

CONSTITUTION

**EASTERN CAPE PROVINCIAL
LEGAL PRACTITIONERS'
ASSOCIATION**

Adopted 2020

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CONSTITUTION

EASTERN CAPE PROVINCIAL LEGAL PRACTITIONERS' ASSOCIATION

PREAMBLE

Whereas the Legal Practice Act 28 of 2014 dissolved the law societies referred to in section 56 of the Attorneys Act 53 of 1979 (now repealed) and transferred their assets, rights, liabilities, obligations and staff, to the Legal Practice Council;

And whereas the legal practitioners currently practising in this Province of the Republic of South Africa have decided to establish an association to promote the transformation of the profession, the maintenance of standards, prestige and image of the profession, to encourage practitioners' continued commitment to delivering high quality legal services to all their clients and a fair distribution of *pro bono* services for indigent clients and to enhance an independent legal profession that operates ethically and responsively in this Province;

And whereas the legal practitioners in this Province seek to align themselves with the principles, aims and objectives of the Law Society of South Africa;

Now therefore, it is agreed to establish the Legal Practitioners' Association of the Eastern Cape and this constitution is accordingly adopted:

1. NAME OF THE ASSOCIATION

1.1 The name of the association is:

LEGAL PRACTITIONERS' ASSOCIATION OF THE EASTERN CAPE

1.2 In this constitution it is referred to as 'the Association'. The Association is affiliated to the Law Society of South Africa (LSSA) as its recognised parent body but shall be able to act independently of the LSSA.

2. LEGAL STATUS

2.1 The Association is, and in terms of this constitution shall continue to be, a body corporate with perpetual succession. The Association has an identity and an existence separate and distinct from its members and office-bearers.

2.2 The Association shall continue to exist even when its membership changes and when there are different office bearers.

- 2.3 The Association is capable of suing and of being sued in its own name. The Association is capable, in its own name, of acquiring rights, incurring duties and carrying out all contractual obligations necessary for its functioning.
- 2.4 Members and office-bearers of the Association have no rights in the property or other assets of the Association solely by virtue of their being members or office-bearers. All office-bearers accept fiduciary responsibility towards the Association. No single member, office-bearer or individual person may control directly or indirectly the decision-making powers of the Association.

3. OBJECTIVES OF THE ASSOCIATION

The objectives of the Association are:

- 3.1 As a member of the LSSA, the association can co-operate with the Legal Practice Council and its Provincial Councils established in terms of the Legal Practice Act and any other associations of legal practitioners in South Africa or other organisations with similar objectives.
- 3.2 To promote the common interests of members having regard always to the broader interest of the public whom the member serves, and to endeavour to reconcile, where they may conflict, the interest of members (as legal practitioners) and the public;
- 3.3 The Association is empowered to raise additional funds (excluding membership subscriptions) to provide assistance to any member who is in distress, other than breach of ethical and professional conduct. Such allocation and approval will be at the discretion of the management committee.
- 3.4 To promote and safeguard and maintain the independence, objectivity and integrity of members;
- 3.5 To promote and safeguard the independence, integrity and reputation of the Judiciary;
- 3.6 To maintain and enhance professional standards, prestige and standing of the legal profession and of its members nationally, which standards shall be reviewed from time to time;
- 3.7 To promote legal education, continuing legal education, practical legal education and related research; to grant bursaries to candidate legal practitioners in need of financial assistance; to conduct lectures and seminars for members and to circulate information electronically, or otherwise, which may be of interest to members in their practices;
- 3.8 To uphold, safeguard and advance the Constitution, the rule of law, the administration of justice, and the laws of the Republic of South Africa;

- 3.9 To strive towards the achievement of a system of law that is fair, just, equitable, certain and free from unfair discrimination; to initiate, consider, promote, support, oppose or endeavour to modify proposed reforms or changes in law, practice, procedure, the administration of justice and existing or proposed legislation; and, to promote and facilitate access to the profession and access to justice and the Courts;
- 3.10 To promote and encourage unity, tolerance and respect between its members irrespective of race, colour, gender and creed; to promote transformation in the legal profession with emphasis on gender equality, people with disabilities and previously disadvantaged individuals.
- 3.11 To represent generally the views of its members on a national basis and to appoint representatives to any national body it deems fit.

