector
56. Staff, finances and accountability of Office of Legal Services Protector

## **CHAPTER 6**

### **COMPLAINTS AGAINST LEGAL PRACTITIONERS**

#### ***PART 1***

##### ***Complaints of misconduct by legal practitioner***

57. Procedure for dealing with complaints of misconduct
58. Disciplinary hearing
59. Proceedings after hearing and remedial action

60. Review by Legal Services Protector
61. Appeal against decisions of disciplinary body
62. Further role of Legal Services Protector
63. Urgent legal proceedings
64. Disciplinary procedures of accredited organisations
65. Powers of High Courts

**CHAPTER 7**  
**LEGAL PRACTICE FIDELITY FUND**

***PART 1***

***Establishment of Fund and founding provisions***

66. Continued existence of Attorneys Fidelity Fund
67. Revenue of Fund
68. Liability of Fund
69. Limitation of liability of Fund
70. Purpose and application of Fund
71. Money to be deposited into banking account and investment of money
72. Financial year of Fund
73. Fund exempt from certain tax and insurance laws

***PART 2***

***Governance of Fund***

74. Establishment of Board
75. Constitution of Board
76. Appointment of chairperson and vice-chairperson of Board
77. Vacancies in Board
78. Terms of office of members of Board
79. Removal from office
80. Meetings and resolutions of Board
81. Committees of Board
82. Powers of Board
83. Certificate in respect of liabilities of Fund and investment of money in Fund
84. Audit
85. Re-insurance

- 86. Provision of insurance cover and suretyships

**PART 3**  
***Claims against Fund***

- 87. Procedure for instituting claims against Fund
- 88. Actions against Fund
- 89. Subrogation
- 90. Claims may be charged against future revenue of Fund
- 91. Indemnification in respect of certain acts
- 92. Preservation and disposal of records and documentation in possession of Board

**CHAPTER 8**  
**HANDLING OF TRUST MONIES**

- 93. Obligations of legal practitioners where money is entrusted to them by client or any person
- 94. Application for and issue of Fidelity Fund certificates
- 95. Legal practitioners obliged to hold Fidelity Fund certificates must open trust accounts
- 96. Accounting
- 97. Trust money and trust property do not form part of assets of trust account practice
- 98. Court may prohibit operation of trust account
- 99. Appointment of *curator bonis* in respect of trust account
- 100. Rights of banks in respect of trust accounts

**CHAPTER 9**  
**REGULATIONS AND RULES**

- 101. Regulations
- 102. Rules

**CHAPTER 10**  
**GENERAL PROVISIONS**

- 103. Contingency fees
- 104. Recovery of costs by legal practitioner rendering free legal service
- 105. Senior Legal Practitioner
- 106. Offences and penalties

**CHAPTER 11**  
**TRANSITIONAL PROVISIONS**

107. Transitional Council
108. Abolition of societies, and transfer of assets, rights, liabilities and obligations of Council
109. Abolition of Fidelity Funds and transfer of assets, rights, liabilities and obligations to Legal Practice Fidelity Fund
110. Transitional provisions in relation to Legal Practice Fidelity Fund Board of Control
111. Transitional provisions in relation to qualifications
112. Transitional provisions in relation to obtaining Fidelity Fund certificates
113. Existing organisations
114. Existing advocates, attorneys, conveyancers and notaries
115. Persons entitled to be admitted and enrolled as advocates, attorneys, conveyancers or notaries
116. Pending proceedings
117. Interpretation of certain references in laws
118. Repeal of laws and savings
119. Short title and commencement

**CHAPTER 1**  
**DEFINITIONS, INTERPRETATION AND PURPOSE OF ACT**

## Definitions and interpretation of Act

1. (1) In this Act, unless the context indicates otherwise—

"**accredited organisation**" means an organisation accredited by the Council in terms of section 20;

"**appeal tribunal**" means an appeal tribunal established in terms of section 50(5);

"**assessment**" means the process of measuring whether a candidate legal practitioner or paralegal practitioner has successfully attained an adequate level of competence referred to in sections 29(2) or 47, as the case may be;

"**Attorneys Act**" means the Attorneys Act, 1979(Act No. 53 of 1979);

"**bank**" means a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990);

"**Board**" means the Legal Practice Fidelity Fund Board established in terms of section 74(1);

"**candidate legal practitioner**" means a person undergoing practical legal training;

"**chairperson**" means the chairperson of the Council appointed in terms of section 5(1);

"**code of conduct**" means a written code setting out rules and standards relating to ethics, conduct and practice for legal or paralegal practitioners, and their enforcement through professional disciplinary bodies;

"**contingency fees agreement**" means any agreement referred to in section 103(1);

"**conveyancer**" means a person entitled to practise as a conveyancer in terms of section 32;

"**Council**" means the Legal Practice Council of South Africa established in terms of section 3 and includes any substructure or committee of the Council acting on behalf of the Council;

"**course work**" means a structured programme of learning activities offered by the Council or an accredited organisation with the aim of assisting a candidate legal practitioner in attaining an adequate level of competences referred to in section 29(2), and which may include distance-based learning;

"**court**" means any court in the Republic as defined in section 66 of the Constitution;

"**disciplinary body**" means—

(a) an investigating committee;

(b) a disciplinary committee;

(c) an appeal tribunal; or

(d) a disciplinary body established by an accredited organisation;

"**disciplinary committee**" means a disciplinary committee established under section 50;

"**Executive Director**" means the Executive Director of the Council appointed in terms of section 14(1);

"**financial year**" means the financial year of the Fund as contemplated in section 72;

"**fixed date**" means the date of commencement of this Act;

"**Fund**" means the Legal Practice Fidelity Fund referred to in section 66(1);

"**investigating committee**" means an investigating committee established in terms of section 50(1);

"**justice centre**" means an institution which renders legal services to members of the public who are unable to pay a fee, and which operates on behalf of and under the control of the Legal Aid Board established in terms of section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969);

"**learning contract**" means a contract in writing in which—

- (a) the supervisor, or in the case of an accredited organisation or institution, the organisation or institution, undertakes—
- (i) to subject a candidate legal practitioner to learning activities in the relevant application of law and assist him or her in attaining an adequate level of competences;
  - (ii) to issue a certificate of satisfactory performance as required by section 27(c); and
- (b) the candidate practitioner undertakes to participate in learning activities required by the supervisor or, in the case of an accredited organisation or institution, the organisation or institution or any organ thereof;

**“legal community service”** means community service related to the application of law which may be performed—

- (a) at a justice centre;
- (b) at an institution rendering legal services to the community;
- (c) in terms of a learning contract; or
- (d) in terms of section 30;

**"legal practitioner"** means a person admitted as such in terms of section 25(1) and for the purposes of the application of Chapters 5 and 6 includes a paralegal practitioner and a practice;

**“legal services”** means the provision of advice or assistance to the public relating to the enforcement, protection or interpretation of legal rights or obligations, which is not provided purely incidentally to the provision of other advice or assistance;

**"Legal Services Protector"** means a person appointed as such in terms of section 53(1);

**"magistrate's court"** means a regional court or a district court established in terms of the Magistrate's Courts Act, 1944 (Act No. 32 of 1944), and **“magistrates' courts”** has a corresponding meaning;

**“Master”** means a Master of the High Court acting within the powers conferred upon him or her by law;

**"Minister"** means the member of the Cabinet who is responsible for the administration of justice;

**"notary"** means a person entitled to practise as a notary in terms of section 33;

**"paralegal practitioner”** means a person who may render legal services as contemplated in section 43;

**"practical legal training"** means training provided to a *baccalaureus legum* graduate or person with an academic qualification recognised in terms of section 35, with the object of enhancing his or her ability to render legal services and attaining an adequate level of competences as referred to in section 29(2), and comprises both course work and work-place training;

**"practice"** means an entity in terms of which one or more legal practitioners conduct a practice involving the rendering of legal services to the public either alone, or in partnership with one another, or as a corporation, or as a voluntary association with legal personality;

**“pupillage”** means a period of practical legal training which is supervised by one or more supervisors, offered under the auspices of an accredited organisation whose members specialise in advocacy;

**“registrar”** means a registrar of a court and includes any acting or assistant registrar of a court;

**"Republic"** means the Republic of South Africa;

**“reward”** means any fee or reward, whether monetary or otherwise, but does not include the salary or emoluments of an employee if no reward is sought or obtained for his or her employer from the person to whom the service is

rendered;

**“Roll of Legal Practitioners”** means the Roll of Legal Practitioners referred to in section 26(1) and **“Roll”** has a corresponding meaning;

**“supervisor”** means a legal practitioner assigned or approved by the Council or an accredited organisation to supervise the practical training of a candidate legal practitioner under this Act;

**"this Act"** includes the rules made under section 102 and the regulations made under section 101;

**"trust account"** means a trust account referred to in section 95(1);

**“trust account practice”** means a practice conducted by one or more legal practitioners who are in terms of this Act obliged to hold a Fidelity Fund certificate;

**“work-place training”** means the training of a candidate legal practitioner by his or her supervisor in the application of law in legal practice, in order to assist him or her to attain an adequate level of competences, by means of—

- (a) service in terms of a learning contract under the supervision of a legal practitioner;
- (b) service in terms of a learning contract related to the rendering of legal services in the office of the State Attorney or any other organ of the State;
- (c) service in terms of a learning contract related to the rendering of legal service in a justice centre;
- (d) service in terms of a learning contract entered into by arrangement with an accredited organisation, and taking place under the supervision of one or more supervisors; or
- (e) any form of service which the Council may from time to time determine, having regard to the competencies referred to in section 29(2);

(2) If any conflict arises between this Act and the provisions of any other law save the Constitution or any Act expressly amending this Act, the provisions of this Act shall prevail.

### **Purpose of Act**

2. The purpose of this Act is to—

- (a) regulate the rendering of legal services;
- (b) create a framework for—
  - (i) the effective rendering of legal services;
  - (ii) the development and maintenance of appropriate norms and standards for the rendering of legal services by legal practitioners and paralegal practitioners;
  - (iii) the regulation of the admission and enrolment of legal practitioners and paralegal practitioners;
  - (iv) the development of adequate training programmes for candidate legal practitioners and candidate paralegal practitioners;
  - (v) engendering public confidence in legal practitioners and paralegal practitioners;
  - (vi) participation of all legal practitioners in the legal profession;
- (c) enhance access to justice; and
- (d) provide a fair and effective procedure for the resolution of complaints against legal practitioners and paralegal practitioners.

**CHAPTER 2**  
**STRUCTURES REGULATING LEGAL PRACTICE**

***PART 1***  
***Legal Practice Council***

**Establishment of Council**

3. There is hereby established a juristic person to be known as the Legal Practice Council of South Africa.

**Composition of Council and appointment of members**

4. (1) The Council consists of the following persons appointed by the Minister:

- (a) 12 legal practitioners designated by organisations representing legal practitioners;
- (b) two persons designated by organisations representing paralegal practitioners;
- (c) one teacher of law designated by an organisation or organisations representing the majority of law teachers from tertiary institutions;
- (d) two persons representing the interests of users of legal services, after a call for nominations for these appointments has been published in the *Gazette* by the Minister;
- (e) one person who by virtue of his or her knowledge and experience will, in the opinion of the Minister promote the objects of the Council;
- (f) one person designated by the Board, who does not have the right to vote at meetings, and who may not be the chairperson.

(2) Subject to section 107, the Minister must, after consultation with the Council, by notice in the *Gazette*, determine—

- (a) the organisations referred to in subsection(1)(a), (b) and (c); and
- (b) in the case of subsection (1)(a), the number of legal practitioners to be designated by each such organisation.

(3) In making the appointments and determination referred to in subsections (1) and (2), the Minister must have regard to—

- (a) the objects of the Council;
- (b) the principle of openness and transparency;
- (c) the principle of representivity, with particular regard to –
  - (i) race and gender;
  - (ii) in the case of designations referred to in subsection(1)(a), fair and effective representation of different categories of legal practitioners; and
  - (iii) provincial distribution;
- (d) the recommendations of the Council.

(4) (a) The Minister may refer a designation made in terms of subsection (1)(a), (b) or (c) back to the designator for reconsideration if, in his or her opinion, the requirement regarding representivity has not been met

or the designated person is not a fit and proper person for appointment.

(b) If after such a referral the designating body designates the same person after reconsidering the matter, the Minister must appoint him or her.

### **Appointment of chairperson and vice-chairperson**

5. (1) At the first meeting of the Council, the members of the Council must elect a chairperson and vice-chairperson from their number.

(2) The members of the Council may appoint any person to chair the proceedings contemplated in subsection (1).

(3) The chairperson and vice-chairperson hold office for a period of one year from the date of their election and may be re-elected.

(4) (a) When the period of office of a chairperson or vice-chairperson expires, that person remains in office until the next meeting of the Council.

(b) If the office of chairperson or vice-chairperson becomes vacant for any reason, the office must be filled immediately according to the procedure set out in this section.

### **Terms of office**

6. (1) A member of the Council holds office for a term of three years.

(2) A member may at any time, upon at least three months' written notice to the Minister, resign from office.

(3) Despite subsection (1), a member remains in office after expiry of his or her term of office until the commencement of the term of office of his or her successor.

(4) A member may not serve more than two consecutive terms.

### **Vacancies in Council**

7. (1) A vacancy in the Council occurs when—

- (a) a member's term of office expires;
- (b) a member dies;
- (c) a member is removed from office in terms of section 8; or
- (d) a member's resignation takes effect.

(2) (a) A vacancy in the Council must be filled as soon as practicable in accordance with section 4.

(b) The vacancy is filled for the unexpired period of the term of office in respect of which the vacancy occurred.

### **Removal from office**

8. (1) The Minister may, at the instance of the Council, remove a member from office on account of-

- (a) misconduct;

- (b) inability to perform the duties and functions of his or her office efficiently;
  - (c) absence from three consecutive meetings of the Council without the permission of the chairperson, except on good cause shown; or
  - (d) a request by the organisation which designated that member in terms of section 4(1).
- (2) (a) If the Council has commenced proceedings for the removal of a member the Minister must, if so requested by the Council, suspend that member from office.
- (b) A member who is suspended from office may not perform any functions of that office or receive any allowances.

### **Objects of Council**

**9.** The objects of the Council are to promote and protect the public interest by—

- (a) regulating the provision of legal services;
- (b) preserving and upholding the independence of the legal profession;
- (c) maintaining and enhancing the integrity and status of the legal profession;
- (d) determining, maintaining and enhancing appropriate standards of professional practice and ethical conduct on the part of legal practitioners and paralegal practitioners;
- (e) promoting high standards of legal education and training;
- (f) promoting access to justice for all members of the public;
- (g) promoting access to the legal profession;
- (h) promoting and representing the legitimate professional interests of legal practitioners;
- (i) considering and initiating reforms and improvements in any branch of the law, the administration of justice, the rendering of legal services and legislation impacting thereon; and
- (j) upholding and advancing the rule of law, the administration of justice and the Constitution.

### **Powers of Council**

**10.** (1) In addition to the powers conferred upon it in this Act, and for the purposes of achieving its objects, the Council may—

- (a) acquire or hire movable or immovable property;
- (b) develop, hypothecate, let, sell or otherwise dispose of movable or immovable property;
- (c) make donations and grants to support projects relating to its objects;
- (d) perform any act in respect of negotiable instruments or the electronic transfer of moneys;
- (e) impose monetary penalties;
- (f) invest Council funds;
- (g) borrow or raise money;
- (h) insure against any risk;
- (i) establish or administer—
  - (i) insurance schemes;
  - (ii) medical schemes;

- (iii) pension, provident or benevolent funds, for the benefit of employees of the Council and their dependants;
  - (j) conclude agreements;
  - (k) institute or defend legal proceedings;
  - (l) publish material;
  - (m) fix payments to be made to the Council by persons enrolled in terms of this Act and grant rebates in recognition of community service performed by persons so enrolled;
  - (n) advise the Minister with regard to matters concerning the legal profession and legal practice;
  - (o) do anything which is required for the proper and effective exercise or performance of its powers and functions.
- (2) The Council may also—
- (a) acquire or form and administer a public company or, together with any other person or institution, establish a scheme underwritten by a registered insurer, in order to provide insurance cover subject to the provisions of the Short Term Insurance Act, 1998 (Act No. 53 of 1998), to legal practitioners in respect of any claims which may arise from the professional conduct of such legal practitioners;
  - (b) enter into a contract with a company or scheme referred to in paragraph (a) or any company carrying on professional indemnity insurance business for the provision of group professional indemnity insurance to legal practitioners to the extent and in the manner provided in such contract;
  - (c) enter into deeds of suretyship to the satisfaction of the Master in order to provide security on behalf of a legal practitioner in respect of work done by such legal practitioner as—
    - (i) executor in the estate of a deceased person;
    - (ii) a trustee in an insolvent estate;
    - (iii) a curator to the person or property in the case of a person who is unable to manage his or her own affairs; or
    - (iv) in case of any other similar capacity, by any other person in such capacity where a legal practitioner acts as agent for the person concerned; and
  - (d) levy premiums and fees for the provision of such insurance or security through any scheme established or public company administered by it in terms of the provisions of this Act or legislation repealed by this Act.

### **Meetings and resolutions of Council**

- 11.** (1) (a) The Council may meet at any place in the Republic.
- (b) The Council must, as soon as practicable after the appointment of its members, meet for the first time at the time and place determined by the Minister and thereafter at the times and places determined by the Council.
- (c) The Council must hold at least four meetings in a year.
- (2) When the chairperson is absent or not able to perform his or her functions, the vice-chairperson must act as chairperson and if both the chairperson and vice-chairperson are absent from a meeting or not able to perform their functions, the members present must elect one of their number to preside at that meeting.

- (3) The quorum for any meeting of the Council is half of the total number of its members.
- (4) The decision of the majority of members present at a meeting constitutes the decision of the Council and in the event of an equality of votes the person presiding at the meeting has a casting vote in addition to a deliberative vote.
- (5) The Council must determine the procedure for calling a meeting and the procedure to be followed at meetings.
- (6) In any advice or recommendation to the Minister the minority views of any one or more members of the Council, as well as any report of a committee appointed in terms of section 12, must be included.
- (7) The Council must keep a record of its proceedings.
- (8) A resolution in writing of the Council signed by all its members is regarded as if it had been passed at a meeting of the Council.

