**SUMMARY OF WRITTEN SUBMISSIONS: LEGAL PRACTICE AMENDMENT BILL [B 11 - 2017]**

**Introduction**

The Portfolio Committee on Justice and Constitutional Development invited stakeholders and interested persons to make written submissions on the Legal PracticeBill [B 11 - 2017]. 7 written submissions have been received.

* Table 1 provides a clause by clause summary of the submissions and general comments.

**List of commentators:**

Commission for Gender Equality

Adv A Reinecke

Adv H Horn

National Bar Council of South Africa

National Forum on the Legal Profession

Gatsheni Advisory

Adv A C Paries

The Banking Association of South Africa

Paralegal Association of South Africa

Attorneys Fidelity Fund

Human Rights Commission

ClearLaw SA

Mr Nemusimbori and Adv Mokhine

**TABLE 1**

**SUBMISSIONS/RECOMMENDATIONS BY CLAUSE**

| **Clause** | **Name** | **Submission / Recommendation** | **DOJCD Response** |
| --- | --- | --- | --- |
| 1 | Adv A Reinecke | This amendment gives the Legal Practice Council the power to establish, promote and administer insurance schemes and medical aid schemes for legal practitioners, former legal practitioners and employees and officials of the Council. Adv Reinecke argues that the Council should only be able to do so in respect of officials and employees of the Council and these schemes should not be made available for legal practitioners. Adv Reinecke states that it will jeopardize the independence of the legal system and Council, create a financial burden and conflict with Road Accident Fund disputes. | The Department does not agree. Currently section 59(h) of the Attorneys Act, 1979, gives these benefits to legal practitioners too. Adv Reinecke does not elaborate on her views in this regard. |
| 1 | National Bar Council of South Africa | Supports clause 1. | Noted. |
| 2 | Commission for Gender Equality | Clause 2 amends section 23 of the Legal Act, 2014 (the Act) to provide that the Minister may, from time to time, prescribe the areas of jurisdiction of the Provincial Councils in consultation with the Council. The GCE suggests that the jurisdiction of Provincial Councils **must** be reviewed regularly and changes must be effected which are necessary.  It suggests the following provision:  “The Minister must review the areas of jurisdiction of Provincial Councils every five years and make any changes in their areas of jurisdiction should this be necessary and expedient for the effectiveness of any Provincial Council.”. | Section 97(1) of the Act provides that the National Forum must, within 24 months after the commencement of Chapter 10, make recommendations to the Minister on several matters, including the areas of jurisdiction of the Provincial Councils.  Section 23(2)(b) provides that the Minister must prescribe the areas of jurisdiction of theProvincial Councils in consultation with the Council.  Section 97(1)(a)(ii) is in the Act for purposes of establishing the first Provincial Councils and their areas of jurisdiction. Section 23(2)(b), on the other hand, allows the Minister to prescribe the areas of jurisdiction of Provincial Councils in consultation with the Council at any later stage should this become necessary. That is after the Act becomes fully operational.  Clause 2 therefore suggests that section 23(2)(b) be amended in order to clarify the difference between sections 23 and 97.  To have to review the areas of jurisdiction of Provincial Councils every five years, as suggested by the CGE, is not necessary. Significant changes of this nature should only be done as when the need arises. |
| 2 | Adv A Reinecke | This amendment must be consulted with the National Council of Provinces. | The Bill will be considered by the National Council of Provinces in the normal course. |
| 2 | ClearlawSA Pty Ltd | They propose a further insertion at the end of the section, to read as follows:  “(b) The Minister **[must]** may, from time to time, prescribe the areas of jurisdiction of the Provincial Councils in consultation with the Council, provided that if the Minister does not define the jurisdiction of the Provincial Councils within 12 months of the commencement of this Act, then the National Council must do so.” | The Department does not support this proposal. For purposes of establishing the first areas of jurisdiction of the Provincial Councils section 97(1)(a)(ii) of the Act provides that the National Forum must make recommendations to the Minister on the establishment of the Provincial Councils and their areas of jurisdiction. The Minister will then use these recommendations for the basis of making regulations as contemplated in section 109(1) of the Act. Section 109(1) is clear. The Minister must make regulations in respect of the matters referred to in section 97(1), which includes the areas of jurisdiction of the Provincial Councils. There is therefore no need to insert a proviso as suggested by ClearlawSA. |
| 2. | National Bar Council of South Africa | Supports clause 2. | Noted. |
