



LAW SOCIETY
OF SOUTH AFRICA

OFFICE OF THE CHIEF EXECUTIVE OFFICER

30 October 2014

The Honourable DL Ximbi
The Chairperson
Select Committee on Security and Justice
National Council of Provinces
P O Box 15
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Dear Mr Ximbi

**SUBMISSIONS ON THE LEGAL AID BILL [B 8B-2014] AND REQUEST TO ADDRESS
SELECT COMMITTEE ON SECURITY AND JUSTICE**

I attach hereto submissions to the Select Committee on Security and Justice (NCOP) on the Legal Aid Bill [B 8B-2014]. These submissions are made on behalf of the Law Society of South Africa (LSSA) and its six constituent members – the Black Lawyers Association (BLA), the National Association of Democratic Lawyers (NADEL), the Cape Law Society (CLS), the KwaZulu-Natal Law Society (KZNLS), the Law Society of the Free State (LSFS) and the Law Society of the Northern Provinces (LSNP).

The LSSA would like to express its sincerest thanks to the Committee for being allowed this opportunity to make submissions.

It will be appreciated if you would kindly afford us an opportunity to address the Committee on our comments.

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The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.

We look forward to your advices.

Yours faithfully



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**SUBMISSIONS BY THE LAW SOCIETY OF SOUTH AFRICA (LSSA)
TO THE NATIONAL COUNCIL OF PROVINCES
ON THE LEGAL AID BILL (B8B-2014)**

These submissions are done in consultation with and with the concurrence of all the constituents of the Law Society of South Africa (LSSA), namely the Black Lawyers Association (BLA), the National Association of Democratic Lawyers (NADEL), the Cape Law Society (CLS), the Kwazulu-Natal Law Society (KZNLS), the Law Society of the Free State (LSFS) and the Law Society of the Northern Provinces (LSNP).

The LSSA furnished written submissions to the Parliamentary Portfolio Committee on Justice and Correctional Services on the Legal Aid Bill. A copy of these submissions is attached hereto.

The LSSA wishes to take this opportunity to submit its comments to the National Council of Provinces, and supplement them, if it pleases the Council.

1. We believe that it is important that public hearings be held at provincial level, as this Bill affects the interest of the public as far as access to justice is concerned, particularly to the poor and vulnerable, the substantial majority of whom are based in the remotest areas of our country.

2. We keenly followed the deliberations of the Parliamentary Portfolio Committee on the Bill. We note that, pursuant to the Portfolio Committee hearings, the provisions regarding the experience and knowledge required in order to qualify for membership of the Board of Directors of Legal Aid South Africa had been expanded to include *experience as a practising attorney or advocate*. [Clause 7(2)(e)(iii)]. Although we understand the sentiments raised at the hearings, we believe that it is of the utmost importance that provision be made for the organised legal profession, through the LSSA and later the Legal Practice Council, to be represented on the Board of Legal Aid South Africa, for the following reasons:

- 2.1 The provincial law societies, which are constituents of the LSSA, are the regulators of the attorneys' profession, which includes attorneys and candidate attorneys employed by Legal Aid South Africa. In terms of the Legal Practice Act, which brings about a new

dispensation, the Legal Practice Council will be the regulator of all attorneys, advocates, candidate attorneys and pupils in the country, including those in the employ of Legal Aid South Africa.

- 2.2 Legal Aid South Africa also procures the services of legal practitioners in private practice.
- 2.3 We believe that that it does not go against the grain of corporate governance to have the regulator of the profession be represented on a Board where the provider of the services, i.e. Legal Aid South Africa, seeks to expand access to justice to ordinary South Africans.
- 2.4 As formulator of policies, the LSSA (and in the new dispensation, the Legal Practice Council) is suitably well placed to act in tandem with Legal Aid South Africa in shaping the strategy to ensure access to justice.
- 2.5 The founding principles of the Legal Practice Act include, amongst others, that legal services should be accessible and that the interest of the public should be promoted and protected. The Legal Practice Council is tasked to give effect to these objectives. There is no one better placed to serve on the Board of Legal Aid South Africa than a representative of the Legal Practice Council to share this vision and to ensure that there is no crossing of path with strategies of the Council and the Board.
- 2.6 This submission is fortified by the inclusion of a representative of Legal Aid South Africa in the Legal Practice Council. Reciprocity in representation on the governance structures will go a long way in enhancing access to justice.

COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA (LSSA)
ON THE LEGAL AID BILL (B8-2014)

The Law Society of South Africa (LSSA) has considered the Legal Aid Bill and comments as follows:

1. Clause 4(1)

In terms of Clause 4(1), the Board may do all that is necessary to achieve the objects of Legal Aid South Africa, including the following:

- (a) Provide legal services, representation and advice by:
 - (i) employing legal practitioners;
 - (ii) employing paralegals;
 - (iii) procuring the services of legal practitioners in private practice.

There is no objection to paralegals being used as researchers, interviewers and the like (provided that they are under proper supervision and oversight by a legal practitioner), but they should not be allowed to sign pleadings and appear in court.

It should be noted that paralegals do not fall under the disciplinary jurisdiction of any regulatory statutory bodies and no provision has been made in the Legal Practice Bill (LPB) for the regulation of paralegals.

It is suggested that Clause 4(1)(a) be clarified as follows:

"Legal Aid South Africa may employ paralegals to provide legal services and advice, provided that the paralegal is subject to the supervision of a legal practitioner."

2. Clause 6(1)

2.1 Although we are of the view that the composition of the Board will, subject to a balance of skills, lend itself to more efficient operations, we are concerned that no specific provision is made for the representation of the legal profession on the Board. The core function of Legal Aid SA is to deliver legal services. The statutory law societies and General Council of the Bar are the main regulators of practising attorneys and advocates and as such should be represented on the Board.

Furthermore, taking into consideration that Legal Aid SA employs in excess of 2 000 legal practitioners and is the largest employer of candidate attorneys, the law societies have a vested right in the functioning of the Board.

In terms of the LPB, the Legal Practice Council (LPC) will regulate attorneys, candidate attorneys, advocates and pupils. The LPB provides for representation by Legal Aid SA on the LPC, due to the nature of the legal services rendered and due to the contribution by Legal Aid SA to access to justice. It is an objective of the LPC to ensure access to justice and as such, the Legal Aid Bill should provide for reciprocity as far as representation on the Board of Legal Aid SA is concerned.

The Legal Aid Act, 22 of 1969, as amended, provides for four practising attorneys and one practising advocate, nominated by the LSSA and the General Council of the Bar respectively, to serve on the Board (Section 4(1)(b)). It is suggested that Clause 6(1) be amended to include

specifically practising attorneys and advocates, nominated by their respective bodies or their successors in title.

2.2 The Bill provides for the chief executive officer and three employees of Legal Aid SA to be appointed as voting members. This is in conflict with good corporate governance.

3. Clause 8

We do not deem it necessary for the Minister to appoint the deputy chairperson and suggest that provision be made for the Board to elect its own deputy chairperson.

4. Clause 22(3)

It appears that a court may not *mero motu* refer a person to Legal Aid SA for legal representation at state expense, but can only do so after the person has already applied to Legal Aid SA, which request has been refused and he or she has exhausted all internal remedies.

This section might have unintended consequences, such as depriving people of their rights in terms of Section 35 of the Constitution and lead to unnecessary delays in the conduct of trials.

5. Clause 26(1)(e)

Please see comments under paragraph 3.