4. POWERS OF THE ASSOCIATION

The Association shall have the power:

- 4.1 To acquire or dispose of any movable or immovable property by purchase, lease, sale or otherwise; to collect, canvass for and to accept subscriptions, donations, bequests, endowments and benefits of any nature for the Association from any person or body and from any source whatsoever;
- 4.2 To accept members' subscriptions and donations of movable and immovable property of all kinds or any rights or interest therein or any other asset of any kind, subject to the condition that such donations are not revocable at the instance of the member or the donor;
- 4.3 To open, operate and close banking accounts on behalf of the Association and generally to control the funds and finances of the Association professionally, honestly and with the intent to carry out the objectives of the Association;
- 4.4 To borrow, raise, invest monies and funds and to allocate funds and to sanction all expenditure on behalf of the Association;
- 4.5 To enter into contracts as may be necessary or expedient from time to time to achieve the objectives of the Association;
- 4.6 To institute, conduct, defend, settle or abandon any legal proceedings by or against the Association in any manner as it may deem fit, but always to achieve the objectives of the Association;
- 4.7 To exercise all the management and executive powers ordinarily vested in the Board of Directors of a Company;

- 4.8 To carry out all the powers and authority of the Association in South Africa and in any other part of the world; and
- 4.9 Generally, to do all such things as may be necessary or expedient to carry out or further any of the objectives of the Association.
- 4.10 The Association is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA OF Chapter III, or a transaction operation or scheme as contemplated in section 103(5) of the Income Tax Act [ITA].
- 4.11 No member of the Association may directly or indirectly have any personal or private interest in the Association. In this context interest means the capital assets of the Association.
- 4.12 The Association may not have a share or other interest in any business, profession or occupation which is carried on by its members.

5. MEMBERSHIP

- 5.1 Membership of the Association shall be open to all legal practitioners and candidate legal practitioners practising and non-practising as such in this Province irrespective of colour, race, gender or creed, who accept and agree to abide by the principles contained this constitution.
- 5.2 The first members of the Association shall be those practicing legal practitioners and candidate legal practitioners who were present and agreed to the adoption of this Constitution at the inaugural meeting where the Association was established.
- 5.3 The Management Committee may, on application in the prescribed format, admit practicing legal practitioners and candidate legal practitioners as members to the Association.
- 5.4 The Management Committee may, subject to any resolutions issued by the members in general meeting, determine the conditions and criteria for membership. Applications for membership that do not comply with such conditions and criteria may be refused by the Management Committee.
- 5.5 The Management Committee must keep a register with the names and addresses of all the Members.
- 5.6 Membership is non-transferrable.
- 5.7 Members have the right to attend all General meetings. At a general meeting, members may exercise their right to determine the policy of the Association in accordance with the objectives of this Association.

- 5.8 The liability of members for the obligations of the Association shall be limited to the amount of their unpaid subscriptions.

6. TERMINATION OF MEMBERSHIP

- 6.1 The status of a member of the Association terminates through death or resignation.
- 6.2 The status of a member is suspended through non-payment of the annual subscription if such payment remains outstanding for six months from date of invoicing or due date, whichever is the later.
- 6.3 The status of a member terminates if a member is found guilty by the Management Committee of actions prejudicial to the interests of the Association, provided that such member has had the right to appear before the Management Committee and has been heard by it, if the said member exercised the right to be heard.
- 6.4 If the member's membership is terminated, the Management Committee must give the member written reasons within 14 days of the date of the Committee's decision or the date of request for reasons made by the said member if the request is made within 90 days of the decision.
- 6.5 At the next general meeting the said committee's decision shall be ratified by the general membership, failing which the decision to terminate such member's membership will lapse. Such member may appear at the said general meeting to argue against ratification of the committee's decision. The decision of the general membership is final and binding on all parties.

