

COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA ON THE DRAFT REGULATIONS UNDER THE PREVENTION AND COMBATING OF HATE CRIMES AND HATE SPEECH ACT, 2023 (ACT 16 OF 2023)

1. INTRODUCTION

The Department of Justice and Constitutional Development published the Draft Regulations made under the Prevention and Combating of Hate Crimes and Hate Speech Act, Act No.16 of 2023 (the Act) on 28 November 2025, inviting written comments from interested parties by 28 January 2026.

The Regulations give practical effect to sections 8(1)(a), (b) and section 10(2)(c) of the Act by prescribing information to be collected by the South African Police Service (SAPS), the National Prosecuting Authority (NPA), Clerks of the court and Registrars of the High Court, and by establishing reporting channels to the Director General of the Department of Justice and Constitutional Development.

The Law Society of South Africa (LSSA) welcomes the publication of the Draft Regulations as a necessary step towards implementing the Act and strengthening the criminal justice system's response to hate crimes and hate speech.

2. COMMENTS

The LSSA notes that the Regulations are intended to operationalize and implement the Act and continue with the debate over definitions of "Hate", "Harm" and potential exemptions for religious or artistic expressions.

The LSSA acknowledges and accepts the facts of compliance once the regulations are in force which the Act will:

- [i] accordingly give effect to Constitutional and International obligations in respect of measures intended to curb racism, racial discriminations, xenophobia and related intolerance;

- [ii] accordingly make hate crimes and hate speeches into criminal offences for Court consideration and decision;
- [iii] Accordingly, enable prosecution of persons accused and alleged to have committed said offences hate crimes and hate speeches offences.
- [iv] accordingly provide for appropriate and applicable Court conviction sentences;
- [v] accordingly provide for related reporting and administration matters.

[1] The LSSA acknowledges and respects that the said draft regulations clearly and correctly do focus on the said requirements to be met by:

- [i] the Director-General of The Department of Justice and Constitutional Development [DOJCD];
- [ii] the South African Police Service [SAPS];
- [iii] The National and Provincial Directors of Public Prosecutions;
- [iv] Clerks of Courts; and
- [v] High Court Registrars

All of which, is focus and applicable to the relevant Court dealing with any said matter in Court.

The LSSA acknowledges that section 270A of the Criminal Procedure Act 51 of 1977 inserted into the Criminal Procedure Act 51 of 1977 by the Prevention and Combating of Hate Crimes and Hate Speech Act, aims to ensure that if the evidence on a charge for a hate crime as contemplated in section 3 of the Prevention of Combating of Hate Crimes and Hate Speech Act does not prove the commission of the so charged offence

but proves the commission of the underlying offence on which the crime is based, an accused maybe found lawfully guilty of the offence in question so proven.

3. CONCLUSION

The LSSA supports the overall intent of the Draft Regulations and the allocation of responsibilities to the Department, SAPS, the NPA and the courts. It is our view that the said draft regulations under the Prevention and Combating of Hate Crimes and Hate Speech Act 16/ 2023 are sufficiently lawful, Constitutionally / Human Rights compliant plus further compliant with the interest of the public plus factual and statutory requirements for positive lawful implementation in the Act. The LSSA remains available to engage further with the Department on implementation guidance and training materials.