| 3 | Commission for Gender Equality | Clause 3 amends section 33 of the Act, dealing with the authority to render legal services by legal practitioners. The amendment proposes the insertion of the word “practising” before the words “legal practitioner” in order to distinguish between “practising” and “non-practising” legal practitioners.  The CGE recommends that a penalty clause must be inserted to make it an offence if a person renders legal services for reward who is not a legal practitioner. | This proposal is unnecessary because section 93(2) of the Act already provides for an offence and penalties, as follows:  “Any person who contravenes the provisions of section 33 commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.”. |
| 3 | National Bar Council of South Africa | The National Bar Council opposes the proposed amendment because  there is no definition for the term ‘practising legal practitioner’. The Council raises the question whether the term ‘practising legal practitioner’ suggests that this term will apply only to those legal practitioners who attend or appear in court? In other words, does this definition exclude consultants who, though they render or offer various legal services, do not appear in court? Will consultants, as a result, not be entitled to receive rewards or commission for rendering legal services? | With reference to the comments made by the National Bar Council of South Africa and the Banking Association of South Africa regarding the proposed amendment to section 33 the following background information is relevant:  (a) Section 3 of the Act, dealing with the purpose of the Act, provides that the purpose of the Act is, among others, to create “a single unified statutory body to regulate the affairs of all legal practitioners and all candidate legal practitioners in pursuit of the goal of an accountable, efficient and independent legal profession”.  (b) In similar vein, section 5 of the Act, dealing with the objects of the SA Legal Practice Council (the Council), provides that the objects of the Council are, among others, to regulate all legal practitioners and all candidate legal practitioners.  (c) What is a legal practitioner? Section 1 of the Act defines “legal practitioner” as an advocate or an attorney who is admitted and enrolled as such in terms of sections 23 and 30, respectively. A legal practitioner is admitted in terms of section 23 as such by a Division of the High Court and that legal practitioner becomes as officer of the court. After admission by a court, the person must enroll as a legal practitioner in terms of section 30. This entails an application in terms of section 30(1) to the Council for the enrolment of his or her name on the Roll of Legal Practitioners. The application for enrolment must indicate whether the legal practitioner intends to practise as an attorney or an advocate. In terms of section 30(3) the Council must keep a Roll of Legal Practitioners which must reflect the particulars of “practising and non-practising legal practitioners”. In other words there is a roll for practising legal practitioners and a roll for non-practising legal practitioners. A similar situation pertains today in terms of the Attorneys Act, 1979 where there is a roll for practising attorneys who actively practise as attorneys and are required to have a Fidelity Fund certificate and a roll for non-practising attorneys, that is attorneys who have been admitted by the court as such and whose names have been enrolled on the roll of non-practising attorneys for the simple reason that they are not actively practising as attorneys and do not have Fidelity Fund certificates. They, however, remain officers of the court and members of the legal profession and a court can, on application by an interested person, strike the name of a non-practising attorney from the roll in the event of any serious misconduct, unbecoming of an officer of the court and member of the legal profession.  (d) The term “practising legal practitioner” is used in numerous places in the Act where it is necessary to distinguish between practising and non-practising legal practitioners, for instance in sections 1 (definitions of conveyancer and notary), 3(b)(ii), 6(4)(c), 7(1)(a), 11(1)(d), 29(1)(b), 30(1)(b)(ii), 30(3)(a), 31(4), 68(1)(d), 74(1)(a), 102(1)(d) and 114(3). It has its ordinary meaning, namely to pursue a profession actively. (There are likewise similar numerous references to “practising attorneys” in the Attorneys Act, 1979).  (e) The National Bar Council of South Africa refers to “consultants” and the Banking Association of South Africa refers to “corporate counsel”. It is important at the outset to state that the Act is intended to regulate the affairs of legal practitioners with the focus on practising legal practitioners. Its focus is not on consultants or corporate counsel, otherwise also known as law or legal advisers in the private sector. However, there may be some limited instances in which the Act may have a bearing on corporate counsel, for instance legal advisers who are admitted and enrolled as legal practitioners on the roll of non-practising legal practitioners, and who are found to be guilty of serious misconduct, unbecoming of an officer of the court. If non-practising legal practitioners who are private sector legal advisers do not wish to fall under the jurisdiction of the Act, they will have to remove their names from the roll. There are also private sector legal advisers who have legal qualifications but who have never been admitted and enrolled as legal practitioners. They do not fall under the jurisdiction of the Act at all.  With the above as background, the Department is of the view that there is no need to define “practising legal practitioner”.  Section 33 of the Act deals with the authority to render legal services. It sets out the small list of work that is specifically reserved for practising legal practitioners only, namely appearing in courts and drawing up court documents. Non-practising legal practitioners are not allowed to carry out these functions because they do not have Fidelity Fund certificates which is there for the public protection. The proposed amendment will not preclude corporate counsel from continuing to offer legal services for remuneration so long as those services do not amount to the reserved work set out above. In conclusion, the insertion of the word “practising” is for the public good in that legal practitioners who carry out reserved work will do so with the backing that comes with having a Fidelity Fund certificate. |
| 3 | Adv A Reinecke | There is no need to further exclude certain practitioners within a profession. | See the response above in respect of the National Bar Council of South Africa. |
| 3 | Gatsheni Advisory | They are unsure precisely which work is reserved for practising attorneys.  It would be helpful if there were to be more clarity on the exact parameters on who may and may not draft the commercial agreements.  The Act discriminates against non-practising attorneys and the insertion of the word “practising”, as proposed in clause 3, exacerbates this discrimination.  The Act should be amended to recognize legal consultants. | Section 33(1) of the Act is clear and provides as follows:  “Subject to any other law no person other than a legal practitioner who has been admitted and enrolled as such in terms of this Act may, in expectation of any fee, commission, gain or reward—  (a) appear in any court of law or before any board, tribunal or similar institution in which only legal practitioners are entitled to appear; or  (b) draw up or execute any instruments or documents relating to or required or intended for use in any action, suit or other proceedings in a court of civil or criminal jurisdiction within the Republic.”  As indicated above there is a very short list of reserved work for practising legal practitioners who have Fidelity Fund certificates. Non-practising legal practitioners are not allowed to do this reserved work, the main reason being is that they do not have Fidelity Fund certificates. Legal services not listed in section 33(1)(a) or (b) can be offered by non-practising legal practitioners, unless it is prohibited by any other law. To try and list what else may or may not be done by non-practising legal practitioners, as suggested, is not feasible.  The provisions relating to practising and non-practising legal practitioners are for the protection of the clients.  The Department does not agree. The Bill does not change the position relating to legal consultants/corporate counsel/corporate lawyers at all. They can continue offering the services that they have done to date. See also response above in respect of the National Bar Council of South Africa. The Act distinguishes in numerous places between practising and non-practising legal practitioners where such a distinction is necessary. Failure to do so could result in unintended consequences, for instance the following:  (i) Section 3(b)(ii) provides that the purpose of the Act is to broaden access to justice by putting in place measures to provide for the rendering of community service by “practising legal practitioners”. Were this distinction not made, then corporate lawyers would have to render community service, which certainly is not the intention.  (ii) Section 6(4)(c) provides that the Council must, in the rules, determine annual fees payable by all legal practising legal practitioners. Were this distinction not made, then corporate lawyers would also have to pay annual fees to the Council.  (iii) Section 29(1)(b) provides that the Minister must prescribe the requirements for community service and such requirements may include a minimum period of recurring community service by “practising legal practitioners” upon which continued enrolment as a legal practitioner is dependent.  The Act does recognize legal consultants who are admitted and enrolled on the roll of non-practising legal practitioners. |