### **Committees of Council**

- 12.** (1) The Council may—
  - (a) appoint an executive committee consisting of the chairperson, the vice-chairperson and three other members;
  - (b) appoint committees relating to matters falling within the scope of its powers and functions, the members of which may be members of the Council or any other persons;
  - (c) delegate to the executive committee or other committee such powers and functions as it may determine;
  - (d) direct the executive committee or other committee to advise the Council on any matter.
- (2) The members of a committee must elect its chairperson from their number unless the Council has appointed a chairperson.
- (3) A committee performs its functions in accordance with any policy directions of the Council.
- (4) The Council may at any time dissolve any committee.
- (5) The provisions of section 11 apply, with the necessary changes, to a meeting of a committee appointed in terms of subsection (1).
- (6) The Council is not divested of any power delegated to a committee and may amend or rescind a decision of such a committee.

### **Allowances and expenses of members of Council and committees**

- 13.** A member of the Council or a committee of the Council may be paid such reasonable allowances and travel and subsistence expenses as the Council may determine in respect of and incidental to the performance of his or her ordinary functions or any additional functions performed at the request of or with the approval of the Council or a committee of the Council.

### **Appointment, powers and functions of Executive Director and staff of Council**

- 14.** (1) The Council must as soon as practicable after its establishment and whenever necessary thereafter, appoint a suitably qualified and experienced person as Executive Director of the Council for such term as the Council may determine.

(2) Before the Executive Director is appointed the Council must in at least two national newspapers give notice of its intention to appoint a person and invite interested persons to submit applications to the Council.

(3) Whenever the Executive Director is for any reason absent or unable to perform his or her functions, or when the position of Executive Director is vacant, the Council may appoint a person as Acting Executive Director.

(4) The Executive Director is appointed on such terms and conditions and receives such remuneration, allowances and other service benefits as the Council may determine.

(5) The Executive Director performs the functions assigned to him or her subject to the control and directions of the Council.

(6) In addition to the functions assigned to him or her under this Act or by the Council, the Executive Director is responsible for—

- (a) the formation and development of an efficient administration;
- (b) the management and discipline of the administrative staff of the Council; and
- (c) the proper and diligent implementation of the resolutions and operational plans of the Council.

(7) (a) The Executive Director may, subject to the approval of the Council, delegate the performance of any function to a member of the staff of the Council and permit such person to further delegate the performance of that function.

(b) A delegation or authorisation referred to in paragraph (a)—

- (i) must be in writing;
- (ii) may be subject to conditions and restrictions;
- (iii) must specify the period for which it lasts;
- (iv) may be amended or withdrawn; and
- (v) does not prevent the exercise of the power and performance of the function by the Executive Director.

### **Appointment of staff of Council**

**15.** (1) The Council must, as soon as practicable after the appointment of the Executive Director, and after consultation with the Executive Director, appoint such staff as may be reasonably necessary to assist the Executive Director.

(2) The Council may authorise the Executive Director, on its behalf, to appoint such staff as it considers reasonably necessary.

(3) A person appointed in terms of subsection (1) or (2) is appointed on such terms and conditions and receives such remuneration, allowances and other service benefits as the Council may determine.

(4) In making the appointments referred to in subsection (1) or (2), the Council and the Executive Director must take into account the need for gender and racial representivity.

### **Finances, expenditure and accountability**

**16.** (1) The funds of the Council consist of—

- (a) fees payable in terms of this Act;

- (b) an annual appropriation made by the Fund, the amount of which is determined by the Board in consultation with the Council; and
- (c) any other moneys received by the Council in terms of this Act or accruing to the Council from any other source.
  - (2) Expenditure incidental to the performance of the functions of the Council in terms of this Act or any other law must be defrayed from the funds of the Council.
  - (3) The Executive Director —
    - (a) must deposit all moneys received by the Council with a bank approved by the Council;
    - (b) may invest any moneys of the Council which is not required for immediate use with a bank approved by the Council or in such other manner as the Council may determine;
    - (c) is charged with the responsibility of accounting for money received or paid out for or on account of the Council;
    - (d) must cause the necessary accounting and other related records to be kept, including proper records of all the assets and liabilities of the Council.
  - (4) The records referred to in subsection (3)(d) must be audited by a registered accountant and auditor appointed by the Council.

### **Reports by Council**

- 17. (1) The Council must report to the Minister at least once every year on its activities, the achievement of its objects and its financial affairs.
- (2) The Minister must cause such report to be tabled in Parliament as soon as practicable after receipt thereof.

### **Validity of decisions taken by or acts performed under authority of Council**

- 18. (1) No decision of the Council having a bearing on or affecting the interests of the Fund may be taken without prior consultation with the Board.
- (2) An act or decision of the Council or act performed under authority of the Council is not invalid merely because of—
  - (a) a defect or irregularity in, or in connection with the appointment of a member of the Council; or
  - (b) a vacancy in the membership of the Council, including a vacancy resulting from the failure to appoint an original member of the Council,
 if the decision was taken or the act was authorised by the requisite majority of the members of the Council who were present at the time and entitled to sit as members.
- (3) Anything done by or in relation to a person purporting to act as chairperson or as a member of the Council is not invalid merely because—
  - (a) the occasion for the person to act had not arisen or had ceased;
  - (b) there was a defect or irregularity in relation to the appointment; or
  - (c) the appointment had ceased to have effect.

**PART 2**  
**Accredited Organisations**

**Types of accredited organisations**

**19.** The membership of an accredited organisation is limited to either legal practitioners or paralegal practitioners.

**Establishment and accreditation of organisations**

**20.** (1) Any organisation of legal practitioners or paralegal practitioners may in the prescribed manner and upon payment of the prescribed fees apply to the Council for accreditation as an accredited organisation.

(2) The Council must grant accreditation to an organisation if it is satisfied that—

- (a) it has a written constitution providing for appropriate financial controls, an executive, secretariat, the conduct of meetings, the keeping of minutes and for such other matters as the Council considers reasonably necessary for the efficient functioning of the organisation;
- (b) it has a code of conduct consistent with this Act;
- (c) it has the capacity effectively to enforce its code of conduct and to exercise professional discipline in respect of its members;
- (d) it has the capacity to provide practical legal training to enable candidates to attain the abilities referred to in sections 29(2) and 47;
- (e) it is a viable organisation with sufficient resources to perform its duties and functions; and
- (f) its main objects are to promote and develop high standards of legal practice by its members, and promote the public interest and the legitimate interests of its members.

(3) If the Council decides—

- (a) to accredit the applicant, the Council must—
  - (i) issue a certificate of accreditation in the applicant's name stating the period and any terms or conditions of accreditation;
  - (ii) as soon as practicable after the decision, publish the certificate of accreditation in the *Gazette*; or
- (b) not to accredit the applicant, the Council must advise the unsuccessful applicant in writing of its decision and the reasons therefor.

**Powers and functions of accredited organisations**

**21.** (1) Every accredited organisation must—

- (a) exercise professional discipline over its members in accordance with this Act;
- (b) make rules not inconsistent with this Act, including rules of professional ethics, which are binding on all its members;
- (c) receive and determine applications for membership and accept all applicants who qualify for membership, with or without such conditions as it may reasonably determine according to criteria approved by the

Council;

- (d) report to the Council in the prescribed manner on its activities;
  - (e) provide the prescribed information regarding legal practice by its members; and
  - (f) cooperate with the Council and the Legal Services Protector.
- (2) An accredited organisations may also—
- (a) provide practical legal training programmes approved by the Council for candidate legal practitioners who intend applying for membership of the organisation;
  - (b) provide continuing legal education;
  - (c) determine annual membership fees;
  - (d) advise the Council regarding legal practice in relation to its branch of legal practice;
  - (e) take such other steps as it may reasonably determine to enhance skills and promote the administration of justice.
- (3) The code of conduct of an accredited organisation may not—
- (a) prevent a member from rendering any legal services which he or she is otherwise entitled under this Act to perform, but may restrict its membership to natural persons who render legal services for reward to the public only if briefed by another legal practitioner, except in such circumstances as the accredited organisation, with the approval of the Council, may determine;
  - (b) prevent a member from rendering legal services or appearing in a court together with a legal practitioner who is not a member of that organisation, solely for that reason.

### **Renewal of accreditation**

22. (1) Every accredited organisation must every three years, on or before the prescribed date, apply to the Council in the prescribed manner and upon payment of the prescribed fee for the renewal of its certificate of accreditation.

(2) The provisions of section 20 apply, with the necessary changes, to applications for renewal in terms of subsection (1).

(3) Not later than three months after receipt of any application in terms of subsection (1), the Council must determine the application and issue to every successful applicant a certificate of accreditation valid for a further three years.

### **Withdrawal of accreditation**

23. (1) Subject to subsection (2) and (3), the Council may, in consultation with the Legal Services Protector, withdraw a certificate of accreditation if the accredited organisation concerned materially breaches a requirement of this Act.

(2) Unless circumstances dictate otherwise, before taking any steps under this section, the Council must issue a directive to the accredited organisation describing the nature and extent of the breach and stating the steps required to rectify the breach and the period within which this must be done.

(3) The Council must give the accredited organisation concerned prior written notice and the

opportunity to make representations before acting in terms of subsection (1).

(4) If the Council withdraws a certificate of accreditation it must as soon as practicable after the decision, give written notice to the accredited organisation concerned and publish a notice in the *Gazette*.

### **CHAPTER 3 REGULATION OF LEGAL SERVICES AND LEGAL PRACTITIONERS**

#### **Authority to render legal services**

**24.** (1) Subject to the provisions of section 43 or any other law, no person other than a legal practitioner may—

- (a) render legal services for reward or hold out that he or she is entitled to do so;
- (b) hold himself or herself out as a legal practitioner or make any representation or use any title or description indicating or implying that he or she is a legal practitioner.

(2) A legal practitioner who is struck off the roll or suspended from practice, may not—

- (a) render legal services as a legal practitioner directly or indirectly for his or her own account or in partnership or association with any other person, or as a member of a legal practice; or
- (b) be employed by or otherwise be engaged in a practice without the prior written consent of the Council given in exceptional circumstances and on such terms and conditions as the Council may determine.

(3) Any person who contravenes the provisions of subsection (1)(a) or (b) or (2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

#### **Admission as legal practitioner**

**25.** (1) A High Court must admit to practise and authorise to be enrolled as a legal practitioner any person who upon application made in the prescribed form satisfies the court that he or she—

- (a) is duly qualified;
- (b) is—
  - (i) a South African citizen;
  - (ii) ordinarily resident in the Republic;
  - (iii) a member of a category of persons whom the Council has declared, by notice in the *Gazette*, shall be allowed to be admitted to practise in the Republic; or
  - (iv) certified by the Council as being a person who by virtue of his or her special circumstances qualifies to practise in South Africa; and
- (c) is a fit and proper person to be so admitted.

(2) A person applying for admission in terms of subsection (1) must, at least six weeks before the day on which his or her application is to be heard by the court, deliver to the registrar a copy of the application containing—

- (a) an affidavit disclosing—
  - (i) his or her identity number;
  - (ii) all facts relevant to the application, and in particular any facts which may be adverse to the granting

of the application, including insolvency, previous criminal convictions and past and pending disciplinary proceedings;

- (iii) whether or not he or she has at any time been struck off the Roll of Legal Practitioners, advocates, attorneys, conveyancers or notaries or suspended from practice by the court;
- (b) an affidavit from a legal practitioner stating that he or she has examined the applicant’s identity document and is satisfied that the applicant is the person referred to in the identity document;
- (c) a certificate from the relevant university that he or she has obtained the degree or degrees referred to in section 27(a);
- (d) a certificate or certificates that he or she has successfully completed the practical legal training referred to in section 27(b);
- (e) a certificate referred to in section 27(c).

(3) The applicant must on or before the date referred to in subsection (2) serve a copy of the application on the Council and if the applicant thereafter at any time prior to the hearing of the application delivers any further documents to the registrar, he or she must forthwith serve a copy thereof on the Council.

(4) The Council must forthwith notify every accredited organisation of every application received by it in terms of subsection (3).

(5) Not later than one week before the date on which the application is to be heard the Council must furnish the registrar with a certificate stating whether in its opinion the applicant is a fit and proper person and, if it furnishes a negative certificate, a notice opposing the application and an affidavit setting out the grounds of its opposition.

(6) Any person who is admitted to practise and authorised to be enrolled as a legal practitioner must, upon being so admitted, take an oath or make an affirmation before the court, which must be subscribed by him or her in the following form:

“I, ..... do hereby swear/ solemnly and sincerely affirm and declare/ that I shall fulfill my duty as an officer of the court, at all times act with honesty and integrity in the practice of law, and uphold the Constitution.”.

**Enrolment of legal practitioners**

26. (1) On receipt of proof of admission by the High Court in terms of section 25(1), the Council must enroll the applicant as a legal practitioner.

- (2) The Council must keep the Roll of Legal Practitioners in the prescribed form.
- (3) The Roll of Legal Practitioners must reflect—
  - (a) the name of every person admitted and enrolled as a legal practitioner in terms of this Act, and particulars of the order of court whereby he or she was admitted;
  - (b) the name of every person readmitted and enrolled as a legal practitioner contemplated in section 38, and particulars of the order of court readmitting him or her;
  - (c) the names of all persons deemed in terms of section 114 to have been admitted and enrolled as legal

practitioners, and particulars of the orders of court admitting them;

- (d) particulars of any order of court whereby any legal practitioner has been suspended, whether such order was made before or after the commencement of this Act, or whereby the name of any such person has been ordered to be struck off the Roll of Legal Practitioners;
- (e) any amendment or endorsement against the enrolment of a legal practitioner contemplated in section 37;
- (f) particulars of all legal practitioners who—
  - (i) are members of an accredited organisation, the name of the relevant accredited organisations and the dates on which they became members;
  - (ii) have applied for and been enrolled to practise with a Fidelity Fund certificate;
  - (iii) do not take work directly from the public;
  - (iv) are conveyancers or notaries;
  - (v) are not practising as legal practitioners;
- (g) such other particulars as the Minister may from time to time prescribe on the recommendation of the Council.

(4) The registrar of the court which makes an order—

- (a) admitting and authorising any person to practise and be enrolled as a legal practitioner;
- (b) readmitting and authorising any person to practise and be enrolled as a legal practitioner;
- (c) that the name of any person be struck off the Roll of Legal Practitioners or suspending any person from practice as a legal practitioner under this Act or any other law,

must immediately after the making of such order forward a certified copy thereof to the Council.

(5) On receipt of the certified copy referred to in subsection (4), the Council must amend the Roll of Legal Practitioners accordingly.

(6) A legal practitioner may apply to the Council for the removal of his or her name from the Roll of Legal Practitioners.

(7) Upon receipt of an application referred to in subsection (6), the Council may grant such application and amend the Roll of Legal Practitioners accordingly or, where disciplinary proceedings by the Council or an accredited organisation against the legal practitioner concerned are pending or contemplated, refuse it.

(8) Any document issued by the Council whereby it is certified that—

- (a) any person has been admitted and enrolled to practise as a legal practitioner;
- (b) any person has been readmitted to practise as a legal practitioner;
- (c) any person has been suspended from practice as a legal practitioner; or
- (d) the name of any person has been struck of the Roll of Legal Practitioners,

is on its mere production *prima facie* proof of the facts stated therein.

(9) The Council must annually, on or before the prescribed date, forward a copy of a current Roll of Legal Practitioners to—

- (a) the registrar of the Constitutional Court;
- (b) the registrar of the Supreme Court of Appeal;
- (c) the registrars of all divisions of the High Court;

- (d) the presidents of the regional courts;
  - (e) the Chief Magistrates of magistrates' courts;
  - (f) the Director-General: Justice;
  - (g) the registrars of deeds appointed in terms of section 2 of the Deeds Registries Act, 1937(Act No. 47 of 1937); and
  - (h) the secretaries of all accredited organisations,
- who must keep such copy available for public inspection until receipt of the next copy from the Council.

### **Qualifications for admission**

**27.** The following persons are deemed to be duly qualified for the purpose of section 26(1)(a), namely any person who—

- (a) (i) has satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic after completing a period of study of not less than four years for that degree; or
- (ii) after he or she has satisfied all the requirements for the degree of bachelor other than the degree of *baccalaureus legum* of any university in the Republic or, after he or she has been admitted to the status of any such degree by any such university, has satisfied all the requirements for the degree of *baccalaureus legum* of any such university after completing a period of study for such degrees of not less than five years in the aggregate: Provided that a university may reduce the required aggregate period to four years if it is satisfied that the first degree obtained was substantially a law degree; and
- (b) after obtaining the degree of *baccalaureus legum* referred to in paragraph (a) has completed not less than one year of practical legal training consisting of—
  - (i) work-place training and course work as prescribed by the Council or by an accredited organisation with the approval of the Council, and published in the *Gazette*; or
  - (ii) pupillage as prescribed by an accredited organisation with the approval of the Council, and has been furnished with a certificate to that effect by the person who supervised the practical legal training referred to in subparagraph (i) or the secretary of the accredited organisation referred to in subparagraph (ii); and
- (c) after completing the practical legal training referred to in paragraph (b) has undergone an assessment in terms of section 29 and has been furnished with a certificate by—
  - (i) the Council, in the case of a person who has undergone the practical legal training referred to in paragraph (b)(i); or
  - (ii) the secretary of the accredited organisation, in the case of a person who has undergone the pupillage referred to in paragraph (b)(ii).

### **Practical legal training**

**28.** (1) The Council, or an accredited organisation in consultation with the Council, must determine the minimum conditions and procedures for the registration and administration of practical legal training.

(2) The supervisor referred to in section 27(b) must have at least three years' experience as a practising legal practitioner during the preceding five years: Provided that the Council may, upon application made to it, accredit as a supervisor a legal practitioner who does not satisfy this requirement if it is satisfied that he or she will be a competent supervisor.<sup>1</sup>

### **Assessment of practical legal training**

**29.** (1) The Council, or any accredited organisation authorised to do so by the Council, must from time to time determine a procedure and issue directions pertaining to the assessment of persons undergoing practical legal training.

(2) The purpose of assessment in terms of subsection (1) must be to establish whether, in the opinion of the Council or the accredited organisation concerned, the person has attained an adequate level of competence for admission and enrolment as a legal practitioner and, in particular has attained the ability to—

- (a) communicate effectively in the performance of his or her duties and functions as a legal practitioner;
- (b) conduct negotiations;
- (c) provide legal advice;
- (d) apply practical aspects of advocacy, including arguing before courts;
- (e) apply the rules and procedures of professional conduct, practice management and administration;
- (f) prepare legal documents;
- (g) research and apply South African law;
- (h) in the case of a legal practitioner who deals directly with a client and who receives money from a client, apply basic accounting skills in administering books of account.