7. GENERAL MEETINGS

- 7.1 The management committee may call a general meeting of the members at any time during the year upon twenty-one (21) calendar days' notice to members. Such notice must include the date, venue, time and an agenda of the business to be conducted at the general meeting.
- 7.2 Timely despatch of the notice for a general meeting determines whether the meeting is validly convened: failure to receive a notice of the meeting is not an impediment to the meeting continuing as convened.
- 7.3 If ten (10) percent of the members of the Association request a general meeting, the management committee will call such meeting upon twenty-one (21) calendar days' notice to members and include in the convocation of the meeting the agenda proposed by the members requesting the meeting.
- 7.4 The Association may convene as many general meetings as the management committee – or the general body of membership – desires in a

calendar year. The members of the Association may vote and participate at all general meetings.

- 7.5 The rules relating to matters before any general meeting with regard to decisions binding on the Association are the same rules that apply to annual general meetings.
- 7.6 The Association shall be empowered to hold any meetings via electronic platform (such as Zoom / MS Teams and the like), should circumstances dictate that a physical meeting is not possible. This shall be decided by the Management Committee from time to time.

8. ANNUAL GENERAL MEETINGS

- 8.1 An annual general meeting shall be convened by the management committee within three months of the end of the financial year of the Association. The management committee shall call the annual general meeting on twenty-one (21) calendar days' notice to members. Such notice must include the date, venue, time and an agenda of the business to be conducted at the annual general meeting.
- 8.2 Only in exceptional cases may the management committee convene an annual general meeting on fourteen (14) days' notice. The members at the said annual general meeting must confirm that they accept the reasons for using fourteen days instead of twenty-one days' notice.
- 8.3 The quorum of a general meeting shall be a minimum of 25 of the Association's members present or represented by written proxy.
- 8.4 Should the quorum fails to be obtained at the specified time, the meeting shall be postponed for at least 14 days, then reconvened at the same place and then the members present in person or by proxy shall deem to constitute a quorum for that meeting. Provided that the meeting shall only be empowered to issue resolutions pertaining to the items on the agenda proposed for the original meeting
- 8.5 The management committee must circulate the agenda for every general meeting.
- 8.6 The Association shall conduct, *inter alia*, the following business at its annual general meeting, chaired by the out-going chairperson. The business of the AGM must include:
- 8.6.1 The presentation of the Chairperson's report;
- 8.6.2 The adoption of the minutes for the previous Annual General Meeting;
- 8.6.3 The presentation and adoption of the Association's Annual Financial Statements;

- 8.6.4 The election of the relevant members of the Management Committee;
- 8.6.5 The appointment of Auditors, and
- 8.6.6 Other appropriate matters.

9. SPECIAL ISSUES FOR A GENERAL MEETING

The Management Committee shall submit for approval to a general meeting:

- 9.1 Any acquisition, any exchange or transfer of immovable property in the name of the Association;
- 9.2 The mortgaging of any immovable property registered in the name of the Association;
- 9.3 Any contract or lease for a period of more than nine years;
- 9.4 Any loans to or by the Association.

10. NOTICES

- 10.1 All notices terms of this constitution must be given to members in writing or via electronic communication to the address provided by the members.
- 10.2 The accidental omission to address notices to any member shall not nullify the proceedings of any meeting.
- 10.3 A member present in person at any meeting shall be deemed to have received notice of such meeting.

11. MANAGEMENT COMMITTEE

- 11.1 The Association is managed and governed in accordance with this constitution by the management committee which accounts to the members at general meetings.
- 11.2 The management committee comprises a minimum of six members and a maximum of nine members, called committee members, elected at the annual general meeting. As far as is practically possible, one third of the committee members will be drawn from the Black Lawyers Association (“BLA”), another third from the National Association of Democratic Lawyers (“NADEL”) and the final third from practitioners who are not members of BLA and/or of NADEL. For ease of reference, the three groups contemplated here shall be referred to as the constituents.