| 3 | Banking Association South Africa | The Banking Association is of the view that the Act is not intended to regulate the affairs of corporate counsel. It refers to a number of provisions in the Act which in the opinion of the Banking Association are examples that the Act does not apply to corporate counsel. It argues that the proposed amendments in clause 3 demonstrates and confirms that the meaning of “legal practitioner” in the Act was never intended to include corporate counsel. It argues further that if the purpose of the Act was indeed also to regulate the conduct and affairs of corporate counsel, the proposed amendments contained in clause 3 have the potential of depriving corporate counsel of legislative competencies to render certain legal services it has in terms of the current section 33 of the Act.  The word ‘practising’ should also be inserted in section 34 of the Act too. | The Department does not agree with the conclusions reached by the Banking Association. As indicated above, the Act is primarily focused on practising legal practitioners. However, in terms of the definition of “legal practitioner” a person is a legal practitioner if he or she is admitted and enrolled as such under sections 23 and 30, respectively, even if he or she is on the roll of non-practising legal practitioners and to that extent falls under the jurisdiction of the Act. An attorney who is on the roll of non-practising attorneys, remains an attorney even though not in active practice and remains a member of the legal profession. Nothing stops persons falling in this category from continuing to call themselves “admitted attorneys or admitted advocates” which they often do when applying for prospective job opportunities. If they want the benefits deriving from being a member of the legal profession they must then realize that they, in limited circumstances, will also fall under the jurisdiction of the SA Legal Practice Council which, in terms of section 5(d) of the Act, must “regulate all legal practitioners (as defined) and all candidate legal practitioners”. These limited circumstances relate mostly to cases of gross misconduct which could result in a non-practising legal practitioner being struck off the roll.  The term “practising legal practitioner” is used in numerous places in the Act where it is necessary to distinguish between practising and non-practising legal practitioners, as does the Attorneys Act, 1979, in respect of practising and non-practising attorneys.  The amendments proposed in clause 3 do not have the potential of depriving corporate counsel of legislative competencies to render certain legal services it has in terms of the current section 33 of the Act, as alleged by the Banking Council. The Bill does not change the position relating to legal consultants/corporate counsel/corporate lawyers at all. They can continue offering the services that they have done to date. The proposed amendment will not preclude corporate counsel from continuing to offer legal services for remuneration so long as those services do not amount to the reserved work set out in section 33(1)(a) and (b).  As indicated above, the term “practising legal practitioner” is used where it is clearly necessary to distinguish between practising and non-practising legal practitioners. Section 34 deals with forms of legal practice which, in itself, means that we can only be referring to practising legal practitioners. |
| 4 | National Bar Council of South Africa | Supports clause 4. | Noted. |
| 4 | Adv A Reinecke | * She states that the ‘preamble’ is misleading because it only deals with a description and/or terminology of what a bank should furnish to the Council or the Board if so directed. * The proposed amendment should be properly considered before final approval, because it can only contribute towards a comprehensive transformation of the legal profession, if correct and adequate information can be obtained for transparency and accountability purposes. | * She erroneously refers to preamble of the Bill, whereas it should be the long title. The Department does not agree with the allegation. The proposed amendment of section 91 does indeed deal with the duties of banks in respect of attorneys’ trust accounts. The long title is a correct reflection of what clause 4 is about, namely the duty of banks to provide information in respect of trust accounts to the Council or the Board of the Fidelity Fund. No specific proposal for an amendment is made by Adv Reinecke. It is unclear what her objection to this technical issue is. * The purpose of the amendment proposed by the National Forum is in our view clear and sound. A bank statement issued by a bank does not always provide sufficient information for purposes of an investigation into a trust account. A transaction history provides a better paper trail of monies going into and out of a trust account. It is not clear what Adv Reinecke’s concern is about. |