(3) The assessment referred to in subsection (1) must be carried out—

- (a) in the case of a person undergoing practical legal training with an accredited organisation, by the organisation accredited for that purpose;
- (b) in all other cases, by the Council: Provided that the Council may engage an appropriate institution or organisation to conduct such assessment on its behalf.

(4) The Council or an accredited organisation referred to in subsection (3), must determine the criteria for a person to qualify to conduct an assessment in terms of this section.

---

<sup>1</sup> The GCB does not support this proviso. Its view is that the three-year requirement is already a very low threshold given the importance of the supervisor's duties.

### **Prescription of community service**

**30.** (1) The Minister may<sup>2</sup>, on the recommendation of the Council, prescribe legal community service, which may include—

- (a) remunerated service as a component of practical legal training from a date determined by the Minister on the advice of the Council;
- (b) a minimum period of service by legal practitioners.

(2) A minimum period of service contemplated in subsection (1)(b), may be a recurring annual requirement upon which continued registration is dependant.

(3) For the purposes of this section, but subject to subsection (1)(a), “community service” may include unremunerated service involving—

- (a) the delivery of legal services to the public;
- (b) the provision of legal education and training on behalf of the Council, an accredited organisation or an academic institution or non-governmental organisation approved by the Council;
- (c) service as a judicial officer, including as a commissioner in the Small Claims Court;
- (d) service to the national prosecuting authority or any other state institution approved by the Council;
- (e) service on regulatory structures established or accredited in terms of this Act; or
- (f) such other service as may be determined by the Council.

### **Right of appearance of candidate legal practitioners**

**31.** (1) Any candidate legal practitioner who—

- (a) has satisfied the requirements referred to in section 27(a);
- (b) is undergoing the practical legal training contemplated in section 27(b);

---

<sup>2</sup> The GCB view is that this provision is too wide, and that there must be objective criteria for the exercise of the Minister’s decision, such as effectiveness, predictability and fairness having regard to the individual’s obligations and personal circumstances. The Chairperson supports this view.

(c) has the permission of his or her supervisor;  
 (d) acts under the general direction of his or her supervisor; and  
 (e) is in possession of a Certificate of Appearance referred to in subsection (2),  
 is entitled to appear instead of or on behalf of such supervisor in any court or tribunal in or before which his or her supervisor is entitled to appear, other than the Constitutional Court, Supreme Court of Appeal, Labour Appeal Court and Competition Appeal Court: Provided that a candidate legal practitioner may appear in a High Court or a court of equivalent jurisdiction only after completing six months of his or her practical legal training .

(2) The Executive Director or, in the case of an accredited organisation the secretary of such an organisation must, upon the written application of the supervisor of any candidate legal practitioner who meets the requirements referred to in subsection (1)(a), (b) and (c) and upon the payment of the prescribed fee, issue to such candidate legal practitioner a Certificate of Appearance.

(3) The supervisor referred to in subsection (1) may charge reasonable fees for the appearance of the candidate legal practitioner, and a person in whose favour a court makes an order of costs may recover a reasonable fee for the appearance of the candidate legal practitioner.

(4) Any candidate legal practitioner who is entitled to appear as contemplated in subsection (1) continues at the expiry of his or her learning contract to be entitled to appear, provided that he or she continues to be under the supervision of the supervisor who was his or her supervisor immediately before such expiry, or provided that he or she remains in the employment of the practice or justice centre concerned.

(5) In the event of the death, mental illness, insolvency, conviction for crime, imprisonment for debt, suspension, striking off the Roll or discontinuance of practice of the supervisor who was the supervisor of a candidate legal practitioner immediately before the expiry of his or her practical training or pupillage, such candidate legal practitioner is, with the written permission of the Executive Director or a person authorised thereto by him or her, or, in the case of an accredited organisation the secretary of such an organisation, entitled to take service with any other supervisor and to appear as contemplated in subsection (1) under the supervision of that supervisor.

(6) The supervisor is accountable to the court with regard to the appearance of a candidate legal practitioner.

### **Conveyancers**

**32.** (1) No person may perform any act which in terms of any law may be performed only by a conveyancer unless his or her enrolment as a legal practitioner reflects that he or she is entitled to practise as a conveyancer.

(2) The Council must endorse a legal practitioner's right to practise as a conveyancer against his or her enrolment as a legal practitioner if the Council is satisfied that—

- (a) the applicant is a person referred to in section 114; or
- (b) the applicant is in possession of a conveyancing qualification approved by the Council; and
- (c) no proceedings are pending to strike the applicant's name of the Roll of Legal Practitioners or to suspend him or her from practising.

### **Notaries**

**33.** (1) No person may perform any act which in terms of any law may be performed only by a notary unless his or her enrolment as a legal practitioner reflects that he or she is entitled to practise as a notary.

(2) The Council must endorse a legal practitioner's right to practise as a notary against his or her enrolment as a legal practitioner if the Council is satisfied that—

- (1) the applicant is a person referred to in section 114; or
- (b) the applicant is in possession of a notarial qualification approved by the Council; and
- (c) no proceedings are pending to strike the applicant's name of the Roll of Legal Practitioners or to suspend him or her from practising.

### **Panel for Recognition of Legal Qualifications**

**34.** (1) A panel to be known as the Panel for the Recognition of Legal Qualifications is hereby established.

(2) The purpose of the Panel is to consider applications to be deemed to be duly qualified for the purpose of section 25(1)(a), by persons who do not hold the qualifications referred to in section 27.

(3) The Minister must after consultation with the Council and any organisation representing university teachers of law appoint the members of the Panel and determine their terms of office.

(4) The Panel consists of—

- (a) a judge or retired judge of the High Court, Supreme Court of Appeal or Constitutional Court, who is the chairperson of the Panel;
- (b) two legal practitioners;
- (c) two university lecturers in law; and
- (d) two persons who, in the opinion of the Minister, have the necessary expertise to serve on the Panel.<sup>3</sup>

(5) If the chairperson of the Panel is absent the members present must elect one from their number to preside at that meeting.

---

<sup>3</sup> The GCB view is that these additional nominees are unnecessary. The Chairperson supports this view.

(6) The members of the Panel may hold office for a period not exceeding three years.

(7) The Minister must, on the recommendation of the Council, remove a member from the Panel if the Minister is satisfied that—

(a) there is good cause for doing so; or

(b) the member concerned has failed, without good cause, to attend three consecutive meetings of the Panel.

(8) A member of the Panel may resign from office by submitting at least three months prior written notice to the Minister.

(9) A vacancy in the Panel must be filled as soon as practicable in accordance with subsections (3) and (4).

(10) A member of the Panel who is not in the full-time service of the State may, in respect of his or her services, be paid such allowances as may be determined by the Council.

(11) The majority of the members of the Panel form a quorum.

(12) A decision of the majority of the members present at any meeting is the decision of the Panel and in the event of an equality of votes, the person presiding has a casting vote in addition to his or her deliberative vote.

(13) The procedure at and the times and places of meetings of the Panel are determined by the chairperson of the Panel in consultation with the Panel.

(14) Section 18(2) applies, with the necessary changes, to the Panel.

### **Functioning of Panel**

**35.** (1) The Panel must consider and determine every application in terms of section 34(2).

(2) (a) In considering an application the Panel must, where the applicant has foreign qualifications or has been admitted to the practice of law in a foreign country, evaluate—

(i) the academic qualifications of the applicant, including the extent to which the syllabus in terms of which the applicant has been educated and the standard of training received by the applicant corresponds with the syllabus and the standard of education which are normally required by an institution in the Republic for the completion of a similar qualification;

(ii) the nature of any professional training undergone by the applicant;

(iii) whether or not the applicant has the right to practise in the courts of the other country concerned;

(iv) where applicable the nature and extent of the practical legal experience of the applicant in the country concerned.

(b) In considering an application from a person with South African qualifications and experience who does not comply with the qualification requirements of section 27, the Panel must evaluate

whether the nature of the qualifications and the nature and extent of the applicant's experience in the practice of law can reasonably be expected to qualify such person for admission as a legal practitioner.

(3) In making its decision the Panel must take into account the criteria listed in section 29(2).

(4) The Panel may at any time before a recommendation is made for the purposes of performing its functions in terms of this section—

(a) call upon the applicant to furnish it with any documentation which it requires in order to make a decision;

(b) consult with any person, organisation or institution;

(c) require the applicant to appear before it to be interviewed.

(5) After considering an application the Panel may—

(a) issue a certificate that the applicant be deemed to be duly qualified;

(b) issue a certificate that the applicant be deemed to be duly qualified upon compliance with conditions specified in the certificate, including conditions relating to further training of either an academic or practical nature or both;

(c) issue a certificate that the applicant be deemed to be duly qualified for the purpose of a limited legal practice the nature of which must be specified in the certificate; or

(d) refuse the application.

(6) The Council must fund the activities of the Panel.

(7) Any administrative work for the Panel is carried out by members of the staff of the Council.

### **Legal practitioners, conveyancers and notaries entitled to practise throughout the Republic**

**36.** Any person who is admitted and enrolled as a legal practitioner, conveyancer or notary in terms of this Act is entitled to practise as such throughout the Republic unless a court having jurisdiction has ordered that his or her name be struck off the Roll or unless he or she is subject to an order suspending him or her from practice as a legal practitioner, conveyancer or notary.

### **Striking off and suspension**

**37.** (1) A High Court may on application, if it is satisfied that a legal practitioner is no longer a fit and proper person or no longer meets the requirements for admission, order that such legal practitioner be struck off the Roll or suspended from practice or that he or she be restricted to a limited form of practice, and the Council must endorse the Roll accordingly.

(2) Any order made in terms of subsection (1) may be suspended by the court on such terms and conditions and for such period as it deems fit.

(3) An application referred to in subsection (1) may be brought by the Council, the Legal

Services Protector or any other person entitled in law to do so.

### **Readmission and re-enrolment**

**38.** (1) Subject to such conditions as it may determine, a High Court must readmit to practise and authorise to be enrolled as a legal practitioner any person who was previously admitted and enrolled in terms of this Act or any law repealed by this Act, and whose name was removed from or struck off the Roll in terms of this Act or such other law, upon application made in the prescribed form by such person, if the court is satisfied that the applicant is a fit and proper person to be so readmitted and re-enrolled and meets the requirements of section 25(1)(a) and (b).

(2) In considering whether an applicant is a fit and proper person to be readmitted and re-enrolled, the High Court must take into account—

- (a) any circumstances which prevailed in the Republic prior to 27 April 1994 which may have been relevant to that applicant being removed from or struck off the Roll; and
- (b) the need to redress the inequities suffered by certain categories of persons in the past.

(3) The provisions of section 25(2), (3), (4) and (5) apply, with the necessary changes, to applications referred to in subsection (1).

(4) The court which readmits and authorises the re-enrolment of a person may order that all references on the Roll to the previous removal or the striking off of the name of the person concerned from such Roll be deleted from that Roll, if the court is satisfied that this will not prejudice the public interest.

### **Notification to Council**

**39.** The Registrar of a High Court must within 14 days after—

- (a) a person has been admitted in terms of section 25 or readmitted in terms of section 38(1) to practise as a legal practitioner, conveyancer or notary and an authorisation has been given that he or she be enrolled or re-enrolled as such;
- (b) a certificate of right of appearance in court has been issued or re-issued to a legal practitioner in terms of section 38; or
- (c) an order in terms of which a legal practitioner, conveyancer or notary is to be struck off the Roll or suspended from practice has been made in terms of section 37(1),

notify the Council of such admission or readmission and authorisation, issuing or re-issuing or order and the date thereof and furnish the Council with certified copies of the relevant documentation.

### **Forms of legal practice**

**40.** (1) A legal practitioners may, subject to the provisions of any rules made with the approval of the Council by an accredited organisation, practise—

- (a) on his or her own account;
  - (b) as part of a commercial juristic entity established in terms of subsection (2);
  - (c) as part of a non-profit juristic entity established in terms of subsection (3);
  - (d) as part of a justice centre;
  - (e) as part of a multi-disciplinary practice approved by the Council in terms of section 41;
  - (f) as part of a public interest law centre accredited by the Council as such.
- (2) A commercial juristic entity may conduct a legal practice provided that—
- (a) the partners, members, directors and shareholders are all legal practitioners;
  - (b) legal services may be rendered only by or under the supervision of legal practitioners; and
  - (c) if the entity receives or holds money or property belonging to any person, all of the partners, members, directors and shareholders are holders of a valid Fidelity Fund certificate.
- (3) A non-profit juristic entity may conduct a legal practice provided that—
- (a) its governing body is comprised exclusively of legal practitioners;
  - (b) legal services are rendered only by or under the supervision of legal practitioners;
  - (c) at least one person in its employ is a holder of a Fidelity Fund certificate;
  - (d) its income and property are not distributable to its members or members of its governing body except as reasonable compensation for services rendered; and
  - (e) upon its winding-up or dissolution, any asset remaining after all liabilities have been met, must be transferred to another non-profit organisation having similar objectives to it.
- (4) A multi-disciplinary practice may be established and render legal services in accordance with the provisions of section 41.
- (5) If a juristic entity conducts a legal practice, all present and past partners, members, directors and shareholders are liable jointly and severally together with the entity for the debts and liabilities of the entity as are or were contracted during their period of office, as well as in the event of the insolvency of the entity and in respect of any theft as contemplated in section 68, committed during their period of office: Provided that an entity may be incorporated with limited liability if the Council is satisfied, with due regard to the nature of the work undertaken or to be undertaken by that entity, that—
- (a) the entity's financial position is satisfactory;
  - (b) suitable provision has been made to obtain insurance cover in respect of professional indemnity claims; and
  - (c) the entity gives notice to prospective clients that it is incorporated with limited liability.

### **Multi-disciplinary practice**

**41.** The Minister may, on the recommendation of the Council and subject to the conditions determined by him or her in consultation with the Council, make regulations permitting a juristic entity which conducts a legal practice to take into partnership or as directors persons other than legal practitioners:<sup>4</sup> Provided that—

---

<sup>4</sup> The GCB states that there was clear agreement amongst the members of the Task Team that this issue needs careful consideration before it is dealt with in

- (a) the provision of legal services is under the effective control of the legal practitioner partners or directors;
- (b) the legal services to be provided by the practice are of the kind which are normally provided by legal practitioners;
- (c) such practice must—
  - (i) submit annual reports to the Council;
  - (ii) disclose to the Council all financial arrangements and management agreements;
  - (iii) disclose to clients any arrangement that may impact on the legal practitioner's ability to render independent legal services;
  - (iv) establish procedures to deal efficiently with any conflict of interest; and
  - (v) comply with existing Council rules applicable to legal practices.

**Shareholding in legal practice by person other than legal practitioner**

---

legislation, and should be referred to the Law Commission for its urgent consideration and advice because of the varied international experience in this regard.

**42.** (1) A juristic entity in which persons other than natural persons who are legal practitioners are shareholders may, with the written consent of the Council, conduct a legal practice.<sup>5</sup>

(2) The Council shall not give such consent unless the founding document of the juristic entity provides that only legal practitioners may be directors of the entity.

(3) In considering whether to give such consent, the Council must have regard to—

- (a) the adequacy of the steps which the entity has taken and will take to ensure the professional independence of the legal practitioners who render legal services on its behalf, and to maintain client confidentiality;
- (b) other matters affecting the public interest.

(4) In giving such consent the Council may impose reasonable conditions, including the provision by the entity from time to time of reports to the Council, to ensure that the requirements of subsection (3) are complied with.

## **CHAPTER 4 PARALEGAL PRACTICE**

### **Rendering of paralegal services**

**43.** (1) The Minister may, after consultation with the Council and the Paralegal Committee, make regulations to regulate the rendering of legal services to the public by paralegal practitioners.

(2) The Minister may, after consultation with the Chief Justice and in consultation with the Council and the Paralegal Committee, by notice in the *Gazette*, authorise paralegal practitioners to appear in courts, subject to such conditions as he or she may determine.

(3) In deciding whether to grant the authority referred to in subsection (2), the parties concerned must have regard to—

- (a) the need to ensure that persons appearing in court are represented, where the interests of justice so require;

---

<sup>5</sup> The GCB view is that the tests can not be applied to a company prior to incorporation, and that the better option would be to require the company to apply for a certificate of consent from time to time.

- (b) the need to ensure that such representation is adequate and competent;
  - (c) the availability of registered legal practitioners to represent persons in particular courts and in particular areas; and
  - (d) other aspects of the public interest
- (4) The authority or consent referred to in subsection (2) may be given in respect of a stipulated area, court, class or type of case, and period.

#### **Establishment and objects of Paralegal Committee**

**44.** (1) A committee to be known as the Paralegal Committee is hereby established as a substructure of the Council.

(2) The objects of the Paralegal Committee are to—

- (a) promote access to justice for disadvantaged communities;
- (b) promote the development of the paralegal sector;
- (c) make recommendations to the Council and the Minister on matters pertaining to paralegal practice; and
- (d) perform such functions as may be prescribed.

#### **Constitution and functioning of Paralegal Committee**

**45.** (1) The Paralegal Committee consists of the following members appointed by the Minister:

- (a) Two members of the Council designated for that purpose by the Council;
- (b) four persons from organisations which represent or employ paralegal practitioners who will, in the opinion of the Minister, promote the development of the paralegal sector and access to justice;
- (c) two persons from tertiary institutions which are involved in the training of paralegal practitioners; and
- (d) two members of communities served by paralegal practitioners, at least one of whom is from a rural community.

(2) Before making the appointments referred to in subsection (1)(b), (c) and (d), the Minister must invite nominations by notice in the *Gazette*.

(3) In making the appointments the Minister must have due regard to—

- (a) the objects of the Paralegal Committee;
- (b) the principles of openness and transparency;
- (c) the need for representivity, especially in relation to race, gender and provincial distribution; and
- (d) the degree of support which each nominee has from relevant constituencies.

(4) (a) At its first meeting the Paralegal Committee must elect a chairperson.

(b) If the chairperson is absent from a meeting, the members must elect one from their number to preside at that meeting.

(5) The term of office of members of the Paralegal Committee is three years.

(6) The Minister may, on the recommendation of the Council, remove a member from the Paralegal Committee if the Minister is satisfied that—

- (a) there is good cause for doing so;

(b) the member concerned has failed, without good cause, to attend three consecutive meetings of the Paralegal Committee.

(7) A vacancy in the Paralegal Committee must be filled as soon as practicable in accordance with subsections (1), (2) and (3).

(8) A member of the Paralegal Committee may resign from office by submitting at least three months' prior written notice to the Minister.