- 11.3 The Management Committee must, as soon as reasonable possible, request the relevant constituent to appoint, in writing, a member to fill any vacancy that resulted from a committee member drawn from the relevant constituent.
- 11.4 The Management Committee may co-opt up to three (3) additional non-voting members as it may consider appropriate to serve on the Management Committee.
- 11.5 The first members of the Management Committee shall be elected by the legal practitioners present in person at the adoption of the constitution. To constitute the first Management Committee, if there is an election, one-third of the members securing the most votes shall serve for three years; one third of members securing the next most votes shall serve for two years; and the others will serve for one year. In the event of no election being necessary, the appointed members shall by vote decide at the first meeting of the Management Committee who shall serve for three years, who shall serve for two years and who shall serve for one year.
- 11.6 Thereafter members shall serve for three years, provided that no member shall serve for more than two consecutive three-year terms [without a twelve-month period of eligibility.
- 11.7 The management committee may co-opt members to its ranks to fill any vacancies that may occur during the year. A member so co-opted serves out the balance of the term until the next annual general meeting. That notwithstanding, such service counts as a full year on the management committee.
- 11.8 The Management Committee shall be entitled to hold their meetings via an electronic platform such as ZOOM / MS Teams and the like (as determined by the Management Committee from time to time) where physical meetings are not practical in the circumstances. Such electronic meetings to be recorded and minuted as is the norm in formal meetings.

12. POWERS AND PROCEDURES OF THE MANAGEMENT COMMITTEE

Without limiting their rights and duties of management, the management committee shall have the following specific powers:

- 12.1 To convene meetings;
- 12.2 To appoint, remove and determine the duties, salaries and remuneration of employees;
- 12.3 To hold and have the custody and control of the funds and other property of the Association;

- 12.4 To raise funds for the Association in such manner as it deems appropriate;
- 12.5 To open a banking account. This shall be operated by the treasurer who shall provide the executive committee with the necessary financial statements, documents and vouchers in respect of all payments made, for due ratification by the executive committee;
- 12.6 To appoint committees and sub-committees and delegate any of its powers to such Subcommittee/s, which delegation terminates automatically when the management committee leaves office;
- 12.7 The members appointed to committees must be appointed from any of Association's membership, and may include management committee members;
- 12.8 To do all other things that it may consider conducive to the interests and good management and the promotion of the objectives of the Association;
- 12.9 To review the annual subscription payable in terms of this constitution and to present a suggested subscription to the members at the annual general meeting for approval;
- 12.10 To draft rules to determine:
 - 12.10.1 The voting process and procedures;
 - 12.10.2 Any other rules or procedures it deems necessary to execute its mandate;
- 12.11 All rules must be approved at an annual general meeting or a general meeting Specially called for such purpose;
- 12.12 To direct and conduct an enquiry into any complaint received regarding a member's alleged conduct contrary to the provisions of this constitution; and,
- 12.13 To compel any member subjected to such enquiry to submit on demand all documentation and information required by the management committee to investigate such a complaint;
- 12.14 The management committee may:
 - 12.14.1 examine and take appropriate action regarding legislation and the administration of justice;
 - 12.14.2 formulate evidence for submission to government or any commissions or committees or other bodies;
 - 12.14.3 express its opinion in such quarters as it deems, from time to time, to be desirable;

- 12.14.4 make or join in making representations to Ministers or other persons or bodies on matters relating to the legal profession or members thereof;
- 12.14.5 prepare rules to regulate the conduct of the Association's meetings and deliver such personally, or send by e-mail or other electronic transmission, to the last address notified by each member or in any other manner as the Board may determine, provided that the rules must be ratified by the members at the next general meeting otherwise it will lapse;
- 12.14.6 exercise all powers as assigned to it in terms of this constitution.
- 12.15 The management committee shall hold at least one ordinary meeting every sixty (60) days.
- 12.16 A majority of committee members on the management committee shall form a quorum at any meeting of the management committee, present in person.
- 12.17 Minutes must be taken at every meeting of the management or executive committee to record the proceedings and must be kept by the secretary general at the offices of the Association.
- 12.18 Minutes of each meeting must be furnished to members of the management or executive committee, as the case may be, within 14 days of the meeting. The minutes must be confirmed as a true record of proceedings of the relevant previous meeting at the next meeting of such committee/s.
- 12.19 The control vested in the Management Committee and its members are responsible for the fiduciary responsibilities of the Association and must consist of at least three individuals who are not related to each other, as defined in the Income Tax Act, to accept the fiduciary responsibility of the Association and no single person shall directly or indirectly control the decision making powers relating to the Association..