| 4 | Commission for Gender Equality | Supports clause 4. | Noted. |
| 5 | National Bar Council of South Africa | Supports clause 5. | Noted. |
| 5 | Adv A Reinecke | She raises the question whether this proposed amendment will not delay the implementation of the remainder of the Act and frustrate the process of transformation of the profession. She is of the view that the Council must be established as soon as possible. | One of the main objectives of the Bill is to facilitate a smooth implementation of the remainder of the Act. Section 96(4) of the Act currently provides that the lifespan of the National Forum is 3 years. The National Forum came into existence on 1 February 2015 and in terms of section 96(4), as reads currently, will cease to exist on 1 February 2018. The National Forum is not going to be in a position to finalise its mandate as set out in Chapter 10 of the Act before 1 February 2018. Clause 5 therefore amends section 96(4) of the Act by extending its lifespan so that the Forum can carry out its statutory mandate as set out in the Act and as proposed in the Bill. Pragmatism must prevail in order to ensure a smooth hand-over of responsibilities from the current regulatory bodies to the new regulatory bodies. |
| 5 | ClearlawSA Pty Ltd | The proposed amendment renders the date on which the National Forum will need to hand over to the Council and the date on which that Forum will cease to exist, vague. They propose the inclusion of the words: “which should not be later than 1 February 2018.”.  The proposed amendment does not go far enough because it fails to indicate that membership of the Forum should also terminate on the date that the Forum terminates. | Consideration could be given to setting a specific statutory date (after 1 February 2018) on which the National Forum ceases to exist in order to ensure that the remainder of the Act is implemented and that transformation of the legal profession proceeds as planned. However, clause 5 does provide for the National Forum to cease to exist on a “date as the Minister may determine after consultation with the National Forum”. The Minister could use this power to ensure that there is not undue delay in the hand-over from the old to the new transformed regulatory bodies.  This insertion is unnecessary as section 101 provides:  “ A member of the National Forum holds office for the duration of the National  Forum.”. |
| 5 | Commission for Gender Equality | Supports clause 5. | Noted. |
| 6(d) | ClearlawSA Pty Ltd | Clause 6(d) of the Bill amends section 97(2)(a) of the Act. Section 97 deals with the terms of reference of the National Forum and section 97(2)(a) provides that the National Forum must, within 24 months of the commencement of Chapter 10, negotiate and reach agreement with the law societies in respect of the transfer of their assets, rights, liabilities, obligations and staff, to the Council and provincial councils. The amendment adds that the National Forum must also reach agreement on the date on which the law societies will be dissolved, which date may not be later than 6 months after the date of commencement of Chapter 2.  ClearlawSA suggests the insertion of the following wording should agreement not be reached:  “provided further that in the absence of an agreement, the law societies shall transfer their assets, rights, liabilities, obligations and staff to the Council with effect from 1 February 2018.’’ | The Department does not support this insertion. Law societies, with their assets and liabilities and staff, exist as entities in their own right. Their assets cannot simply be transferred. There has to be agreement. (See section 60(1) of the Attorneys Act, 1979 which provides that the affairs of a law society shall be managed and controlled by a council, which may, subject to the provisions of [subsection (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/c0pg/7aqg/8aqg/r22g?f=templates$fn=document-frame.htm$3.0$q=$x=$nc=1967#g2), exercise the powers of the society. Section 60(2) provides that the alienation or mortgaging of any immovable property of a law society, the appointment of the auditors of a law society and the fixing of any subscription, fees, levies or other charges payable to a society by its members, shall be subject to the approval of such majority of the members of that law society who are present or represented at a general meeting or at a meeting specially convened for that purpose, as may be prescribed). Failure to reach agreement is catered for in section 97(4) of the Act, which provides that if an agreement cannot be reached between the National Forum and the law societies, the parties may agree to refer the matter to arbitration. |