(9) A member of the Paralegal Committee who is not in the full-time service of the State must, in respect of his or her services, be paid such allowances as may be determined by the Council.

(10) The majority of the members of the Paralegal Committee form a quorum.

(11) A decision of the majority of the members present at any meeting is the decision of the Paralegal Committee and in the event of an equality of votes, the chairperson has a casting vote in addition to his or her deliberative vote.

(12) (a) The procedure at and the times and places of meetings of the Paralegal Committee are determined by that Committee.

(b) The first meeting of the Paralegal Committee must be held at the time and place determined by the Council.

(13) The Paralegal Committee may, subject to the approval and directions of the Council, form subcommittees to enable it to achieve its objects and perform its functions and the provisions of sections 12 and 13 apply with the necessary changes to the Paralegal Committee and its subcommittees.

**Powers and functions of Paralegal Committee**

**46.** The powers, duties and functions of the Paralegal Committee are to—

- (a) make recommendations to the Council and the Minister regarding the regulation of the rendering of legal services to the public by paralegal practitioners;
- (b) make recommendations to the Council and the Minister as to what should be the required qualifications for paralegal practitioners generally or paralegal practitioners rendering specific legal services;
- (c) make recommendations to the Council regarding applications by paralegal organisations for accreditation in terms of section 20 and what functions such organisations should be authorised to perform;
- (d) provide training or training programmes for candidate paralegal practitioners and paralegal practitioners and to promote the provision of such training by other institutions;
- (e) make recommendations to the Council regarding applications by institutions for accreditation as training institutions for paralegal practitioners;
- (f) receive, consider and make recommendations to the Council with regard to applications for the enrolment of paralegal practitioners and to levy a reasonable fee in respect of such applications;
- (g) establish disciplinary committees to consider complaints of misconduct against paralegal practitioners and make recommendations to the Council as to what action should be taken in respect of such complaints;
- (h) monitor the legal service needs of disadvantaged communities and make recommendations to the Council as to how such needs can best be addressed;

- (i) promote the development of the paralegal sector with the object of promoting access to justice for all communities and empowering disadvantaged communities; and
- (j) on behalf of the Council, maintain a Roll of Registered Paralegal Practitioners.

### **Criteria with regard to qualifications of paralegal practitioners**

**47.** In making decisions or recommendations concerning the qualifications of paralegal practitioners in general or in determining applications for enrolment all functionaries must take into account academic qualifications, course work training and the experiential acquisition of knowledge and skills, and have due regard to the need for paralegal practitioners to be able to—

- (a) communicate effectively orally and in writing;
- (b) assist clients to comply with administrative requirements, such as the completion of official forms;
- (c) understand fundamental legal concepts;
- (d) provide basic legal advice;
- (e) understand the circumstances in which it is appropriate to refer matters to a legal practitioner;
- (f) advise and educate members of communities on human rights issues;
- (g) in the case of qualification to provide services in a specialised area of law, to research, understand and apply the relevant law;
- (h) in the case of applications for limited right of appearance in court, understand the legal practitioner's duties as an officer of the court and competently to represent the client in the relevant proceedings;
- (i) understand and apply rules of professional conduct and practice management; and
- (j) promote access to justice.

### **Accreditation of legal advice offices**

**48.** (1) Any legal entity may apply to the Council in the prescribed manner for accreditation to render legal services or any specialised legal service as a legal advice office.

(2) The Council may require further information in support of the application and, for that purpose, may require the applicant to attend one or more meetings of the Council.

(3) The Council may accredit an applicant to perform any function in respect of which it seeks accreditation, after considering the application and any further information provided by the applicant if satisfied that—

- (a) the applicant is registered in terms of the Non-profit Organisations Act, 1997(Act No. of 1997);
- (b) the services provided by the applicant will meet the standards set by the Council;
- (c) the applicant is able to conduct its activities effectively;
- (d) the persons appointed by the applicant to perform those functions will do so in an independent manner;
- (e) the persons appointed by the applicant to perform those functions will be competent to perform those functions and exercise any associated powers;
- (f) the applicant has an acceptable code of conduct to govern the persons whom it appoints to perform those

functions;

- (g) the applicant will use fair disciplinary procedures to ensure that each person it appoints to perform those functions will subscribe and adhere to the code of conduct; and
- (h) the applicant promotes a service that is broadly representative of the South African society.<sup>6</sup>
  - (4) If the Council decides—
    - (a) to accredit the applicant—
      - (i) it must—
        - (aa) enter the applicant’s name in the register of accredited legal advice offices contemplated in subsection (5);
        - (bb) issue a certificate of accreditation in the applicant’s name stating the period of its validity;
        - (cc) send the certificate to the applicant; and
        - (dd) as soon as practicable after the decision, publish the certificate of accreditation in at least one widely circulated means of communication; and
      - (ii) it may impose such terms and conditions on the accreditation that it deems appropriate; or
    - (b) not to accredit the applicant, it must advise the unsuccessful applicant in writing of its decision and the reasons for its decision.
      - (5) The Council must in the prescribed manner create, keep and maintain a register of all legal advice offices accredited in terms of this section.
      - (6) Any person may inspect the register of an accredited legal advice office.
      - (7) An accredited legal advice office may charge a fee for performing any of the functions for which it is accredited, on such terms and conditions and in accordance with such tariff of fees that the Council may determine.
      - (8) An accredited legal advice office, or any person engaged by it to perform the functions for which it has been accredited, is not liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising those functions.
      - (9) An accredited legal advice office, or any person engaged by it to perform the functions for which it has been accredited, may not without the consent of the person to whom it is rendering legal services, disclose to any person or in any court any information, knowledge or document that it or that person acquired on a confidential basis or without prejudice in the course of performing those functions, except on the order of a court.
      - (10) An accredited legal advice office may apply to the Council in the prescribed form to amend its accreditation and the Council must treat such an application as an application in terms of subsection (1)
      - (11) If an accredited legal advice office fails to a material extent to comply with the terms of its

---

<sup>6</sup> The Chairperson suggests that this be amended or deleted as its meaning is unclear.

accreditation, the Council may withdraw its accreditation after having given reasonable notice of the withdrawal to that office.

(12) (a) An accredited legal advice office may apply to the Council in the prescribed form to renew its accreditation either in the current or in an amended form.

(b) The Council must treat the application for renewal as an application in terms of subsection (1).

## **CHAPTER 5**

### **PROFESSIONAL CONDUCT, ESTABLISHMENT OF DISCIPLINARY BODIES AND OFFICE OF LEGAL SERVICES PROTECTOR**

#### ***PART 1***

#### ***Professional conduct and establishment of disciplinary bodies***

#### **Professional conduct**

**49.** (1) The Council must within 90 days from the date of its first meeting draw up a code of conduct for legal practitioners and paralegal practitioners.<sup>7</sup>

(2) (a) The Council must ensure that the code is available to all members of the public at all reasonable times.

(b) The Council must provide the Minister and all legal practitioners who are not members of accredited organisations with the code and any amendment to it.

(c) The Council may amend the code from time to time.

(3) All legal practitioners and paralegal practitioners must comply with the code, and failure to do so constitutes misconduct.

#### **Establishment of disciplinary bodies**

**50.** (1) The Council may from time to time establish investigating committees to conduct preliminary investigations of complaints contemplated in section 57.

(2) An investigating committee must, after investigating a complaint, if—

(a) it is satisfied that the practice or legal practitioner concerned may have been guilty of misconduct, refer the matter to a disciplinary committee;

---

<sup>7</sup>

The GCB suggests the addition of the words “who are not members of accredited organisations”.

- (b) it is satisfied that the practice or legal practitioner concerned was not guilty of misconduct, inform the complainant and the practice or legal practitioner of its finding and the reasons for it.
- (3) The Council must from time to time establish disciplinary committees to investigate complaints contemplated in section 57.
- (4) Disciplinary committees must be established with due regard to—
- (a) the ease of access by members of the public resident in various parts of the Republic;
- (b) the need to promote the efficient resolution of complaints against legal practitioners;
- (c) the need to provide a cost-effective disciplinary system; and
- (d) the requirements of administrative justice.
- (5) The Council must establish an appeal tribunal or tribunals to hear appeals lodged in terms of section 61(1)(a).
- (6) An appeal tribunal consists of not less than three persons appointed by the Council.
- (7) The Council may, by notice in the *Gazette*, prescribe procedures to be followed by disciplinary bodies established in terms of this section.

## ***PART 2***

### ***Legal Services Protector***

#### **Establishment of Office of Legal Services Protector**

- 51.** There is hereby established the Office of Legal Services Protector for the Republic.

#### **Objects of Legal Services Protector**

- 52.** The objects of the Legal Services Protector are to—
- (a) protect and promote the public interest in relation to the rendering of legal services;
- (b) ensure the fair, efficient and effective investigation of complaints of alleged misconduct against legal practitioners;
- (c) promote high standards of integrity in the legal profession; and
- (d) promote the independence of the legal profession.

#### **Appointment and independence of Legal Services Protector**

- 53.** (1) The President must as soon as practicable after the commencement of this Act and whenever it becomes necessary thereafter, upon the recommendation of the Judicial Service Commission, appoint a Legal Services Protector.
- (2) The Legal Services Protector must be a South African citizen who—

- (a) is or was a judge of a court contemplated in sections 166(a) to (c) of the Constitution; or
- (b) qualifies to be appointed as a judge of such a court.<sup>8</sup>

(3) The Legal Services Protector is independent and subject only to the Constitution and the law and he or she must be impartial and exercise his or her powers and perform his or functions without fear, favour or prejudice.

(4) The Council and accredited organisations must assist and protect the Legal Services Protector to ensure his or her independence, impartiality, dignity and effectiveness.

(5) No person may interfere with the functioning of the Legal Services Protector.

### **Remuneration and other terms and conditions of employment of Legal Services Protector**

**54.** (1) The Legal Services Protector receives such remuneration, allowances and other employment benefits and is appointed on such terms and conditions as the President, after consultation with the Minister, may determine: Provided that such remuneration—

- (a) is not less than that of a judge of a High Court; and
- (b) may not be reduced, nor may the terms and conditions of employment be adversely altered, during his or her term of office.

(2) The Legal Services Protector may not perform remunerative work outside his or her official duties.

(3) The Legal Services Protector holds office for a period of three years from the date of appointment and is eligible for re-appointment.

(4) (a) The President may, on the advice of the Judicial Service Commission, remove the Legal Services Protector from office on account of—

- (i) misconduct;
- (ii) permanent inability to perform the duties of his or her office efficiently.

(b) The President must, at the instance of the Judicial Service Commission, suspend a Legal Services Protector from office at any time after the commencement of the proceedings of the Judicial Service Commission concerning the removal of that Legal Services Protector.

---

<sup>8</sup> The Task Team has extensively debated this broad qualification. Some members support this broad qualification only if the appointment is made, as proposed, upon the recommendation of the Judicial Service Commission.

(c) A Legal Services Protector who is suspended from office may not exercise or perform any powers or functions or receive any remuneration or allowances.

(5) If a vacancy occurs in the Office of Legal Services Protector, the President must, subject to the provisions of this section, appoint another person to that Office.

(6) Whenever the Legal Services Protector is for any reason unable to exercise or perform his or her powers or functions, or when the appointment of a person to the Office of Legal Services Protector is pending, the President may, subject to this section, appoint a person as Acting Legal Services Protector to exercise the powers and perform the functions of the Legal Services Protector.

### **Powers and functions of Legal Services Protector**

**55.** (1) In addition to the other powers and functions conferred on or assigned to him or her in this Act, and for the purposes of achieving the objectives referred to in section 52, the Legal Services Protector—

- (a) may investigate and make recommendations to the Council, the Minister and Parliament on any matter which he or she considers may affect the integrity and independence of the legal profession and public perceptions of the integrity and independence of the legal profession;
- (b) may of his or her own accord or on receipt of a complaint, investigate any alleged failure of the Council, and accredited organisation or a substructure of the Council to deal promptly, effectively and fairly with a complaint;<sup>9</sup>
- (c) may, in the case of a failure of the Council or substructure of the Council, report and make recommendations to the Minister on the failure of the Council or substructure of the Council;
- (d) must, in the case of a failure of a disciplinary body, report and make recommendations to the Council on the failure of such disciplinary body and require the Council to report to him or her regarding what steps it will take in this regard;
- (e) may make recommendations to the Council and the Minister as to steps that ought to be taken to promote high standards of integrity in the legal profession;
- (f) may refer any complaint concerning a prosecutor to the National Director of Public Prosecutions or the Director of Public Prosecutions concerned; or
- (g) may, at any time prior to, during or after an investigation, if he or she is of the opinion that the facts disclose the commission of an offence by any legal practitioner, bring the matter to the notice of the National Prosecuting Authority.

---

<sup>9</sup>

Certain judges of the High Court who saw a late draft of the Bill have suggested that the Legal Services Protector should be obliged to investigate a complaint made to him or her by a Court in this regard, and to report to the Court on what steps he or she proposes to take in connection with that failure. The Task Team has not had an opportunity to consider this proposal. The Chairperson supports the proposal.

(2) For the purposes of an investigation—

- (a) the Legal Services Protector may summon any person who is believed to be able to furnish any information on the subject of the investigation or to have in his or her possession or under his or her control any book, document or other object relating to that subject, to appear before the Legal Services Protector at a time and place specified in the summons, to be questioned or to produce that book, document or other object;
- (b) the Legal Services Protector or a person designated by him or her may question that person, under oath or affirmation administered by the Legal Services Protector, and examine or retain for further examination or for safe custody such a book, document or other object.

(3) A summons referred to in subsection (2) must—

- (a) be in the prescribed form;
- (b) contain particulars of the matter in connection with which the person concerned is required to appear before the Legal Services Protector;
- (c) be signed by the Legal Services Protector or a person authorized by him or her; and
- (d) be served in the prescribed manner.

(4) (a) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a magistrate's court applies in relation to the questioning of a person in terms of subsection (2): Provided that such a person is not entitled to refuse to answer any question upon the ground that the answer would tend to expose him or her to a criminal charge.

(b) No evidence regarding any questions and answers contemplated in paragraph (a) are admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in section 319 (3) of the Criminal Procedure Act, 1955 (Act 56 of 1955).

(5) A person appearing before the Legal Services Protector by virtue of subsection (2)--

- (a) may be assisted at his or her examination by a legal representative;
- (b) is entitled to such witness fees as he or she would be entitled to if he or she were a witness for the State in criminal proceedings in a magistrate's court.

(6) Any person who has been summoned to appear before the Legal Services Protector and who—

- (a) without sufficient cause fails to appear at the time and place specified in the summons or to remain in attendance until he or she is excused by the Legal Services Protector from further attendance;
- (b) at his or her appearance before the Legal Services Protector—
  - (i) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce;
  - (ii) refuses to be sworn or to make an affirmation after he or she has been asked by the Legal Services Protector to do so;
- (c) having been sworn or having made an affirmation—
  - (i) fails to answer fully and to the best of his or her ability any question lawfully put to him or her;
  - (ii) gives false evidence knowing that evidence to be false or not knowing or not believing it to be true, is guilty of an offence.

**Staff, finances and accountability of Office of Legal Services Protector**

**56.** (1) The Legal Services Protector must as soon as practicable after his or her appointment and after consultation with the Council and the Board appoint—

- (a) a suitably qualified and experienced person as Chief Administrative Officer for the purpose of assisting the Legal Services Protector in the performance of all financial, administrative and clerical functions pertaining to the Office of the Legal Services Protector; and
- (b) such staff as may be reasonably necessary to assist the Legal Services Protector and the Chief Administrative Officer with the work incidental to the performance of their functions.

(2) In making the appointments referred to in subsection (1), the Legal Services Protector must take into account the need for gender and racial representivity.

(3) The persons appointed in terms of subsection (1) receive such remuneration, allowances and other employment benefits and are appointed on such terms and conditions and for such periods as the Legal Services Protector, after consultation with the Council, may determine.

(4) Expenditure incidental to the performance of the functions assigned to the Legal Services Protector in terms of this Act or any other law must be defrayed from moneys appropriated by Parliament for this purpose, from the funds contemplated in section 70(2)(g), annually appropriated by the Board after consultation with the Council, and from fines and penalties imposed by disciplinary bodies in terms of this Act.

(5) The Chief Administrative Officer—

- (a) must deposit all moneys received by the Office of the Legal Services Protector with a bank approved by the Board;
- (b) may invest any moneys of the Office of the Legal Services Protector which is not required for immediate use, with a bank approved by the Board or in such other manner as the Board may determine;
- (c) is responsible for the management of and control over the staff of the Office of the Legal Services Protector appointed in terms of subsection (1)(b) and is for that purpose accountable to the Legal Services Protector;
- (d) must—
  - (i) be charged with the responsibility of accounting for money received or paid out for or on account of the Office of the Legal Services Protector;
  - (ii) cause the necessary accounting and other related records to be kept; and
  - (iii) cause proper records of all the assets and liabilities of the Office of the Legal Services Protector to be kept; and
- (e) must perform the functions which the Legal Services Protector may from time to time assign to him or her in order to achieve the objects of the Office of the Legal Services Protector, and is in respect thereof accountable to the Legal Services Protector.

(6) The records referred to in subsection (6)(d)(ii) must be audited by a registered accountant and auditor appointed by the Board.

**CHAPTER 6**  
**COMPLAINTS AGAINST LEGAL PRACTITIONERS**

***PART 1***

***Complaints of misconduct by legal practitioner***

**Procedure for dealing with complaints of misconduct**

**57.** (1) Complaints of misconduct relating to legal practitioners who are not members of an accredited organisation must be lodged and dealt with in the manner and form prescribed by the Council. (2) (2)

Complaints of misconduct relating to legal practitioners who are members of an accredited organisation must be lodged and dealt with in the manner and form stated in its code of conduct as approved by the Council.

(3) The procedures of an accredited organisation as approved by the Council govern all complaints and disciplinary proceedings in respect of members of that organisation to the exclusion of the other provisions of this Chapter, except sections 60 and 65.

(4) A disciplinary body constituted by an accredited organisation shall, with the necessary changes, have the powers of a disciplinary body under sections 58 and 59.

**Disciplinary hearing**

**58.** (1) A disciplinary hearing must be conducted by the disciplinary body subject to the provisions of this section and the rules determined by the Council.

(2) The disciplinary body may for the purposes of this section appoint a person to assist it in the performance of its functions.

(3) (a) The disciplinary body may, for the purposes of a hearing, subpoena any person—

- (i) who in its opinion may be able to give material information concerning the subject of the hearing; or
- (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing,

to appear before it at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.

