



**Your voice. For justice.**

**Legal Aid Bill**  
**Submissions to the Portfolio Committee on Justice and**  
**Correctional Services**

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## 1. Introduction

Legal Aid South Africa ("Legal Aid SA") welcomes the opportunity to comment on the Legal Aid Bill (hereafter referred to as "the Bill") and supports the Bill in its entirety, save for a few minor amendments that are suggested below. Legal Aid SA is empowered by section 3 of the Legal Aid Act 22 of 1969, to render or make available legal aid to indigent persons and to provide legal representation at State expense as contemplated in the Constitution of the Republic of South Africa, 1996 ("the Constitution").

In essence Legal Aid SA is primarily responsible for the proper implementation of the Bill when it is passed. It is in this context that Legal Aid SA wishes to comment on the Bill. The aim of the Bill is to provide for:

- access to justice and realisation of the right to have legal representation as envisaged by the Constitution;
- the establishment of a national public entity called Legal Aid SA with a Board of Directors with its defined powers, functions, duties and composition;
- the provision of legal aid by direction of courts in criminal matters; and
- the compilation of the Regulations (Policy) and Legal Aid Manual (Procedures) setting out the criteria for qualification for legal aid, the types of matters for which legal aid is available and the manner in which legal aid is to be administered.

The Bill will therefore strengthen the independence and impartiality of Legal Aid SA by establishing a Board of Directors. The Board will be the accounting authority of Legal Aid SA and will be charged with responsibilities elaborated in the Public Finance Management Act.

## 2. The Submissions

This submission deals with comments on clauses where amendments need to be effected.

## **2.1. Clauses where amendment is sought**

### **2.1.1 Composition and appointment of the Board**

Clause 6 (1) of the Bill provides for the appointment by the Minister in writing of 14 voting members. Paragraph (a) provides for the nomination of the Chairperson by the Chief Justice. The clause does not make for provision for the nomination to be made by the Chief Justice after consultation with the Board. We support the amendment of the clause to provide for nomination by the Chief Justice after consultation with the Board. This will promote transparency and good governance especially in relation to succession planning which is essential to ensure a smooth transition between the proposed incumbent and the incumbent chair. This is critical to ensure a sustainable and well-led board.

### **2.1.2 Qualification for membership of Board**

Clause 7 deals with the qualification for membership of the Board. Section 69 of the Companies Act 7 of 2008 ("the Companies Act), provides the grounds for disqualification from being a director. It is proposed that Clause 7 should be amended to incorporate the requirements of the Companies Act as qualification criteria for membership of the Board.

### **2.1.3 Term of appointment**

Clause 9 of the Bill provides that the term of appointment of members of the Board of Directors shall be for a period of not less than three years and not more than five years, which period may be renewed for one additional term only.

Our proposal is that the provision should specify the renewal of the term without limitation to one additional term. The option on renewal of the term should be left to the discretion of the Board. In this way the Board can ensure continuity and plan ahead for any change in the composition of the Board and, specifically, the retention and maintenance of scarce skills, expertise and institutional memory. The proposed amendment is also in line with the King III report on corporate governance. In this manner, the Board can retain experienced experts as well as bring in new members without compromising on its overall experience, expertise or independence.

#### **2.1.4 Termination of membership of Board**

Clause 10 (1) deals with termination of the membership of Board. The Companies Act provides for termination of membership upon expiry of the term of office. This clause should be amended to clarify that expiration of a term is a ground for automatic termination of membership of the Board. A member's term would therefore automatically end unless such term is renewed before the expiration of the previous period of appointment.

#### **2.1.5 Clause 23 and clause 24**

Clause 23 deals with the compilation of the Legal Aid Manual and clause 24 with the making of regulations. The regulations contain the policy as to who qualifies for legal aid and what matters are covered by the scheme. This constitutes the substance of the legal aid scheme and should precede the Legal Aid Manual, which will detail the procedures for the administration of the legal aid scheme. It is suggested that these clauses should be re-arranged for consistency with the current clause 24 becoming clause 23, and the current clause 23 becoming clause 24.

### **3. Conclusion**

It is our earnest request that our submission be considered during the deliberation of this important Bill which seeks to ensure the proper functioning of the legal aid system in South Africa.

All other issues will be discussed during the deliberations on a clause-by-clause basis.

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**Legal Aid South Africa**