| 6 | Adv A Reinecke | (i) Adv Reinecke queries the need to delete section 97(1)(a) (iv) of the Act as proposed by clause 6(a). She argues that the need for this is not “well explained” in the Memorandum on the Objects of the Bill. | (i) Section 97(1) of the Act provides that the National Forum must make recommendations, including the manner in which the Provincial Councils must be elected, which must then be made into regulations. However, section 23(4) provides that Provincial Councils must be elected in accordance with a procedure determined by the Council in the rules (referring to the rules of the Council as per the definition). Section 97 requires regulations and section 23 requires rules. Clause 6(a) therefore deletes section 97(1)(a)(iv) of the Act in order to remove the contradiction. |
| 6 | Adv A Reinecke | (ii) Adv Reineicke suggests it would not be wise to broaden the mandate of the National Forum to deal with the first set of rules “when it has become evident that the representatives on the National Forum might already struggle to deliver within their limited current scope of work and areas of responsibility”. The added burden might frustrate the process of transformation. | (ii) The Department does not agree with Adv Reinecke. This amendment was requested by the National Forum. Section 97 of the Act deals with the statutory mandate of the National Forum. The mandate of the National Forum was originally to be limited to what was thought to be absolutely essential for purposes of preparing for the installation of the proposed new regulatory structures contemplated in the Act. It has been suggested that the mandate of the National Forum is not broad enough to ensure a smooth handover of ongoing work carried out by the existing regulatory bodies (the statutory law societies) when the new regulatory bodies come into existence on a particular day. In other words, the question is whether the mandate of the National Forum should not be extended in order to ensure that all the functions and duties of the current regulatory bodies do not come to an abrupt and complete stand-still when the new Council comes into operation on a particular day, on which it will take up the reins. This might give rise to an unnecessary disruption of these functions and duties as there will not immediately be rules and regulations in place for the legal profession. This is certainly not in the public interest.  The need for this shift is to ensure that the following crucial responsibilities, among others, of the existing law societies do not get interrupted when the law societies cease to exist on a particular day and are taken over by the new Council, as the Council and Provincial Councils might not immediately be able to function fully: registration of attorneys, processing applications for Fidelity Fund certificates, registration of contracts of candidate attorneys, furnishing certificates of right of appearance in the High Court, dealing with applications for admission as attorneys, conveyancers and notaries, issuing certificates of good standing, conducting admission exams, dealing with cases of misconduct and payment of staff of the law societies. |
| 6 | Commission for Gender Equality | The CGE is concerned with the long delay in the promulgation of the Legal Practice Act.  The CGE does not support subparagraph (d) which allows for 24 months to dissolve existing structures such as law societies and recommends a period of 12 months. | The Department does not agree with this statement.  Chapter 10 came into operation on 1 February 2015, which is already more than 12 months ago.  The Act has a major impact on the legal profession. Numerous complicated issues must be resolved. If this process is rushed it could have unintended consequences. Clause 5 provides for the National Forum to cease to exist on the date of the meeting with the Council envisaged in section 105(3) **or** on “such other date as the Minister may determine after consultation with the National Forum”. The Minister could use this power to ensure that there is not undue delay in the hand-over from the old to the new transformed regulatory bodies. |
| 6 | National Bar Council of South Africa | Supports clause 6. | Noted. |
| 7. | Commission for Gender Equality | Supports clause 7. | Noted. |
| 7 | National Bar Council of South Africa | Supports clause 7. | Noted. |
| 7 | Adv A Reinecke | This amendment, as proposed, might not achieve what is required for purposes of ensuring the required transformation of the legal profession. Further investigation and consultation is required. | The Department does not agree with this proposal. Adv Reinecke does not elaborate on her view.  Although the intention was that the rules and regulations contemplated in sections 94 and 95 should be dealt with by the Council and not the National Forum, it is in the interests of the profession and the public to have continuity and, to this end, it is necessary to empower the National Forum to deal with the first set of rules and regulations which will apply when the Act becomes fully operational. Once the Council is fully operational there is nothing that precludes it from later replacing or amending the rules made by the National Forum and requesting the Minister to amend the regulations initiated by the National Forum. |