(b) A subpoena issued in terms of paragraph (a), must—

- (i) be in the prescribed form;
- (ii) be signed by the chairperson of the disciplinary body or, in his or her absence, any member of that body; and
- (iii) be served on the legal practitioner concerned personally or by sending it by registered mail.

(4) The disciplinary body may retain a book, document or object produced in terms of subsection (3) for the duration of the hearing.

(5) The chairperson of the disciplinary body may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (3).

(6) At a hearing the legal practitioner charged—

- (a) (i) may personally be present at the hearing of the proceedings;

- (ii) may be assisted or represented by another person in conducting the proceedings;
  - (iii) has the right to be heard;
  - (iv) may call witnesses;
  - (v) may cross-examine any person called as a witness in support of the charge; and
  - (vi) may have access to documents produced in evidence;
- (b) (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 59(2)(b);
- (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of misconduct as charged.
- (7) The legal practitioner may during a hearing—
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
  - (b) question any person who was subpoenaed in terms of subsection (3); or
  - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which he or she suspects or believes to have a bearing on the subject of the hearing.
- (8) (a) A witness who has been subpoenaed may not—
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
  - (ii) refuse to be sworn in or to be affirmed as a witness;
  - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
  - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary body from further attendance.
- (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary body be made available to him or her.
- (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary body by, any person called in terms of this section as a witness.
- (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
- (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.
- (9) Any person who—
- (a) fails to comply with the provisions of subsection (8)(a)(i), (iii) or (iv);
  - (b) refuses to comply with the provisions of subsection (8)(a)(ii);

- (c) contravenes subsection (8)(b), (e) or (f); or
  - (d) obstructs or hinders any person in the performance of his or her functions under this section,
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(10) The record of evidence which has a bearing on the charge before the disciplinary body, and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if—

- (a) the record is accompanied by a certificate from the chairperson of the body or commission; and
- (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.

(11) If the misconduct with which the legal practitioner is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the legal practitioner as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

### **Proceedings after hearing and remedial action**

**59.** (1) (a) After the conclusion of the hearing the disciplinary tribunal must within 30 days decide whether or not the legal practitioner is guilty of misconduct.

(b) If the disciplinary tribunal finds that the legal practitioner is guilty of misconduct it must—

- (i) inform the legal practitioner and the Council of the finding; and
- (ii) inform the legal practitioner of his or her right of review in terms of section 60.

(2) A legal practitioner found guilty of misconduct in terms of this section may—

- (a) address the disciplinary tribunal in mitigation of sentence; and
- (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.

(3) If the legal practitioner is found guilty of misconduct, the disciplinary body concerned may—

(a) in the case of a legal practitioner—

- (i) order him or her to pay compensation, with or without interest to the complainant;
- (ii) impose upon him or her a fine not exceeding R50 000,00;
- (iii) temporarily suspend him or her from practising or from engaging in any particular aspect of the practice of law pending the finalisation of an application referred to in paragraph (a)(iv)(bb);
- (iv) advise the Council to apply to the relevant High Court for—

(aa) an order striking his or her name off the Roll of Legal Practitioners and any other Roll on which his or her name is recorded;

(bb) an order suspending him or her from practice;

(cc) an interdict to prohibit him or her to deal with trust moneys; or

(dd) any other appropriate relief;

(v) advise the Council to amend or endorse his or her enrolment;

(vi) order that his or her Fidelity Fund certificate be withdrawn;

(vii) warn him or her against certain conduct and order that such warning be endorsed against his or her enrolment; or

- (viii) caution or reprimand him or her;
  - (b) in the case of a practice—
    - (i) order it to pay compensation, with or without interest, to the complainant;
    - (ii) impose upon it a fine not exceeding R500 000,00;
    - (iii) order that its Fidelity Fund certificate be withdrawn;
    - (iv) warn it against certain conduct; or
    - (v) caution or reprimand it;
  - (c) in the case of a candidate legal practitioner—
    - (i) cancel or suspend his or her practical legal training;
    - (ii) impose upon him or her a fine not exceeding R5 000,00; or
    - (iii) caution or reprimand him or her.
- (4) (a) The disciplinary body may take decisions under more than one of the subparagraphs of paragraph (a), (b) and (c).
- (b) In addition to the sanctions contemplated in subsection (3), the disciplinary body may order the legal practitioner to pay the cost of the investigation or the disciplinary hearing.
- (5) (a) If the taking of any steps or the imposition of any penalty has been postponed for a particular period, and if at the end of that period the disciplinary body is satisfied that the legal practitioner concerned has substantially observed all the relevant conditions, the disciplinary body must inform that legal practitioner that no steps will be taken in respect of him or her or that no penalty may be imposed upon him or her.
- (b) If the payment of a fine or any part thereof has been suspended by the disciplinary body for a particular period, and if at the end of such period the disciplinary body is satisfied that the legal practitioner concerned has substantially observed all the relevant conditions, the disciplinary body must inform such legal practitioner that the payment of that fine or that part thereof shall not be enforced.
- (c) If a legal practitioner fails to comply with any conditions determined in terms of subsection (1), the disciplinary body must impose a penalty upon him or her or execute the penalty imposed upon him or her, unless he or she satisfies the disciplinary body that the non-compliance with such conditions was due to circumstances beyond his or her control.
- (6) Any court with civil jurisdiction may on the application of the disciplinary body grant an order for the recovery from the legal practitioner concerned of any amount he or she failed to pay in accordance with the fine imposed under subsection (3)(a)(ii), (b)(ii) or (c)(ii), together with any interest thereon, whereupon the order so granted has the effect of a civil judgment of that court and must be executed in the prescribed manner.
- (7) At the conclusion of the hearing the disciplinary body must notify the Council and the Legal Practice Protector of its finding.
- (8) If the legal practitioner is found guilty of misconduct, the Council must publish the finding and the sanction imposed in terms of subsection (3) in the *Gazette*.
- (9) The Council must give effect to the advice and decision of the disciplinary body.

### **Review by Legal Services Protector**

**60.** (1) (a) Any complainant, other than the legal practitioner against whom the complaint has been made, who is aggrieved—

- (i) by the manner in which a disciplinary body conducted an investigation or hearing; or
- (ii) by the outcome of an investigation or hearing,

may lodge a notice of application for review with the Office of the Legal Services Protector within 21 days of becoming aware of the allegedly irregular investigation or gaining knowledge of the outcome of the investigation or hearing.

(b) The Legal Services Protector may on good cause shown condone the late filing of a review notice.

(2) A review in terms of subsection (1) is conducted in accordance with the procedure determined by the Legal Services Protector.

(3) Upon reviewing the matter, the Legal Services Protector—

(a) may, in respect of a review regarding—

(i) the manner in which an investigation or hearing has been conducted—

(aa) confirm the findings on the investigation and hearing and the actions taken; or

(bb) if he or she is satisfied that the procedure has been substantially unfair, set aside the findings and actions taken and remit the matter, with or without directions: Provided that if in his or her opinion there has been an unreasonable delay on the part of a disciplinary body, the Legal Services Protector may substitute his or her own decision for that of that disciplinary body; or

(ii) the outcome of the investigation or hearing—

(aa) confirm the findings and the actions taken; or

(bb) if he or she is satisfied that there has been a substantial miscarriage of justice, set aside the finding and substitute his or her own decision for that of the disciplinary body, or remit the matter, with or without directions; and

(b) must notify the complainant, the legal practitioner and the disciplinary body in writing of the outcome of the review and the reasons for his or her decision.

### **Appeal against decision of disciplinary body**

**61.** (1) If a disciplinary body advises the Council to lodge an application to struck a legal practitioner from the Roll or to suspend him or her, such legal practitioner may within 14 days of being informed of the decision, lodge an appeal to an appeal tribunal against a finding of the body or against the sentence, or both.

(2) The appeal tribunal may—

(a) dismiss the appeal against the decision of the disciplinary body and confirm the finding or sentence or both; or

(b) uphold the appeal against the decision of the disciplinary body wholly or in part and set aside or vary the

finding or sentence or both.

(3) If a legal practitioner found guilty of misconduct lodges an appeal in terms of subsection (1), the decision of the disciplinary body may not be put into effect before the appeal tribunal has decided the appeal.

#### **Further role of Legal Services Protector**

**62.** (1) The Legal Services Protector may monitor—

- (a) the investigation of a complaint by and conduct of a disciplinary body;
- (b) the conducting of a hearing by a disciplinary body.

(2) Subsection (1) applies with the necessary changes to disciplinary investigations and hearings by or on behalf of an accredited organisation.

#### **Urgent legal proceedings**

**63.** Notwithstanding the provisions of this Chapter, if upon considering a complaint a disciplinary body is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct, it may on behalf of the Council institute urgent legal proceedings in the High Court having jurisdiction to suspend the legal practitioner from the Roll and to obtain alternative interim relief.

#### **Disciplinary procedures of accredited organisations<sup>10</sup>**

**64.** (1) An accredited organisation must adopt a procedure for dealing with complaints against its members, and submit such procedure to the Council for its approval.

(2) In considering whether to approve a procedure submitted in terms of subsection (1), the Council must have regard to whether the procedure adequately protects the rights and interests of complainants and legal practitioners.

(3) In the case of dispute between the Council and an accredited organisation as to whether a proposed procedure should be approved, either party may submit the matter to the Legal Services Protector for his or her decision, in accordance with a procedure determined by him or her.

(4) The Legal Services Protector may reject the proposed procedure or approve it, with or without amendments.

#### **Powers of High Courts**

**65.** (1) The provisions of this Act do not derogate in any way from the power of a High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner.

(2) Nothing contained in this Act precludes a complainant or a legal practitioner from applying to the High Court for appropriate relief in connection with any complaint or charge of misconduct against a legal practitioner or any decision of a disciplinary body, the Legal Services Protector or the Council in connection with

---

<sup>10</sup> The GCB view is that this section is too prescriptive and should in any event be part of the general accreditation in terms of section 20, which already provides sufficient safeguards so that this section is unnecessary.

such complaint or charge.

**CHAPTER 7**  
**LEGAL PRACTICE FIDELITY FUND**

**PART 1**

*Establishment of Fund and founding provisions*

**Continued existence of Attorneys Fidelity Fund**

**66.** (1) Notwithstanding the provisions of section 118, the Attorneys Fidelity Fund established by section 25 of the Attorneys Act continues to exist as a juristic person under the name Legal Practice Fidelity Fund.

(2) All assets, rights, liabilities and obligations which immediately prior to the date of commencement of this Act vest in the Attorneys Fidelity Fund, including any assets held by any person in trust for the Attorneys Fidelity Fund, pass to the Fund on that date.

**Revenue of Fund**

**67.** The Fund consists of –

- (a) each amount which is, immediately prior to the date of commencement of this Act, payable to or held on account of the Fund, and which is paid on or after such date of commencement;
- (b) contributions paid by applicants for the issue of Fidelity Fund certificates and any interest on or penalties in respect of overdue contributions;
- (c) interest paid to the Fund in terms of this Act;
- (d) income obtained from investments of the Fund;
- (e) money recovered by or on behalf of the Fund in terms of this Act;
- (f) money received by or on behalf of the Fund from any insurer;
- (g) money which may be appropriated to the Fund by Parliament on such terms and conditions as the Minister, with the concurrence of the Minister of Finance, may determine;
- (h) any other money lawfully paid into the Fund; and
- (i) any other money accruing to the Fund from any other source.

**Liability of Fund**

**68.** The Fund is liable to reimburse persons who suffer pecuniary loss as a result of theft of any money or other property given in trust to a trust account practice in whenever the theft is committed by a legal practitioner in that practice or any person employed by that practice or supervised by such a legal practitioner, including where such legal practitioner or person is acting as executor or administrator in the estate of a deceased person or as a trustee in an insolvent estate or in any other similar capacity, excluding a curator to a financial institution in terms of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984).

### Limitation of liability of Fund

**69.** (1) The Fund is not liable in respect of any loss suffered—

- (a) by a family member or a member of the household of the thief;
- (b) by any partner or co-director in the practice in which the theft occurs;
- (c) as a result of theft committed by a legal practitioner whose fidelity has been otherwise guaranteed by a person, either in general or in respect of a particular transaction, to the extent to which it is covered by the guarantee;
- (d) by any person as a result of any theft committed after the victim of the theft received notice in writing from the Council or the Board warning against the use or continued use of the legal services of the practice concerned or the giving of any money or property in trust to such practice and such person has failed to take reasonable steps after being so warned;
- (e) by any person as a result of theft of money which a legal practitioner has been instructed to invest on behalf of such person.

(2) A claim for reimbursement as contemplated in section 68 is limited—

- (a) in the case of money given in trust to a trust account practice, to the amount actually handed over, without interest, unless interest has been earned and given in trust to the practice, or unless the Board, in its discretion, decides to pay interest; and
- (b) in the case of securities or other property, to an amount equal to the average market value of such securities or property at the date when written demand is first made for their delivery, or if there is no average market value, the fair market value of such securities or other property as at that date, without interest.

(3) Only the balance of any loss suffered by any person after deduction from the loss of the amount or value of all money or other benefits received or receivable by that person from any source other than the Fund, may be recovered from the Fund.

(4) Subsection (1)(e) does not apply to money which a legal practitioner is authorised to invest where the legal practitioner acts in his or her capacity as executor, trustee or curator, or in any similar capacity, excluding a curator to a financial institution in terms of the Financial Institutions (Investments of Funds) Act, 1984 (Act No. 39 of 1984).

(5) Subject to subsection (6), a legal practitioner must be regarded as having been instructed to invest money for the purposes of subsection (1)(e), where a person—

- (a) who entrusts money to the legal practitioner; or
- (b) for whom the legal practitioner holds money,

instructs the legal practitioner to invest all or some of that money in a specified investment or in an investment of the legal practitioner's choice.

(6) For the purposes of subsection (1)(e) a legal practitioner must be regarded as not having been instructed to invest money if he or she is instructed by a person—

- (a) to pay the money into an account contemplated in section 95(3), if such payment is for the purpose of investing such money in such account on a temporary or interim basis only pending the

conclusion or implementation of any particular matter or transaction which is already in existence or about to come into existence at the time that the investment is made and in respect of which investment the legal practitioner exercises exclusive control as trustee, agent or stakeholder, or in any fiduciary capacity;

- (b) to lend money on behalf of that person to give effect to a loan agreement where that person, being the lender—
- (i) specifies the borrower to whom the money is to be lent;
  - (ii) has not been introduced to the borrower by the legal practitioner for the purpose of making that loan; and
  - (iii) is advised by the legal practitioner in respect of the terms and conditions of the loan agreement; or
- (c) to utilise money to give effect to any term of a transaction to which that person is a party, other than a transaction which is a loan or which gives effect to a loan agreement that does not fall within the scope of paragraph (b).

(7) A legal practitioner who has been instructed to invest money as contemplated in subsection (4) must, as soon as practicable after he or she has received such instruction, but prior to the receipt of the money to be invested, notify the person giving the instruction of the provisions of subsection (1)(e) in the form and manner prescribed by the Board in terms of subsection (8).

(8) For the purposes of subsection (7), the Board must issue directives prescribing the form and manner in which a notice referred to in that subsection must be given, and it may from time to time review and, if necessary, revise such directives.

(9) Any legal practitioner who contravenes subsection (7) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

### **Purpose and application of Fund**

**70.** (1) Subject to the provisions of this Act, the Fund must, in the first instance, be applied for the purpose of—

- (a) meeting the liability of the Fund referred to in section 68; and
- (b) paying expenses incurred in operating the Board and the Fund, including the payment of remuneration or allowances and other service benefits to employees.

(2) After the Fund has fully met its obligations contemplated in subsection (1), the Fund may, in the discretion of the Board, also be applied for the following purposes:

- (a) Paying expenses incurred by the Board in investigating and establishing the validity of claims referred to in section 68;

- (b) paying all expenses and legal costs incurred by the Board for the purpose of recovering monies from the persons whose wrongful conduct gave rise to the claim;
- (c) refunding the costs or any portion thereof incurred by a claimant in establishing a claim or attempting to recover the whole or a portion of the claim from the person whose wrongful conduct gave rise to the claim;
- (d) paying legal expenses incurred in defending a claim made against the Fund, or otherwise incurred in relation to the Fund;
- (e) paying premiums in respect of contracts of insurance entered into in terms of section 85;
- (f) paying allowances to members of the Board in relation to their services or their reasonable travelling and accommodation expenses incurred in relation to the affairs of the Board and the Fund;
- (g) contributing to expenses incurred in establishing and operating the Office of the Legal Services Protector;
- (h) paying fees and expenses to the Council or its substructures in respect of any function performed as agent for the Fund;
- (i) refunding any expenses incurred by a disciplinary body in relation to the institution of legal proceedings or the taking of disciplinary action against any legal practitioner;
- (j) contributing to the establishment and operating costs of the Council or its substructures so far as these cannot be covered by their income derived from other sources;
- (k) paying costs relating to the detection or prevention of theft of trust money;
- (l) refunding the bank charges or any portion thereof paid by a legal practitioner in relation to the keeping of a trust account;
- (m) paying interest in relation to section 68;
- (n) paying expenses relating to any function performed in terms of this Act.

(3) After the Fund has fully met its obligations contemplated in subsections (1) and (2), and provided that there are sufficient funds available, the Fund may, in the discretion of the Board, also be applied for the following purposes:

- (a) Providing financial support to organisations or institutions providing legal education and training, with the object of enhancing the standards of legal services and increasing access to the legal profession;
- (b) providing financial support to legal practitioners, organisations or institutions for the purpose of providing work-place training opportunities for candidate legal practitioners in deserving cases;
- (c) providing financial support to non-profit organisations and institutions promoting access to justice to poor people;

- (d) contributing to the premium or any portion thereof payable in respect of a professional indemnity group insurance policy of any kind in favour of legal practitioners;
- (e) paying bursaries and loans to students, candidate legal practitioners and legal practitioners for the purpose of legal education and research;
- (f) paying the costs or a portion of the costs incurred by a legal practitioner in relation to the obtaining of a Fidelity Fund certificate;
- (g) paying for services rendered at the request of the Council or its substructures with the object of enhancing the professional standards of legal practitioners.

**Money to be deposited into banking account and investment of money**

71. (1) Money of the Fund must be deposited into a banking account held by the Fund at an institution registered as a bank, to the credit of an account to be known as the Legal Practice Fidelity Fund Account.

(2) The Board may, from time to time, invest money which is deposited in terms of subsection (1) and which is not immediately required for the purposes mentioned in this Act.

