

Powers and functions of Ombud¹⁶³

49. (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 objects referred to in section 47, the Ombud —

- (a) may investigate and make recommendations to the Council and the Minister 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 by the Council, Regional Council or disciplinary body to deal promptly, effectively and fairly with a complaint;
- (c) must investigate any complaint made to him or her by a court and must report to the court on what steps he or she proposes to take in connection therewith;
- (d) may, in the case of a failure by the Council or Regional Council as contemplated in paragraph (b), report and make recommendations to the Minister;
- (e) must, in the case of a failure by a disciplinary body, report and make recommendations to the Council and require the Council to report to him or her regarding what steps it will take in this regard;
- (f) may review a decision of the Board in respect of a rejection, in whole or in part, of a claim arising out of the theft of trust money;¹⁶⁴
- (g) 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; or
- (h) 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, candidate legal practitioner or juristic entity, bring the matter to the notice of the National Prosecuting Authority.

ALTERNATIVE TO SUBLCAUSE (1):

(1) (a) 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 objects referred to in section 47, the Ombud is competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged -

- (i) maladministration in the application / implementation of this Act;
- (ii) abuse or unjustifiable exercise of power or unfair or other improper conduct or undue delay in performing a function in terms of this Act;
- (iii) act or omission which results in unlawful or improper prejudice to any person, which the Ombud considers may affect the integrity and independence of the legal profession and public perceptions in respect thereof.

(b) The Ombud may, in carrying out the powers and functions contemplated in paragraph (a), in his or her sole discretion, endeavour to resolve any dispute or rectify any act or omission by -

- (i) mediation, conciliation or negotiation;
- (ii) advising, where necessary, any person regarding appropriate remedies; or
- (iii) any other means that may be expedient in the circumstances.

(c) At any time prior to, during, or after an investigation referred to in paragraph (a), the Ombud may if he or she—

- (i) is of the opinion that the facts disclose the commission of an offence by any person, bring the matter to the notice of the relevant authority charged with prosecutions; or

¹⁶³ Further amendments to this clause will be done once the report back is done on the powers and functions of other Ombuds, as requested by the PC. It might also be worth to look at the powers and functions of the Public Protector in terms of the Interim Constitution.

¹⁶⁴ The LSSA argues that the Ombud should not have the right to review the rejection of a claim by the AFF.

- (ii) deems it advisable, refer any matter which has a bearing on an investigation to the appropriate body or authority affected by it or make an appropriate recommendation regarding the redress of the prejudice in question or make any other appropriate recommendation that the Ombud deems expedient to the affected body or authority;
or
- (iii) is of the opinion that there is substance in any complaint made and that the prejudice to the complainant or any other person adversely affected by the act or omission in question is substantial and has the potential of affecting the integrity and independence of the legal profession and public perceptions in respect thereof, do anything necessary to enable proceedings to be taken to a competent court for the necessary relief or direct or assist in directing a complainant to an appropriate forum.

(2) For the purposes of an investigation the Ombud may—

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

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

- (a) be in the form determined in the rules;
- (b) contain particulars of the matter in connection with which the person concerned is required to appear before the Ombud;
- (c) be signed by the Ombud or a person authorised by him or her; and
- (d) be served as determined in the rules.

(4) (a) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a magistrates' court applies in relation to the questioning of a person in terms of subsection (2), and that person is not entitled to refuse to answer any question on the ground that the answer might expose him or her to a criminal charge.

(b) No evidence regarding any questions and answers referred to 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 No. 56 of 1955).

(5) A person appearing before the Ombud by virtue of subsection (2)—

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

(6) Any person who has been summoned to appear before the Ombud 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 Ombud from further attendance;
- (b) at his or her appearance before the Ombud—
 - (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; or
 - (ii) refuses to take an oath or to make an affirmation after he or she has been asked by the Ombud to do so; and
- (c) having taken an oath 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; or
- (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 and is liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(7) (a) The Ombud may, subject to paragraph (b), in the manner he or she deems fit, make known to any person or body any report or finding, point of view or recommendation in respect of a matter investigated by him or her.

(b) The report or finding, point of view or recommendation in respect of an investigation by the Ombud must, when he or she deems it fit but as soon as possible, be made available to the complainant and to any person or body implicated thereby.

(c) Any report or finding, point of view or recommendation in respect of an investigation by the Ombud must be open to the public, unless the Ombud is of the opinion that exceptional circumstances require that the report, finding, point of view or recommendation be kept confidential.

SCHEDULE

(Laws repealed by section 118)

No. and year of law	Short title	Extent of repeal
Act No. 24 of 1926	Natal Conveyancers Act, 1926	The whole
<u>Act No. 47 of 1937</u>	<u>Deeds Registries Act, 1937</u>	The amendment of the definition of "conveyancer" in section 102(1) by the substitution for the following definition: " 'conveyancer' means, in respect of any deeds registry, a person practising as such [in the Republic, and includes a person admitted as an attorney in terms of the relevant Transkeian legislation and physically practising as such within the area of the former Republic of Transkei on or before the date of the commencement of Proclamation No. R9 of 1997] as contemplated in the Legal Practice Act, 2013;"
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. 29 of 1974	General Law Amendment Act, 1974	Section 16

No. and year of law	Short title	Extent of repeal
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. 29 of 1984	Bophuthatswana Attorneys Act	The whole
Act No. 107 of 1985	Rules Board for Courts of Law Act	The amendment of section 6 by the substitution for paragraph (r) in subsection (1) of the following paragraph: “(r) the tariff of costs chargeable by advocates, attorneys and notaries as contemplated in section 35 of the Legal Practice Act, 2013;”
Act No. 114 of 1993	Recognition of Foreign Legal Qualifications and Practice Act	The whole
Act No. 62 of 1995	Right of Appearance in Courts Act	The whole