| 8 | Adv A Reinecke | Adv Reinecke states that the impression is created that things that should have been done, have not been done (probably because of a conflict of interests). The reason for this is that the respective Societies, Councils and Associations have been put in a position where they need to negotiate with themselves. It also seems as if the National Forum might want to include aspects that were previously excluded from the transitional provisions. This requires further investigation and she is not convinced that the proposed amendment will indeed result in a smooth hand-over. | It is not clear exactly what Adv Reinecke’s objection is.  The amendment proposes that the existing law societies must continue to perform their powers and functions until the date of transfer contemplated in section 97(2)(a). This will facilitate a smooth hand-over, particularly in respect of the functions currently carried out by the law societies and the staff of the law societies. |
| 8 | National Bar Council of South Africa | Supports clause 8. | Noted. |
| General comments | National Bar Council of South Africa | Proposes an amendment to section 34(2)(b). Section 34(2)(b) reads as follows:  “An advocate contemplated in paragraph (a)(ii) may only render those legal services rendered by advocates before the commencement of this Act, as determined by the Council in the rules, if …..”.  The question raised by the National Bar Council is whether advocates who possess a Fidelity Fund certificate are permitted to perform those functions which are traditionally performed by attorneys? Advocates do not sign notices and or pleadings etc. Must litigants who approach Fidelity Fund advocates be required to have notices and or pleadings drafted and settled by the Fidelity Fund advocate to be signed by an attorney too.  Advocates with Fidelity Fund certificates should be recognized by the Act in the same manner as attorneys who possess the same Fidelity Fund certificate.  The following amendment is proposed, that would have the effect that the Council determines what work these legal practitioners may render:  “34(2)(b) An advocate contemplated in paragraph (a)(ii) may only render those legal services **[rendered by advocates before the commencement of this Act]** as determined by the Council in the Rules,…”. | The wording in the provision is clear. Advocates with Fidelity Fund certificates may not render legal services that traditionally were the preserve of attorneys. That was the intention. The proposed amendment is therefore not supported. |
| General comments | Adv A Reinecke | She raises numerous general aspects which do not have a direct bearing on the Bill but rather on issues relating to  Transformation, independence of the legal profession and access to justice. | Noted. |
| General comments | Adv H Horn | He raises the following questions which do not have a bearing on the Bill in a direct manner:  (a) When will he be able to act as a legal representative after the Act comes into operation? Will he, as an advocate, have to still apply for a Fidelity Fund certificate and how long will it take?  (b) The Act is unclear about partnering relationships with attorneys and other advocates or even consultants, and sharing offices.  (c) The Act is unclear if practitioners who belong to their own associations, such as the National Bar Council of South Africa, have to pay membership fees to the national body (the Council). | (a) When the Act comes into operation if he wants to practise as an advocate with a Fidelity Fund certificate he will have to apply for a certificate. The Department is not in a position to say how long that will take.  (b) Section 34 of the Act, which sets out forms of legal practice, is clear. It sets out how legal practices are to be run. This does not differ from the current situation. Advocates will continue to practise for their own account on their own.  (c) The Act is clear. Fees are payable to the Council. See section 6(4)(c) of the Act. However, the Act does not prohibit legal practitioners from being members of other associations. |
| General comments | ClearlawSA Pty Ltd | Proposes an amendment to sections 25(1), 31 and 95(1) of the Act to insert the concept of an annual practising certificate which is issued by the Council confirming that the legal practitioner has complied with the requirements relating to continued legal education. | Section 6 provides for the powers and functions of Council and provides that the Council may determine conditions relating to the nature and extent of continuing education and training, including compulsory post-qualification professional development. |