**Financial year of Fund**

72. The financial year of the Fund is determined by the Board.

**Fund exempt from certain tax and insurance laws**

73. (1) The revenue of the Fund is exempt from the provisions of any law relating to payment of income tax or any other tax or levy by the State.

(2) Any provision of any law relating to insurance (other than a law relating to the compulsory insurance of employees) or the provision of security in connection therewith, shall not apply to the Fund.

***PART 2***

***Governance of Fund***

**Establishment of Board**

74. (1) There is hereby established the Legal Practice Fidelity Fund Board to manage and administer the Fund.

(2) The Fund must be held in trust by the Board for the purposes mentioned in this Act.

**Constitution of Board**

**75.** (1) The Board consists of the following persons appointed by the Minister:

- (a) The Legal Services Protector;
- (b) two members of the Council designated by the Council, of whom at least one member must be the holder of a Fidelity Fund certificate;
- (c) three persons who are not members of the Council, designated by the Council from legal practitioners, of whom at least one member must be the holder of a Fidelity Fund certificate;
- (d) one person designated by the Paralegal Committee to represent paralegal practitioners;
- (e) one teacher of law designated by an organisation or organisations representing the majority of law teachers from tertiary institutions;
- (f) one person who, by virtue of his or her qualifications, expertise and experience in the field of finance, is designated by the Public Accountants' and Auditors' Board or its successor; and
- (g) one person appointed to represent the interests of users of legal services.

(2) In making the designations referred to in subsection (1), the designating body and the Minister must have due regard to—

- (a) the objects of the Board;
- (b) the principle of openness and transparency;
- (c) the principle of representivity, with particular regard to—
  - (i) race and gender;
  - (ii) in the case of designations in terms of subsection (1)(b) and (c), fair and effective representation by different categories of legal practitioners;
  - (iii) provincial distribution.

(3) (a) The Minister may refer a designation made in terms of subsection (1) back to the designating body concerned for reconsideration if in his or her opinion the requirement regarding representivity has not been met or the designated person is not a fit and proper person for appointment.

(b) If after such a referral the designating body designates the same person after reconsidering the matter, the Minister must appoint him or her.

### **Appointment of chairperson and vice-chairperson of Board**

**76.** (1) At the first meeting of the Board contemplated in section 80(1)(b), the members of the Board must elect a chairperson and vice-chairperson from their number.

(2) The members of the Board may appoint any person to chair the proceedings contemplated in subsection (1).

(3) The chairperson and vice-chairperson hold office for a period of one year from the date of their election and may be re-elected.

(4) (a) When the period of office of a chairperson or vice-chairperson expires, that person remains in office until the next meeting of the Board.

(b) Should the chairperson or vice-chairperson vacate his or her office the office must be filled immediately according to the procedure set out in this section.

(5) For the purposes of this Part, “chairperson” and “vice-chairperson” mean the chairperson and vice-chairperson of the Board appointed in terms of subsection (1).

### **Vacancies in Board**

77. (1) A vacancy in the Board occurs when—

- (a) a member's term of office expires;
- (b) a member dies;
- (c) a member is removed from office in terms of section 79(1) and (2); or
- (d) a member's resignation takes effect.

(2) (a) A vacancy in the Board must be filled as soon as practicable in accordance with section 75.

(b) A vacancy so filled is for the unexpired period of the term of office in respect of which the vacancy occurred.

### **Terms of office of members of Board**

78. (1) A member of the Board who is not appointed *ex officio* holds office for a term of two years, but is eligible for re-appointment.

(2) A member may at any time, upon at least three months' written notice to the Board, resign from office.

(3) Despite subsection (1), a member remains in office after expiry of his or her term of office until the commencement of the term of office of his or her successor.

### **Removal from office**

79. (1) The Minister may, at the instance of the Board, remove a member from office on account of—

- (a) misconduct;
- (b) inability to perform the duties of his or her office efficiently;
- (c) absence from three consecutive meetings of the Board without the permission of the chairperson, except on good cause shown;
- (d) a request by the body which or person who designated or nominated that member in terms of

section 75;

- (e) engaging in any activity that may undermine the integrity of the Board; or
- (f) the sequestration of his or her estate.

(2) (a) The Minister must suspend a member from office after the commencement of the proceedings of the Board concerning the removal of that member, if requested by the Board to do so.

(b) A member who is suspended from office may not perform any duties or functions or receive any allowances.

### **Meetings and resolutions of Board**

**80.** (1) (a) The Board may meet at any place in the Republic.

(b) The Board must, as soon as practicable after the appointment of its members, meet for the first time at the time and place determined by the Minister and thereafter at such times and places determined by the Board.

(2) The quorum for any meeting of the Board is 50 percent of the total number of its members.

(3) When the chairperson is absent or not able to perform his or her functions, the vice-chairperson must act as chairperson, and if both the chairperson and vice-chairperson are absent or not able to perform their functions, the members present must elect one from their number to preside at that meeting.

(4) A decision of the majority of the members present at a meeting constitutes a decision of the Board and in the event of an equality of votes the person presiding at the meeting has a casting vote in addition to a deliberative vote.

(5) A resolution in writing of the Board signed by all its members is regarded as if it had been passed at a meeting of the Board.

(6) The Board must determine the procedure for calling a meeting and the procedure to be followed at the meeting.

(7) In any advice or recommendation to the Minister, the minority views of any one or more members of the Board, as well as any report of a committee appointed in terms of section 81, must be included.

(8) The Board must keep a record of its proceedings.

### **Committees of Board**

**81.** (1) The Board may—

- (a) appoint an executive committee consisting of the chairperson, vice-chairperson and two other members;

- (b) appoint committees relating to matters falling within the scope of its powers and functions, the members of which may be members of the Board or other persons;
- (c) delegate to the executive committee or other committee such powers and functions as it may determine;
- (d) direct the executive committee or other committee, either generally or in a specific case, to advise the Board.
  - (2) The members of a committee must elect its chairperson unless the Board has appointed a chairperson.
  - (3) A committee performs its functions in accordance with any policy directions of the Board.
  - (4) The Board may at any time dissolve any committee.
  - (5) The provisions of section 80 apply, with the necessary changes, to a meeting of a committee.
  - (6) The Board is not divested of any power or function delegated to a committee, and may amend or rescind a decision of a committee.

### **Powers of Board**

**82.** In addition to the powers conferred upon it in this Act, and in the furtherance of the purpose of the Fund, the Board may—

- (a) invest any moneys which are not required for immediate use in such manner as the Board may determine;
- (b) insure itself against risk;
- (c) conclude agreements;
- (d) institute or defend legal proceedings;
- (e) inspect or cause to be inspected the accounts of any legal practitioner;
- (f) make rules relating to—
  - (i) contributions to the Fund and the issuing and costs of Fidelity Fund certificates; and
  - (ii) any other matter concerning the Fund;
- (g) generally take such other steps and perform such other acts as may be necessary for or conducive to the achievement of the objects of the Fund.

### **Certificate in respect of liabilities of Fund and investment of money in Fund**

**83.** (1) The Board must appoint an actuary to make recommendations to it on or before 31 March in any year regarding the amount which in that actuary's opinion will be required during the next ensuing year ending on 31 December, for the purposes of the Fund's obligations in terms of section 68, and such actuary must furnish the Board on or before the first-mentioned date with a certificate setting out the

amount so recommended.

(2) The Board must within 30 days after receipt of the certificate referred to in subsection (1) determine the amount required in the ensuing year for the purposes referred to in subsection (1).

(3) So much of the amount determined in terms of subsection (2) as is not immediately required for the purposes referred to in subsection (1) in any financial year must be invested in such Government and other securities as may be prescribed by regulation.

### **Audit**

**84.** (1) The accounts of the Fund must be audited by a registered accountant and auditor appointed by the Board.

(2) A person appointed under subsection (1) must in respect of each financial year of the Fund, draw up a balance sheet and income statement of the Fund and forthwith submit certified copies thereof, together with his or her report thereon, to the chairperson of the Board and to the Council.

### **Re-insurance**

**85.** (1) The Board may in its discretion enter into a contract with any person or corporation carrying on fidelity insurance business in terms of which the Fund will be indemnified to the extent and in the manner provided in such contract against liability to pay claims under this Act.

(2) A contract referred to in subsection (1) must be entered into in respect of legal practitioners referred to in section 93(1).

(3) A claimant against the Board does not have any right—

(a) of action against any person or corporation with whom a contract of indemnity has been entered into in terms of this section; or

(b) to any money paid by the insurer in accordance with such contract.

(4) Any money paid by an insurer in accordance with a contract of indemnity must be paid into the Fund for appropriation by the Board.

### **Provision of insurance cover and suretyships**

**86.** (1) The Board may –

(a) acquire or form, and administer a public company; or

(b) together with any other person or institution, establish a scheme, underwritten by a registered insurer,

in order to provide insurance cover subject to the provisions of the Short Term Insurance Act, 1998 (Act No. 53 of 1998), to legal practitioners in respect of any claims which may arise from the professional

conduct of such legal practitioners.

(2) The Board may enter into a contract with a company or scheme referred to in subsection (1), or any company carrying on professional indemnity insurance business, for the provision of group professional indemnity insurance to legal practitioners to the extent and in the manner provided in such contract.

(3) The Board may enter into deeds of suretyship to the satisfaction of the Master in order to provide security on behalf of a legal practitioner in respect of work done by such legal practitioner as—

- (a) executor in the estate of a deceased person;
- (b) a trustee in an insolvent estate;
- (c) curator to the person or property in the case of a person who is unable to manage his or her own affairs; or
- (d) in case of any other similar capacity, by any other person in such capacity where a legal practitioner acts as agent for the person concerned.

(4) The Board may levy premiums and fees for the provision of such insurance or security through any scheme established or public company administered by it in terms of the provisions of this Act or legislation repealed by this Act.

### ***PART 3***

#### ***Claims against Fund***

##### **Procedure for instituting claims against Fund**

**87.** (1) No person has a claim against the Fund in respect of any theft contemplated in section 68, unless—

- (a) written notice of the claim is given to the Council and to the Board within three months after the claimant became aware of the theft or, by the exercise of reasonable care, should have become aware of the theft; and
- (b) within six months after a written demand has been sent to him or her by the Board, the claimant furnishes the Board with such proof as it may reasonably require.

(2) If the Board is satisfied that, having regard to all the circumstances, a claim or the proof required by it has been lodged or furnished within a reasonable period, it may in its discretion extend any of the periods referred to in subsection (1).

##### **Actions against Fund**

**88.** (1) The Fund is not obliged to pay such portion of a claim which could reasonably be recovered from any other person liable.

(2) The Fund may pay all reasonable expenses and legal costs incurred by a claimant in exhausting his or her rights of action against another person.

(3) The Fund may, before deciding whether to make full payment of a claim or any part of it, in its discretion make an interim payment to the claimant of a portion of the amount for which his or her claim has been admitted.

(4) Any action against the Board in respect of loss suffered by any person as a result of theft committed by a legal practitioner, candidate legal practitioner or employee of any legal practitioner, must be instituted within one year of the date of a notification directed to such person or his or her legal representative by the Board, informing him or her that the Board rejects the claim to which such action relates.

(5) In any action against the Fund all defences which would have been available to the person against whom the claim arose, are available to the Fund.

(6) Any action against the Fund may, subject to the provisions of this Act, be brought in any court having jurisdiction in respect of the claim.

### **Subrogation**

**89.** (1) On payment out of the Fund of money in settlement in whole or in part of any claim under this Chapter, the Fund is subrogated, to the extent of such payment, to all rights and legal remedies of the claimant against any legal practitioner or person in relation to whom the claim arose, or in the event of his or her death or insolvency or other legal disability, against any person having authority to administer his or her estate.

(2) A claimant who fails to co-operate with the Fund in the exercise of its subrogated rights is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

### **Claims may be charged against future revenue of Fund**

**90.** (1) If the Fund at any time has insufficient assets to settle all claims and judgments, such claims and judgments must, to the extent to which they are not settled, be charged against future revenue of the Fund.

(2) The Board may determine the order in which claims and judgments referred to in terms of subsection (1) are settled, and may, if the revenue of the Fund is not sufficient to settle all claims in full, settle any claim or judgment in whole or in part.

(3) Without limiting the discretion of the Board, it must, in applying the Fund towards such settlement of claims and judgments, consider the following, namely –

(a) the relative degrees of hardship suffered or likely to be suffered by the various claimants should

their claims against the Fund not be settled in whole or in part;

- (b) subject to paragraph (a), the full settlement of relatively small claims, except in exceptional circumstances, before relatively large claims are settled to a greater extent than the small claims;
- (c) in equal circumstances, the priority of claimants according to the dates of the judgments or the dates when the claims were admitted by the Board, as the case may be.

### **Indemnification in respect of certain acts**

**91.** No action for damages may be instituted –

- (a) against the Fund, the Board or any member, official or employee of the Board in respect of anything done in the *bona fide* exercise or performance of its or his or her powers or functions in terms of the provisions of this Act; or
- (b) against the Council, a member of the Council or official or employee thereof, in respect of any notification issued in good faith for the purposes of section 88(4).

### **Preservation and disposal of records and documents in possession of Board**

**92.** (1) Any record or document in possession of the Board relating to any claim instituted against the Fund must, subject to the provisions of subsection (2), be preserved at the office of the Board.

(2) The Board may, after the lapse of five years from the date on which any claim to which any record or document relates is settled by the Board or adjudicated upon by the court or rendered unenforceable by lapse of time, direct that such record or document be removed to some other place of custody or be destroyed or otherwise disposed of.

## **CHAPTER 8 HANDLING OF TRUST MONIES**

### **Obligations of legal practitioners where money is entrusted to them by a client or any person**

**93.** (1) Every legal practitioner who practises-

- (a) for own account either alone or in partnership; or
- (b) as a director of a practice which is a juristic person,

and who receives or holds money or property belonging to any person, must be in possession of a Fidelity Fund certificate.

(2) No legal practitioner or person employed or supervised by a legal practitioner may receive or hold funds or property belonging to any person unless the legal practitioner concerned is in possession of a Fidelity Fund certificate.

(3) The provisions of subsections (1) and (2) apply to a deposit taken on account of fees or

disbursements in respect of legal services to be rendered.

- (4) Any person who contravenes subsections (1), (2) or (3) in rendering legal services, is—
- (a) guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years;
  - (b) liable to be struck off the Roll; and
  - (c) not entitled to any fee, reward or re-inbursement in respect of the legal services so rendered.

(5) A Fidelity Fund certificate must indicate that the legal practitioner concerned is obliged to practise subject to the provisions of this Act, and the fact that a legal practitioner holds such a certificate must be endorsed against his or her enrolment by the Council.

- (6) A legal practitioner who—
- (a) transfers from one practice to another; or
  - (b) ceases to practise,

must give notice of this fact to the Council and comply with the Council's relevant requirements in relation to the closure of such practitioner's trust account and in the case of paragraph (b) return his or her certificate to the Council.

(7) The Council may withdraw a Fidelity Fund certificate and where necessary obtain an interdict against a legal practitioner if such legal practitioner fails to comply with the provisions of this Act or in any way acts unlawfully or unethically.

(8) The provisions of this section do not apply to a legal practitioner who practises in a justice centre.

### **Application for and issue of Fidelity Fund certificates**

**94.** (1) A legal practitioner obliged in terms of section 93(1) to be in possession of a Fidelity Fund certificate must apply to the Council for such certificate in the prescribed form and manner.

(2) An application in terms of subsection (1) must be accompanied by the contribution payable by applicants and determined by the Council.

(3) The Council must, in consultation with the Board, determine the amount of the contribution for the ensuing year, if any, and in the event of a contribution being levied give notice thereof by publication in the *Gazette*.

(4) In determining the amount of the contribution, the Council and the Board must take into account the value of the Fund, the extent of the expenses and liabilities which the Fund is likely to incur in the ensuing year and future years, and the determination referred to in section 83(2).

(5) The Council may, in consultation with the Board, and taking into account the performance of community service which promotes access to justice –

- (a) exempt a category of legal practitioners from paying the whole or part of the contribution; or

(b) exempt a particular legal practitioner from paying the whole or part of the contribution after consideration of a written application from that legal practitioner, if it is satisfied that there is good reason to do so.

(6) Upon receipt of an application in terms of subsection (1) the Council must, if it is satisfied that the applicant has—

- (a) complied with the provisions of this Chapter;
- (b) paid the required contribution to the Fund;
- (c) discharged all liabilities in respect of registration fees; and
- (d) completed the prescribed application form in every respect,

forthwith issue to the applicant a Fidelity Fund certificate in the prescribed form.

(7) A Fidelity Fund certificate is valid until 31 December of the year in respect of which it was issued.

(8) A document purporting to be a Fidelity Fund certificate which has been issued contrary to the provisions of this Act is null and void and must be returned to the Council on demand.

#### **Legal practitioners obliged to hold Fidelity Fund certificates must open trust accounts**

**95.** (1) Every legal practitioner referred to in section 93(1) must operate a trust account practice.

(2) Every trust account practice must keep a trust account at a bank in the Republic and must deposit therein, as soon as possible after receipt thereof, money held by it on account of any person.

(3) (a) A trust account practice may of its own accord invest in a separate trust savings account or other interest-bearing account any money which is not immediately required for any particular purpose.

(b) Any trust savings account or other interest-bearing account referred to in paragraph (a), must contain a reference to this subsection.

(4) (a) A trust account practice may, on the instructions of any person, open a separate trust savings account or other interest-bearing account with any bank for the purpose of investing therein any money deposited in the trust account of such practice over which the practice exercises exclusive control as trustee, agent or stakeholder or in any other fiduciary capacity.

(b) Any trust savings account or other interest-bearing account referred to in paragraph (a), must contain a reference to this subsection.

(5) Interest accrued on money deposited in terms of this section must—

(a) in the case of money deposited in terms of subsections (2) and (3)(a), be paid over to the Fund;

(b) in the case of money deposited in terms of subsection (4)(a), be paid over to the person referred to in that subsection.

#### **Accounting**

**96.** (1) A trust account practice must keep proper accounting records containing particulars and information in respect of—

- (a) moneys received and paid on its own account;
- (b) any money received, held or paid on account of any person;
- (c) moneys invested in a trust account or other interest-bearing account referred to in section 95; and
- (d) any interest on money so invested which is paid over or credited to it.

(2) (a) The Council may itself or through its nominee, at the cost of the Council, inspect the accounting records of any trust account practice in order to satisfy itself that the provisions of section 95 and subsection (1) are being complied with.

