



**COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA
ON THE SOCIO-ECONOMIC IMPACT ASSESSMENT AND QUALITY ASSURANCE
(SEIAS) AND POLICY ON TRANSFORMATION OF DEEDS REGISTRATION LEGISLATION**

The Law Society of South Africa (LSSA) constitutes the collective voice of the approximately 30 000 attorneys within the Republic. It brings together the Black Lawyers Association, the National Association of Democratic Lawyers and the Independent attorneys in representing the attorneys of profession.

The Office of the Registrar of Deeds has provided the LSSA with the following documentation relating to the *Transformation of Deeds Registration Legislation*:

- SEIAS - Initial Assessment with certificate of acceptance by Presidency;
- Draft SEIAS - Final Assessment based on initial assessment (for comments); and
- Draft SEIAS - Final Assessment Monitoring and Evaluation (for comments).

The LSSA wishes to comment as follows:

1. The LSSA is generally in agreement with the introduction of a system to record land tenure rights in the deeds registry, and with efforts to advance the slow pace of land reform. We appreciate the opportunity to submit comments at this stage and we are keen to further contribute towards this process, as further developments unfold.
2. It is also agreed that the implementation of the Electronic Deeds Registration System will go a long way in streamlining and modernising the current paper-based system of registration of land, making the system faster, more efficient and accessible. This, if linked to the proposed provision of recordal of so called “off-register” rights in the deeds office, will in our view go a long way in providing the required security of

tenure for all forms of land ownership, and a much improved, modern and efficient Deeds Registration System for South Africa.

3. Insofar as comments from legal practitioners are concerned, we note in the impact assessment that reference is made to “Conveyancers and Notaries having a monopoly in respect of the preparation and execution of deeds for purposes of registration in a deeds registry”. This must be understood in the context of the high standards and requirements of the deeds registration process as prescribed by the Deeds Registries Act and the Sectional Titles Act, read with numerous other legislation, as administered and implemented by the Deeds Office, which requires exceptional training and skill on the part of conveyancers and notaries participating in the registration process of deeds in the registry. The onerous responsibilities and compliance requirements involved with transactions being registered, require that they be prepared and executed by these highly specialised legal practitioners.
4. We further note that it is proposed that provision should be made that transactions involving State land should be dealt with by conveyancers/notaries in the employ of the Department of Agriculture, Land Reform and Rural Development (the Department). It is then stated that a consequence thereof would be that legal practitioners will lose their “monopoly” in respect of the preparation and execution of these deeds relating to State land, and that there will be a resulting loss of income to these legal practitioners. We consider this somewhat of a misconception, as grants of state land are ordinarily done by State employees and not by conveyancers in private practice. We are aware that in some instances in the past this has been done by private conveyancers, but this is rather due to a lack of capacity within the appropriate Government service, than to norm. Theoretically, there should be no significant loss of income on the part of private conveyancers. Accordingly, it is suggested that this cannot be considered as a root problem.
5. In the section referring to consultations with stakeholders from outside Government, we deal with the requested comments in respect of the legal profession as follows:

5.1 BENEFITS

A land registration system that is more suited for modern needs would enable a more cost effective and efficient system of land registration.

5.2 IMPLEMENTATION AND COMPLIANCE COSTS

The above requires a digitalised Electronic Registration System, the recordal of land tenure rights currently not provided for in the deeds registry, and the simplification of procedures within the deeds registry for registration of transactions, and with regard to recording, storing and providing data with regard to land registration. The costs of developing and implementation of such new systems should be determined very carefully, and in co-operation with all role-players and stakeholders.

There may be some savings in the costs of registration of transactions, especially if some of the requirements that conveyancers are obliged to comply with in the processes leading up to the actual preparation and execution of deeds, are reduced or simplified. If, however, the implementation of the proposed transformation proposals brings about additional requirements, then of course, the costs may increase proportionally.

5.3 RISK

The risk is that implementing the transformation proposals may place the entire deeds registration system in jeopardy if it is done without careful consideration to all its consequences and without proper planning and testing. One of the main risks is a suggestion that conveyancing matters could be attended to by non-conveyancers. Conveyancers are highly trained and specialised attorneys with an extensive knowledge of deeds registration matters and are subject to disciplinary controls by the Legal Practice Council, which helps to maintain the security and integrity of the land registration system, and ensures security of tenure for all landowners in the country.

- 6 The proposal is, in principle, supported.
7. It is anticipated in terms of the Impact Assessment that legislation that will provide mechanisms and procedures for the registration and recordal of rights in land, including but not limited to customary, informal and communal forms of tenure which are recognised, or in future will be introduced and be recognised by law. These proposals are supported.
8. The LSSA is however concerned that the Impact Assessment does not consider ancillary legislation, processes and requirements that are essential in the conveyancing process. For example, and without limiting the reference to ancillary legislation, the administration of deceased estates, the effect of the Recognition of Customary Marriages Act and its amendments, as well as the effect of outstanding property

rates and taxes have undeniably compounded the record of the off-register rights of millions of South Africans. A sustainable solution must take into account and address all the related legislation, processes and requirements that have not specifically been identified in the Impact Assessment.