

COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA (LSSA)
ON THE LEGAL AID BILL (B8-2014)

The Law Society of South Africa (LSSA) has considered the Legal Aid Bill and comments as follows:

1. Clause 4(1)

In terms of Clause 4(1), the Board may do all that is necessary to achieve the objects of Legal Aid South Africa, including the following:

- (a) Provide legal services, representation and advice by:
 - (i) employing legal practitioners;
 - (ii) employing paralegals;
 - (iii) procuring the services of legal practitioners in private practice.

There is no objection to paralegals being used as researchers, interviewers and the like (provided that they are under proper supervision and oversight by a legal practitioner), but they should not be allowed to sign pleadings and appear in court.

It should be noted that paralegals do not fall under the disciplinary jurisdiction of any regulatory statutory bodies and no provision has been made in the Legal Practice Bill (LPB) for the regulation of paralegals.

It is suggested that Clause 4(1)(a) be clarified as follows:

“Legal Aid South Africa may employ paralegals to provide legal services and advice, provided that the paralegal is subject to the supervision of a legal practitioner.”

2. Clause 6(1)

2.1 Although we are of the view that the composition of the Board will, subject to a balance of skills, lend itself to more efficient operations, we are concerned that no specific provision is made for the representation of the legal profession on the Board. The core function of Legal Aid SA is to deliver legal services. The statutory law societies and General Council of the Bar are the main regulators of practising attorneys and advocates and as such should be represented on the Board.

Furthermore, taking into consideration that Legal Aid SA employs in excess of 2 000 legal practitioners and is the largest employer of candidate attorneys, the law societies have a vested right in the functioning of the Board.

In terms of the LPB, the Legal Practice Council (LPC) will regulate attorneys, candidate attorneys, advocates and pupils. The LPB provides for representation by Legal Aid SA on the LPC, due to the nature of the legal services rendered and due to the contribution by Legal Aid SA to access to justice. It is an objective of the LPC to ensure access to justice and as such, the Legal Aid Bill should provide for reciprocity as far as representation on the Board of Legal Aid SA is concerned.

The Legal Aid Act, 22 of 1969, as amended, provides for four practising attorneys and one practising advocate, nominated by the LSSA and the General Council of the Bar respectively, to serve on the Board (Section 4(1)(b)). It is suggested that Clause 6(1) be amended to include

specifically practising attorneys and advocates, nominated by their respective bodies or their successors in title.

2.2 The Bill provides for the chief executive officer and three employees of Legal Aid SA to be appointed as voting members. This is in conflict with good corporate governance.

3. Clause 8

We do not deem it necessary for the Minister to appoint the deputy chairperson and suggest that provision be made for the Board to elect its own deputy chairperson.

4. Clause 22(3)

It appears that a court may not *mero motu* refer a person to Legal Aid SA for legal representation at state expense, but can only do so after the person has already applied to Legal Aid SA, which request has been refused and he or she has exhausted all internal remedies.

This section might have unintended consequences, such as depriving people of their rights in terms of Section 35 of the Constitution and lead to unnecessary delays in the conduct of trials.

5. Clause 26(1)(e)

Please see comments under paragraph 3.