(b) If on such inspection it is found that these provisions have not been complied with, the Council may write up the accounting records of the trust account practice and recover the costs of the inspection and writing up of the accounting records from the trust account practice concerned.

(3) For the purposes of subsections (1) and (2), “accounting records” includes any record or document kept by or in the custody or under the control of any trust account practice which relates to—

- (a) money held in trust;
- (b) money invested in terms of section 95(3) and (4);
- (c) interest on such money;
- (d) any estate of a deceased person or any insolvent estate or any estate placed under curatorship, in respect of which a legal practitioner in the trust account practice is the executor, trustee or curator or which he or she administers on behalf of the executor, trustee or curator; or
- (e) the affairs of the trust account practice.

(4) Any money held in the trust account of a trust account practice in respect of which the identity of the owner is unknown, must, after the second annual closing of the accounting records of the trust account practice following the date upon which such funds were deposited in the trust account practice's trust account, be paid over to the Fund by the trust account practice: Provided that nothing in this subsection deprives the owner of such money of the right to claim such portion as he or she may prove an entitlement to.

(5) (a) A legal practitioner or an employee of a trust account practice must, at the request of the Council, or the person authorised thereto by the Council, produce a book, document or thing which relates to the accounting records referred to in subsection (1).

(b) Such legal practitioner or employee may not, subject to the provisions of any other law, refuse to produce such book, document or thing, even though he or she is of the opinion that it contains confidential information belonging to or concerning his or her client.

(6) Any person who performs any function under this section, may not disclose any information which he or she obtained in the performance of such a function except—

- (a) for the purposes of an investigation by a disciplinary tribunal under Chapter 6;
- (b) to any person authorised thereto by the Council who of necessity requires it for the performance of his or her functions under this Act;
- (c) if he or she is a person who of necessity supplies it in the performance of his or her functions under this Act;
- (d) when required to do so by order of a court of law;
- (5) at the written request of the Legal Services Protector; or

(f) at the written request of the National Director of Public Prosecutions or a Director of Public Prosecutions, to any competent authority which requires it for the institution or an investigation with a view to the institution of any criminal prosecution.

(7) Any person who—

(a) refuses or fails to produce a book, document or thing under subsection (5);

(b) contravenes subsection (6); or

(c) obstructs or hinders any person in the performance of his or her functions under this section, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

### **Trust money and trust property do not form part of assets of trust account practice**

**97.** (1) (a) Subject to paragraph (b), an amount standing to the credit of any trust account of any trust account practice—

(i) does not form part of the assets of the trust account practice or of any legal practitioner, partner or member thereof; and

(ii) may not be attached by the creditor of any such trust account practice, partner or member.

(b) Any excess remaining after all claims of persons whose money has, or should have, been deposited or invested in a trust account referred to in paragraph (a), and all claims in respect of interest on money so invested, are deemed to form part of the assets of the trust account practice concerned.

(2) Trust property which is registered in the name of a trust account practice, or jointly in the name of a legal practitioner or trust account practice and any other person in a capacity as administrator, trustee, curator or agent, do not form part of the assets of such legal practitioner or trust account practice or other person.

### **Court may prohibit operation of trust account**

**98.** A High Court may, on application made by the Council, and on good cause shown, prohibit any trust account practice from operating in any way on its trust account, and may appoint a *curator bonis* to control and administer such trust account, with such rights, duties and powers in relation thereto as the court may deem fit.

### **Appointment of *curator bonis* in respect of trust account**

**99.** (1) If any legal practitioner, practising on his or her own account or as a partner or member of a trust account practice—

(a) dies;

(b) becomes insolvent;

- (c) is struck off the Roll or suspended from practice; or
- (d) is declared by a competent court to be incapable of managing his or her own affairs, or abandons his or her practice or ceases to practise,

the Master may, on application made by the Council or by any person having an interest in the trust account of that legal practitioner or trust account practice, appoint a *curator bonis* to control and administer such account, with such rights, duties and powers as the Master may deem fit.

(2) Where the legal practitioner was practising in partnership or as a member of a company with another legal practitioner or other legal practitioners, the Master must allow the trust account to remain under the control of the remaining partners or members, unless there is good reason not to do so.

(3) If a trust account practice is sequestrated, liquidated or placed under judicial management, whether provisionally or finally, the Master may, on application made by the Council or by any person having an interest in the trust account of that practice, appoint a *curator bonis* to control and administer such account, with such rights, duties and powers as the Master may deem fit.

(4) The Master may only grant an application contemplated in subsection (1) or (2), on good cause shown by the Council or any other person concerned, and after having given the trust account practice an opportunity to respond in writing to the application.

(5) Any person who is prejudiced by a decision of a Master in terms of subsection (1), (2) or (3), may, within 30 days after obtaining knowledge of the decision, appeal against that decision to a High Court, and the court may confirm or vary the decision or give such other decision as in its opinion the Master should have given.

(6) Nothing in this section or sections 97 and 98 shall be construed as preventing any legal practitioner who was practising in partnership with a legal practitioner referred to in subsection (1), from operating on the trust account of the partnership.

### **Rights of banks in respect of trust accounts**

**100.** (1) (a) Any bank at which a trust account practice keeps its trust account, or any separate account forming part of a trust account, is not, by reason only of the name or style by which the account concerned is distinguished, deemed to have knowledge that the trust account practice is not entitled to all money paid into such account or with which such account is credited.

(b) The provisions of paragraph (a) do not relieve such bank from any liability or obligation which legally exists and to which it would be subject apart from the provisions of this Act.

(2) Notwithstanding anything in subsection (1) contained, a bank at which a trust account practice keeps his or her or its trust account, or any separate account forming part of a trust account, does not, in respect of any liability of the trust account practice to such bank, not being a liability arising out of or in connection with any such account, have or obtain any recourse or right, whether by way of set-off,

counterclaim, charge or otherwise, against money standing to the credit of any such account.

(3) This section does not—

- (a) deprive any bank of any existing right;
- (b) take away or affect any claim, lien, counter-claim, right of set-off, or charge of any kind which a trust account practice has against or on any money held or received on account of any person;
- (c) relieve any trust account practice which has invested any money referred to in subsection (1) in a trust or other interest-bearing account referred to in section 95, of any liability in respect thereof.

(4) Any bank at which a trust account practice keeps its trust account or any separate account forming part of its trust account, must, if so directed by the Council, furnish the Council with a signed certificate which indicates the balance of such account at the date or dates stated by the Council.

## CHAPTER 9 REGULATIONS AND RULES

### Regulations

**101.** (1) The Minister may make regulations relating to—

- (a) any matter which in terms of any provision of this Act is required to be or may be prescribed by regulation;
- (b) generally, all matters which he or she considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(2) Any regulation made under subsection (1) must, before publication thereof in the *Gazette*, be tabled in Parliament.

### Rules

**102.** (1) The Council may, by notice in the *Gazette*, make rules relating to—

- (a) the types of work-place training which constitute practical legal training for purposes of section 27(b);
- (b) the accreditation of courses in general legal practice as contemplated in section 27(b)(i);
- (c) the certification of persons qualified to supervise candidate legal practitioners as contemplated in section 28(2);
- (d) the qualifications for enrolment as a conveyancer as contemplated in section 32(2)(b);
- (e) the qualifications for enrolment as a notary as contemplated in section 33(2)(b);
- (f) the form on which a certificate of the Panel must be submitted to the Council in terms of section 35(5);
- (g) the manner in which a person may apply to the Council to be enrolled as a legal practitioner, paralegal practitioner, conveyancer or notary;
- (h) the manner in which an association or organisation must apply for accreditation as contemplated in section

20, the accreditation of such organisations and the conditions with which such organisations must comply with, to obtain accreditation;

- (i) the rights, duties and powers of a *curator bonis* appointed in terms of section 99;
- (j) the time when, and the manner in which, any interest referred to in section 95(5) must be paid to the Fund;
- (k) the certificate which must be endorsed on any document specified in the rules by any person preparing such document for or on behalf of any other person;
- (l) the books, records, certificates or other documents to be kept, maintained or issued by persons admitted and enrolled in terms of this Act, the inspection thereof by persons authorised to do so by the Council, and the circumstances and manner in which alterations may be effected thereto;
- (m) the information to be furnished to the Council by any person admitted and enrolled in terms of this Act who—
  - (i) commences or discontinues to practise as a legal practitioner, paralegal practitioner, conveyancer or notary;
  - (ii) takes up employment or ceases to be employed as a legal practitioner, paralegal practitioner, conveyancer or notary;
  - (iii) enters into or withdraws from a partnership or corporation of legal practitioners; or
  - (iv) while so practising, changes his or her business or residential address;
- (n) the investment of the money contemplated in section 95;
- (o) the form in which, and the periods within which, notice must be given to the Council and the Board in respect of claims lodged against the Fund and the particulars thereof, and the conditions subject to which, and the extent to which, the Board may settle claims without recourse to legal proceedings;
- (p) the form of certificates to be issued to legal practitioners and of declarations, applications, notices and documents to be used in relation to any application or refusal of any application relating to the Fund;
- (q) the obtaining of evidence for the purposes of the Fund that any person has been admitted to practise or is still practising or has ceased to practise, or as to the reason why any person has discontinued practice, and generally for the obtaining of information which is considered necessary or desirable for the purposes of determining the merits of applications for Fidelity Fund certificates or matters related thereto;
- (r) the appointment, remuneration and dismissal of staff of the Council and the Board;
- (s) the opening of offices, and the regulation of the management and administration, of the Board, including the manner and form in which all agreements, deeds and documents must be drawn up and executed by, for or on behalf of the Board;
- (t) the power of the Board or any committee thereof to subpoena and examine under oath or affirmation any person whose evidence is deemed necessary to enable the Board or such committee to decide on the validity of any claim lodged against the Fund;
- (u) the forms contemplated in section 103(1);
- (v) any matter that is required or permitted to be prescribed by the Council in terms of this Act and any other matter for the better execution of this Act or in relation to any power, duty or function conferred or assigned upon or function imposed on it by this Act;

(w) generally, any matter which the Council deems necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) (a) Before the Council makes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice calling on interested persons to comment in writing within a period stated in the notice, which may not be less than 30 days from the date of publication of the notice.

(b) If the Council alters the draft rules as a result of any comment it need not publish those alterations before making the rule.

(3) The Council may, if circumstances necessitate the publication of a rule without giving notice contemplated in subsection (2)(a), publish that rule without prior publication of a draft as contemplated in subsection (2), provided that the notice of publication states—

(a) the reason why circumstances necessitated such publication without prior publication of a draft as contemplated in subsection (2); and

(b) that any person who is aggrieved by the rule may make representations to the Council within a period stated in the notice, which may not be less than 30 days from the date of publication of the notice.

## CHAPTER 10 GENERAL PROVISIONS

### Contingency fees

**103.** (1) Notwithstanding anything to the contrary in any law or the common law, a legal practitioner may, if in his or her opinion there are reasonable prospects that his or her client may be successful in any proceedings, enter into an agreement with such client in which it is agreed—

(a) that the legal practitioner is not entitled to any fees for services rendered in respect of such proceedings unless such client is successful in such proceedings to the extent set out in such agreement;

(b) that the legal practitioner is entitled to fees equal to or, subject to subsection (2), higher than his or her normal fees, set out in such agreement, for any such services rendered, if such client is successful in such proceedings to the extent set out in such agreement.

(2) (a) Any fees referred to in subsection (1)(b) which are higher than the normal fees of the legal practitioner concerned (hereinafter referred to as the "success fee"), may not exceed such normal fees by more than 100 per cent.

(b) In the case of claims sounding in money, the total of any such success fee payable by the client to the legal practitioner, may not exceed 25 per cent of the total amount awarded or any amount obtained by the client in consequence of the proceedings concerned, which amount may not, for purposes of calculating such excess, include any costs.

(3) A contingency fees agreement must be in writing and in the form prescribed by the Council.

(4) A contingency fees agreement must be signed by the client concerned or, if the client is a juristic person, by its duly authorised representative, and the legal practitioner representing such client.

(5) A contingency fees agreement must state—

- (a) the proceedings to which the agreement relates;
- (b) that, before the agreement was entered into, the client—
  - (i) was advised of any other ways of financing the litigation and of their respective implications;
  - (ii) was informed of the normal rule that in the event of his or her or it being unsuccessful in the proceedings, he or she or it may be liable to pay the taxed party and party costs of his or her or its opponent in the proceedings;
  - (iii) was informed that he or she or it will also be liable to pay the success fee in the event of success; and
  - (iv) understood the meaning and purport of the agreement;
- (c) what will be regarded by the parties to the agreement as constituting success or partial success;
- (d) the circumstances in which the legal practitioner's fees and disbursements relating to the matter are payable;
- (e) the amount which will be due, and the consequences which will follow, in the event of the partial success in the proceedings, and in the event of the premature termination for any reason of the agreement;
- (f) either the amounts payable or the method to be used in calculating the amounts payable;
- (g) the manner in which disbursements made or incurred by the legal practitioner on behalf of the client are to be dealt with;
- (h) that the client will have a period of 14 days, calculated from the date of the agreement, during which he or she or it will have the right to withdraw from the agreement by giving notice to the legal practitioner in writing: Provided that in the event of withdrawal the legal practitioner is entitled to fees and disbursements in respect of any necessary or essential work done to protect the interests of the client during such period, calculated on a legal practitioner and client basis; and
- (i) the manner in which any amendment or other agreements ancillary to that contingency fees agreement will be dealt with.

(6) A copy of any contingency fees agreement must be delivered to the client concerned upon the date on which such agreement is signed.

(7) Any offer of settlement made to any party who has entered into a contingency fees agreement, may be accepted after the legal practitioner has filed an affidavit with the court, if the matter is before court, or has filed an affidavit with the Council, if the matter is not before court, stating—

- (a) the full terms of the settlement;
- (b) an estimate of the amount or other relief that may be obtained by taking the matter to trial;
- (c) an outline of the legal practitioner's fees if the matter is settled as compared to taking the matter to trial;
- (d) the reasons why the settlement is recommended;
- (e) that the matters contemplated in paragraphs (a) to (d) were explained to the client, and the steps taken to ensure that the client understands the explanation; and
- (f) that the legal practitioner was informed by the client that he or she or it understands and accepts the terms of the settlement.

(8) The affidavit referred to in subsection (7) must be accompanied by an affidavit by the client,

stating—

- (a) that he or she or it was notified in writing of the terms of the settlement;
- (b) that the terms of the settlement were explained to him or her or it, and that he or she or it understands and agrees to them; and
- (c) his or her or its attitude to the settlement.

(9) Any settlement made where a contingency fees agreement has been entered into, must be made an order of court, if the matter was before court.

(10) A client of a legal practitioner who has entered into a contingency fees agreement and who feels aggrieved by any provision thereof or any fees chargeable in terms thereof may refer such agreement or fees to an investigating committee.

(11) An investigating committee may review any such agreement and set aside any provision thereof or any fees claimable in terms thereof if in its opinion the provision or fees are unreasonable or unjust.

### **Recovery of costs by legal practitioner rendering free legal services**

**104.** (1) Whenever in any legal proceedings or any dispute in respect of which legal services are rendered for free to a litigant or other person by a legal practitioner, costs become payable to such litigant or other person in terms of a judgment of the court or a settlement, or otherwise, such litigant or other person shall be deemed to have ceded his or her rights to the costs to that legal practitioner or practice.

(2) (a) A litigant or person referred to in subsection (1) or the legal practitioner concerned may, at any time before payment of the costs referred to in subsection (1), give notice in writing to-

- (i) the person liable for such costs; and
- (ii) the registrar or clerk of the court concerned,

that the legal services are being or have been rendered for free by that legal practitioner or practice.

(b) Where notice has been given as contemplated in paragraph (a), the legal practitioner concerned may proceed in his or her own name, or the name of his or her practice, to have such costs taxed, where appropriate, and to recover them, without being formally substituted for the litigant or person referred to in subsection (1).

(3) The costs referred to in subsection (1) must be calculated and the bill of costs, if any, must be taxed as if the litigant or person to whom the legal services were rendered by the legal practitioner actually incurred the costs of obtaining the services of the legal practitioner acting on his or her behalf in the proceedings or dispute concerned.

### **Senior Legal Practitioner<sup>11</sup>**

**105.** (1) Any person or organisation may request the Minister to confer upon a legal practitioner the status of Senior Legal Practitioner.

---

<sup>11</sup> The GCB proposes that the Act should preserve the power of the President and the Minister to confer silk.

- (2) Such request must be in a form and contain such information as the Minister may prescribe.
- (3) The Minister must make a copy of such application available to—
- (a) the Judge President of the High Court having jurisdiction over the area in which the legal practitioner generally practices;
- (b) any accredited organisation of which the legal practitioner is a member: and
- (c) any other person considered appropriate by the Minister.
- (4) If, after consultation with the persons referred to in subsection (3), the Minister is satisfied that the legal practitioner concerned is, having regard to the nature of his or her skills, expertise and integrity as a legal practitioner, deserving of the status of Senior Legal Practitioner the Minister may—
- (a) confer such status upon that legal practitioner; or
- (b) recommend to the President that he or she confer such status upon that legal practitioner.
- (5) A legal practitioner upon whom the status of Senior Legal Practitioner has been conferred is entitled to use the letters “SLP” after his or her name.

### **Offences and penalties**

- 106.** (1) A practice may not, except with the written consent of the Council, employ in any capacity any person who has been struck off the Roll or suspended from practice, while such person is so struck off or suspended.
- (2) Any person who contravenes subsection (1), or sections 32(1), 33(1), 53(5) or 55(6) is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year.

## **CHAPTER 11 TRANSITIONAL PROVISIONS**

### **Transitional Council**

- 107.** (1) There is hereby established a Transitional Council consisting of the following members appointed by the Minister:
- (a) 12 legal practitioners of whom<sup>12</sup>—
- (i) eight are designated by the Law Society of South Africa;
- (ii) three are designated by the General Council of the Bar of South Africa; and
- (iii) one is to represent legal practitioners not represented by the Law Society of South Africa or the General Council of the Bar of South Africa;
- (b) one person designated by the National Community-Based Paralegal Association;
- (c) one person who represents the interests of paralegals;
- (d) one teacher of law designated by the Society of Law Teachers of Southern Africa;

---

<sup>12</sup> The GCB proposes that the categories in (i), (ii) and (iii) should consist of five, five and two practitioners respectively.