13. INCOME, PROPERTY AND TAXATION

- 13.1 The Association will keep an asset register of all fixed assets and property owned.
- 13.2 The income and property of the Association shall be used solely for the promotion of its objectives and shall not be paid or distributed directly or indirectly to any person, or to any member of the Association or office bearers, except as reasonable compensation for services actually rendered to the Association or reimbursement of actual costs or expenses reasonably incurred on behalf of the Association.
- 13.3 The payment contemplated above, must be a reasonable amount for the work that has been done and approved in accordance with the policies adopted by the Management committee; as defined in the Fourth Schedule

of the ITA, which is not excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.

- 13.4 The Association is prohibited from directly or indirectly distributing any surplus funds to any Association, other than in terms of its objectives.
- 13.5 Substantially the whole of the activities of the Association shall be directed to the furtherance of its objectives and not for the specific benefit of an individual member or minority group.
- 13.6 The Association is prohibited from holding any share or other interest in any business, profession or occupation which is carried on by its members.
- 13.7 The Association may not pay any remuneration to any person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 13.8 The Board undertakes to submit to the Commissioner of the South African Revenue Service, a copy of any amendment to the Constitution within thirty days of its amendment.

14. FINANCE

- 14.1 The funds of the Association shall be made up of all monies received by means of subscriptions, levies, donations, seminars fees, and in any other funds obtained in a legitimate manner via campaigns or training and other programmes approved by the Association.
- 14.2 The Associations financial transactions must be conducted by means of a banking account and all funds of the Association shall be deposited in a bank account decided upon by the management committee.
- 14.3 The treasurer shall keep account of all the funds received and all expenditure and report on the income received and expenditure to the executive and management committees at every meeting and when called upon by the management committee.
- 14.4 The financial year of the Association ends on the last day of December each year.
- 14.5 The Association will comply with such reporting requirements as may be determined by the SARS Commissioner from time to time.
- 14.6 Substantially the whole of the Association's funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere; or from project sponsors

15. INDEMNITY

- 15.1 Subject to the provisions of any relevant statute, members of the management committee and other office bearers or employees shall be indemnified by the Association for all acts done by them in good faith on its behalf.
- 15.2 No member of the management committee or any other office bearer or employee of the Association shall be liable for the acts, omissions, receipts, neglects or defaults of any other members or office bearers or employees, or for any loss, damage or expense suffered by the Association, which occurs in the execution of the duties of their office, unless it arises as a result of their dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

16. LIMITATION

The liability of members is limited to the amount of their unpaid subscriptions.

17. AMENDMENTS TO THE CONSTITUTION AND DISSOLUTION OF THE ASSOCIATION

- 17.1 The constitution may only be amended by resolution approved by not less than two thirds of the membership, present in person, or proxy at the annual general meeting or special general meeting called for that purpose. Notice of such proposed amendment must be attached to the notice convening the relevant general meeting.
- 17.2 The Association may be dissolved by resolution of two-thirds of the entire membership at a special general meeting called specifically for that purpose.
- 17.3 Upon the dissolution of the Association, after all debts have been paid and all commitments honoured, any remaining assets shall not be paid to or distributed amongst members but shall say shall be transferred to and vest in the Law Society of South Africa and in the event that the Law Society of South Africa is no longer in existence or not approved under section 30B of the Income Tax Act, the Association must as part of its dissolution transfer its assets to—
- 17.3.1 another entity approved by the Commissioner in terms of section 30B;
 - 17.3.2 public benefit organisation approved in terms of section 30;
 - 17.3.3 an institution, board or body which is exempt from tax under section 10 (1) (cA) (i) of the Income Tax Act; or
 - 17.3.4 the government of the Republic in the national, provincial or local sphere;

Adoption of Constitution

**ADOPTED BY LAWYERS PRACTISING IN THE EASTERN CAPE PROVINCE AT
A GENERAL MEETING HELD ATON
.....2020**