- (e) two persons who represent the interests of users of legal services;
- (f) one person who by virtue of his or her knowledge and experience will, in the opinion of the Minister promote the objects of the Council;
- (g) one person designated by the Board, who will not have the right to vote at meetings and who may not be the chairperson.

(2) In making the appointments referred to in subsection (1)(a)(iii), (c), (e) and (f), the Minister must—

- (a) call for nominations in the *Gazette*;
- (b) have regard to—
  - (i) the objects of the Council;
  - (ii) the principle of openness and transparency;
  - (iii) the principle of representivity, which includes representivity in relation to—
    - (aa) race and gender; and
    - (bb) provincial distribution.

(3) (a) The Minister may refer a designation made in terms of subsection (1)(a)(i) and (ii), (b), (d) and (g) back to the designator for reconsideration if, in his or her opinion, the requirement regarding representivity has not been met or the designated person is not a fit and proper person for appointment.

(b) If after such a referral the designating body designates the same person after reconsidering the matter, the Minister must appoint him or her.

(4) Unless the context indicates otherwise, the provisions of this Act relating to the Council, its members, substructures and staff, also apply in relation to the Transitional Council, its members, substructures and staff.

(5) The Transitional Council may exercise, carry out and perform any of the powers, duties and functions conferred or imposed upon or assigned to the Council in terms of this Act.

### **Abolition of law societies and transfer of assets, rights, liabilities and obligations to Council**

**108.** (1) Any law society which, immediately before the fixed date, existed under any law repealed by this Act (hereinafter referred to as an existing society), ceases to exist on the day immediately preceding the date of the first meeting of the Council, and all assets, rights, liabilities and obligations which, on that date, vested in any such existing society, immediately vest in the Council.

(2) Any agreement, deed, bond, certificate or other instrument to which an existing society is a party on the date referred to in subsection (1) or which affects such a society on that date, and whether or not such agreement, deed, bond, certificate or other instrument is of such a nature that the rights, liabilities and obligations acquired or incurred thereunder could be assigned prior to that date, has effect and is enforceable as if the Council is a party thereto or affected thereby instead of the existing society concerned, and every reference in any such agreement, deed, bond, certificate or other instrument to the existing society concerned must be construed as a reference to the Council.

(3) Any proceedings to which any existing society is a party and which proceedings have not been concluded on the date referred to in subsection (1), must be continued and concluded as if the Council is a party

thereto in lieu of the existing society concerned.

(4) In respect of the transfer, hypothecation or lease of property or of an agreement or certificate or other instrument which is the subject of registration by virtue of a law, the competent officer of the appropriate registration authority must, upon the request of the Council, without payment of transfer duty, stamp duty or any other fee or charge, make such entry or endorsement or issue such new certificate or take such other action as may be required to give effect to the provisions of this section.

(5) The provisions of this Act shall not affect any legal proceedings in which the Law Society of South Africa or the General Council of the Bar is involved, and which are pending in any court of law immediately prior to the date of commencement of this Act, which proceedings must proceed in all respects until final disposal thereof, as if this Act had not been passed.

(6) (a) Every person who was in the service of the Law Society of South Africa or the General Council of the Bar<sup>13</sup> immediately before the commencement of this Act and who was then engaged in functions now vested in the Council must, as from the date of commencement of this Act, be transferred to the service of the Council.

(b) Every person so transferred must be regarded as being appointed in terms of section 15.

(c) If, for the purposes of this subsection, the question arises whether any person was engaged in functions now vested in the Council, that question must be decided by the Legal Services Protector or, if that person feels aggrieved by the decision, in terms of the Arbitration Act, 1965 (Act No.42 of 1965).

(d) The remuneration and other terms and conditions of service of any person transferred as contemplated in paragraph (a), may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before the commencement of this Act and he or she remains entitled to all rights, benefits and privileges to which he or she was entitled immediately before that date, including—

- (i) membership of a pension fund;
- (ii) membership of a medical aid scheme;
- (iii) employer contributions in connection with such membership;
- (iv) accrued pensionable service;
- (v) accrued leave benefits; and
- (vi) retirement at a specific age.

(e) Every person transferred as contemplated in paragraph (a) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the commencement of this Act.

(f) Any proceedings against such a person which were instituted immediately before the commencement of this Act, must be disposed of as if this Act had not been enacted.

---

<sup>13</sup> The GCB objects to this on the basis that it is one thing for an Act to transfer employees from certain statutory bodies (the provincial law societies) to another statutory body (the Council), but quite a different matter so to transfer employees of a voluntary association (the GCB) to a statutory body. The Chairperson agrees.

### **Abolition of Fidelity Funds and transfer of assets, rights, liabilities and obligations to Legal Practice Fidelity Fund**

**109.** (1) The—

- (a) Attorneys Fidelity Fund referred to in section 26(1) of the Attorneys, Notaries and Conveyancers Act, 1984 (Act No. 29 of 1984), of the former Republic of Bophuthatswana; and
- (b) Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund referred to in section 25 of the Attorneys Act, 1987 (Act No. 42 of 1987), of the former Republic of Venda,

cease to exist on the fixed date and all assets, rights, liabilities and obligations which, on that date, vested in any of the said Funds, vest from that date in the Fund referred to in section 66(1).

(2) The provisions of section 108(2), (3) and (4) apply, where applicable, with the necessary changes to the Funds referred to in subsection (1) from the date on which those Funds cease to exist as contemplated in that subsection.

### **Transitional provisions in relation to Legal Practice Fidelity Fund Board of Control**

**110.** (1) The—

- (a) Attorneys' Fidelity Fund Board of Control referred to in section 27 of the Attorneys Act, 1979 (Act No. 53 of 1979);
- (b) Attorneys Fidelity Fund Board of Control referred to in section 26(3) of the Attorneys, Notaries and Conveyancers Act, 1984 (Act No. 29 of 1984), of the former Republic of Bophuthatswana; and
- (c) Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund Board of Control referred to in section 27 of the Attorneys Act, 1987 (Act No. 42 of 1987), of the former Republic of Venda, and any committee of any such Board of Control appointed in terms of any such law and which existed immediately before the fixed date, continue to exist and the members of such Board of Control and any such committee, if any, continue to hold office as if such Board of Control was established or such committee was appointed, and the members, if any, of such board of control and such committee were appointed in terms of Part 2 of Chapter 7, until the Board referred to in section 74(1) is established.

(2) At the date on which the Board referred to in section 74(1) is established—

- (a) all assets, rights, liabilities and obligations which, on the date immediately preceding the date of such establishment, vested in any of the Boards referred to in subsection (1)(a), (b) and (c), vest in the Board referred to in section 74(1); and
- (b) the provisions of section 108(2), (3) and (4) apply, where applicable, with the necessary changes in respect of the Boards of Control referred to in the said paragraphs.

### **Transitional provisions in relation to qualifications**

**111.** (1) Notwithstanding anything to the contrary in this Act—

- (a) (i) the training course presented at a Practical Legal Training School of the Law Society of South Africa; or

- (ii) any other training course approved by any existing society, before the fixed date for the purpose of training persons to qualify as legal practitioners must be regarded as having been presented or approved pursuant to the provisions of section 27; and
- (b) any period of practical training undergone with an attorney or advocate before the fixed date must be regarded, for the purposes of section 27, as having been a period of practical legal training under supervision of a legal practitioner.
  - (2) Any person upon whom the degree *baccalaureus procurationis* was conferred by a university of the Republic, will be qualified to be enrolled as a legal practitioner by the Council as if he or she held the degree *baccalaureus legum*: Provided that such person has not later than 1999 registered for the first-mentioned degree.

### **Transitional provisions in relation to obtaining Fidelity Fund certificates**

**112.** Any legal practitioner who is in terms of section 93(1) required to be in possession of a Fidelity Fund certificate and who, at the fixed date, was not in possession of such a certificate issued in terms of any law repealed by this Act, must, within 60 days after the fixed date, apply for such a certificate.

### **Existing organisations**

**113.** (1) The following organisations are deemed to be accredited organisations for a period terminating three years after the fixed date<sup>14</sup>-

- (1) The General Council of the Bar of South Africa
- (2) The National Community-Based Paralegal Association
  - (2) Within two years after the fixed date the organisations referred to in subsection (1) must apply to the Council for accreditation in the prescribed manner and upon payment of the prescribed fee.
  - (3) The Council must determine applications for accreditation made in terms of subsection (2) and must issue to a successful applicant a certificate of accreditation which may contain conditions.

### **Existing advocates, attorneys, conveyancers and notaries**

**114.** (1) Any person whose name appears on the roll of advocates, roll of attorneys, roll of conveyancers or roll of notaries of any High Court at the fixed date, whether or not the admission or enrolment of any such person as an advocate, attorney, conveyancer or notary has been or is subject to any conditions, must be regarded as having been unconditionally admitted to practise and authorized to be enrolled as a legal practitioner, conveyancer or notary in terms of this Act, subject to the terms of any order of court whereby any such person has

---

<sup>14</sup> This list will have to be reconsidered in the light of whether other existing organisations wish to be so recognised.

been suspended from practice as an advocate, attorney, conveyancer or notary.

(2) Every person who in terms of subsection (1) is regarded as having been admitted and authorized to practise and to be enrolled as a legal practitioner, conveyancer or notary, must be enrolled as a legal practitioner, conveyancer or notary on the Roll of Legal Practitioners, and for that purpose the Registrar of every High Court must as soon as possible after the appointment of the Executive Director, furnish him or her with the name of every person whose name appears on the roll of advocates, roll of attorneys, roll of conveyancers and roll of notaries of such High Court and with particulars of the order of court whereby every such person was admitted to practise as an advocate, attorney, conveyancer or notary and of any order of court, if any, whereby any such person has been suspended from practice as an advocate, attorney, conveyancer or notary.

(3) Any disciplinary proceedings instituted against an attorney or advocate for an alleged breach of the code of professional ethics prior to the commencement of this Act must be continued and concluded in terms of the procedure determined in terms of Chapter 6 of this Act.

#### **Persons entitled to be admitted and enrolled as advocates, attorneys, conveyancers or notaries**

**115.** Any person who, immediately before the fixed date, was entitled to be admitted and enrolled as an advocate, attorney, conveyancer or notary will, after the fixed date, be entitled to be admitted and enrolled as such in terms of this Act.

#### **Pending proceedings**

**116.** (1) Any enquiry in terms of any law repealed by this Act into the alleged unprofessional or dishonourable or unworthy conduct of a legal practitioner who is not a member of an existing organisation listed in section 113, and which has not been concluded at the fixed date, must be referred to the Council which must treat the matter as it deems appropriate.

(2) Any proceedings in respect of the suspension of any person from practice as an advocate, attorney, conveyancer or notary or for the removal of the name of any person from the roll of advocates, attorneys, conveyancers or notaries which have been instituted in terms of any law repealed by this Act, and which have not been concluded at the fixed date, must be continued and concluded as if such law had not been repealed and for that purpose a reference in the provisions relating to such suspension or removal to the General Council of the Bar of South Africa, any Bar Council, any Society of Advocates, any society or the State Attorney must be construed as a reference to the Council.

#### **Interpretation of certain references in laws**

**117.** Subject to the provisions of this Act, a reference in any other law to—

(a) an advocate, a counsel or an attorney, must be construed as a reference to a legal practitioner;<sup>15</sup>

---

<sup>15</sup> The GCB points out that this section will need to be reconsidered in the light of the fact that the proposed Act distinguishes between practitioners with a Fidelity Fund certificate, and those without such a certificate.

- (b) a conveyancer admitted in terms of any law repealed by this Act, must be construed as a reference to a conveyancer registered in terms of section 32; and
- (c) a notary admitted in terms of any law repealed by this Act, must be construed as a reference to a notary registered in terms of section 33.

### **Repeal of laws and savings**

**118.** (1) Subject to subsection (2), the laws specified in Schedule 1 are hereby repealed to the extent indicated in the third column thereof.

(2) Any—

- (a) regulation made under any law referred to in subsection (1) and in force immediately before the fixed date; and
- (b) rule, 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 fixed date and having the force of law,

remains 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.

(3) Anything done in terms of a law repealed by this Act—

- (a) remains valid if it is consistent with this Act, until repealed or overridden; and
- (b) is deemed to have been done in terms of the corresponding provision of this Act.

### **Short title and commencement**

**119.** This Act is called the Legal Practice Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**SCHEDULE 2**  
**(Laws repealed by section 118(1))**

<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 24 of 1926	Natal Conveyancers Act, 1926	The whole
Act No. 27 of 1939	Natal Advocates and Attorneys Preservation of Rights Act, 1939	The whole
Act No. 19 of 1941	Attorneys' Admission Amendment and Legal Practitioners' Fidelity Fund Act, 1941	The whole
Act No. 93 of 1962	General Law Further Amendment Act, 1962	Sections 35, 36, 37 and 38
Act No. 74 of 1964	Admission of Advocates Act, 1964	The whole
Act No. 74 of 1964 (Transkei)	Admission of Advocates Act, 1964	The whole
Act No. 74 of 1964 (Bophuthatswana)	Admission of Advocates Act, 1964	The whole
Act No. 74 of 1964 (Venda)	Admission of Advocates Act, 1964	The whole
Act No. 74 of 1964 (Ciskei)	Admission of Advocates Act, 1964	The whole
Act No. 73 of 1965	Admission of Advocates Amendment Act, 1965	The whole
Act No. 29 of 1974	General Law Amendment Act, 1974	Section 16
Act No. 39 of 1977	Admission of Advocates Amendment Act, 1977	The whole
Act No. 25 of 1979	Admission of Advocates Amendment Act, 1979	The whole
Act No. 41 of 1979 (Bophuthatswana)	Admission of Advocates Amendment Act, 1979	The whole
Act No. 53 of 1979	Attorneys Act, 1979	The whole
Act No. 53 of 1979		

No. and year of law	Short title	Extent of repeal
(Ciskei)	Attorneys Act, 1979	The whole
Act No. 3 of 1980 (Bophuthatswana)	Admission of Advocates Amendment Act, 1980	The whole
Act No. 76 of 1980	Attorneys Amendment Act, 1980	The whole
Act No.116 of 1981	Attorneys Amendment Act, 1981	The whole
Act No. 60 of 1982	Attorneys Amendment Act, 1982	The whole
Act No. 56 of 1983	Attorneys Amendment Act, 1983	The whole
Act No. 103 of 1983	Second Attorneys Amendment Act, 1983	The whole
Act No. 29 of 1984 (Bophuthatswana)	Attorneys, Notaries and Conveyancers Act, 1984	The whole
Act No. 60 of 1984	Admission of Advocates Amendment Act, 1984	The whole
Act No.108 of 1984	Attorneys Amendment Act, 1984	The whole
Act No. 10 of 1985 (Bophuthatswana)	Attorneys, Notaries and Conveyancers Amendment Act, 1985	The whole
Act No. 32 of 1985 (Ciskei)	Admission of Advocates Amendment Act, 1985	The whole
Act No. 80 of 1985	Attorneys Amendment Act, 1985	The whole
Act No. 21 of 1986 (Bophuthatswana)	Attorneys, Notaries and Conveyancers Second Amendment Act, 1986	The whole
Act No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	The First Schedule in so far as it relates to the State Attorney Act, 1957 (Act No. 56 of 1957)
Act No. 8 of 1987	Attorneys, Notaries and Conveyancers Amendment Act, 1987	The whole

No. and year of law	Short title	Extent of repeal
(Bophuthatswana)		
Act No. 9 of 1987 (Bophuthatswana)	Bophuthatswana Admission of Advocates Amendment Act, 1987	The whole
Act No. 20 of 1987 (Bophuthatswana)	Attorneys, Notaries and Conveyancers Second Amendment Act, 1987	The whole
Act No. 42 of 1987 (Venda)	Attorneys Act, 1987	The whole
Act No. 34 of 1988 (Bophuthatswana)	Attorneys, Notaries and Conveyancers Amendment Act, 1988	The whole
Act No. 87 of 1989	Attorneys Amendment Act, 1989	The whole
Act No. 6 of 1990 (Bophuthatswana)	Attorneys, Notaries and Conveyancers Amendment Act, 1990	The whole
Act No. 13 of 1990	Attorneys Amendment Act, 1990	The whole
Decree No. 8 of 1991 (Ciskei)	Admission of Advocates Amendment Decree, 1991	The whole
Decree No. 9 of 1991 (Transkei)	Decree No. 9 (Amendment of Admission of Advocates Act, 1964) of 1991	The whole
Act No. 12 of 1991 (Bophuthatswana)	Attorneys, Notaries and Conveyancers Amendment Act, 1991	The whole
Act No. 102 of 1991	Attorneys Amendment Act, 1991	The whole
Act No. 106 of 1991	Admission of Advocates Amendment Act, 1991	The whole
Proclamation No. 1 of 1992 (Venda)	Admission of Advocates Amendment Proclamation, 1992	The whole
Decree No. 10 of 1993 (Ciskei)	Attorneys Amendment Decree, 1993	The whole
Act No. 114 of 1993	Recognition of Foreign Legal Qualifications and Practice Act,	The whole

No. and year of law	Short title	Extent of repeal
	1993	
Act No. 115 of 1993	Attorneys Amendment Act, 1993	The whole
Act No. 129 of 1993	General Law Third Amendment Act, 1993	Sections 11, 52, 53 and 54
Act No. 204 of 1993	General Law Sixth Amendment Act, 1993	Section 13
Act No. 55 of 1994	Admission of Advocates Amendment Act, 1994	The whole
Act No. 10 of 1995	Recognition of Foreign Legal Qualifications and Practice Amendment Act, 1995	The whole
Act No. 33 of 1995	Admission of Legal Practitioners Amendment Act, 1995	The whole
Act No. 62 of 1995	Right of Appearance in Courts Act, 1995	The whole
Act No. 49 of 1996	General Law Amendment Act, 1996	The Schedule in so far as it relates to the State Attorney Act, 1957 (Act No. 56 of 1957), and the Attorneys Act, 1979 (Act No. 53 of 1979)
Act No. 104 of 1996	Judicial Matters Amendment Act, 1996	Sections 11, 12 and 13
Act No. 66 of 1997	Contingency Fees Act, 1997	The whole
Act No. 78 of 1997	Qualification of Legal Practitioners Amendment Act, 1997	The whole
Act No. 34 of 1998	Judicial Matters Amendment Act, 1998	Section 19
Act No. 115 of 1998	Attorneys and Matters relating to Rules of Court Amendment Act, 1998	The whole
Act No. 122 of 1998	Judicial Matters Second Amendment Act, 1998	Section 9

<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 62 of 2000	Judicial Matters Amendment Act, 2000	Sections 17, 18, 19 and 20