| General comments | ClearlawSA Pty Ltd | Proposes an amendment to sections 1 and 30 to provide for definitions of “non-practising Roll” and “practising Roll” of legal practitioners. | Existing legislation differentiates between practising and non-practising practitioners. The opinion is held that the Act is clear as it is. |
| General comments | South African Human Rights Commission | Proposes an amendment to section 34(8). Section 34 deals with forms of legal practice and section 34(8) regulates law clinics and provides that a law clinic may be established by a non-profit juristic entity or university in the Republic, subject to certain conditions that must be complied with. The South African Human Rights Commission is of the view that section 34(8) should be amended to provide that it and other Chapter 9 institutions have the authority to establish law clinics, subject to the approval of the Council. It argues that it is neither a non-profit juristic entity nor is it a university but it does provide legal services free of charge in cases of alleged violations of human rights. It employs admitted attorneys and initiates litigation. | The South African Human Rights Commission derives its authority to render legal services from the South African Human Rights Commission Act, 2013. Section 13 of that Act sets out the powers and functions of the Commission and section 13(3) provides that “the Commission is competent –  (a) to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it must, in so far as it able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be taken to a competent court for the necessary relief or may direct a complainant to an appropriate forum; and  (b) to bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or group or class of persons”.  The Legal Practice Act, 2014 moreover recognises the constitutionally enshrined role, as a Chapter 9 Institution, played by the Human Rights Commission when it comes to rendering legal services. See for instance section 84(1) dealing with obligations of legal practitioners relating to the handling of trust monies. Section 84(1) provides that every attorney or advocate who practises with a Fidelity Fund certificate, other than a legal practitioner in the full-time employment of the South African Human Rights Commission or the State as a state attorney or state advocate and who practises …. must be in possession of a Fidelity Fund certificate. See also section 84(9) which provides that no legal practitioner in the full-time employment of the South African Human Rights Commission or the State as state attorney or state advocate, state law adviser or in any other professional capacity may receive or keep money or property belonging to any persons, except during the course of employment of such legal practitioner with the State or the South African Human Rights Commission and in such case only on behalf of the South African Human Rights Commission or the State and for no other purpose.  The South African Human Rights Commission is a special type of constitutionally enshrined institution, together with the other Chapter 9 Institutions. The Department has reservations about categorizing it and other Chapter 9 Institutions as law clinics. They have their status and functions set out in the Constitution and other legislation and the question is raised whether it is appropriate for them to be regarded as law clinics. The Department undertakes to take this up with the Commission at a later stage. |
| General comments | ClearlawSA Pty Ltd | Proposes an amendment to section 34(9) because it is unclear what the term “legal practice” is intended to mean. The following insertion is proposed: “(10) The provisions of subsection (9) shall not prevent or exclude the activities of non-practising legal practitioners provided they do not contravene the provisions of section 33.” | The Department does not agree that there is uncertainty. Section 34 deals with existing forms of legal practice. In terms of section 34(9), the Council is intended to make recommendations on forms of legal practice not referred to in section 34, for instance limited liability legal practices and multi-disciplinary practices. The uncertainty raised by Clearlaw seems to be based on practising and non-practising legal practitioners which is dealt with in the Department’s response in Table 1, Item 3. |
| General comments | ClearlawSA Pty Ltd | Proposes an amendment to section 94(2) dealing with the making of regulations. It provides as follows:  “The regulations contemplated in subsection (1) must be made, in certain circumstances, after consultation with the Council and, in certain circumstances with the Council and the Board of the Fidelity Fund.”  Clearlaw SA raises the question why there is a need to wait until the Board is established in order to make regulations. | The Department does not support this proposal as it is unnecessary. Clauses 6 and 7 give the National Forum the power to make recommendations to the Minister for purposes of making the first set of regulations that are required for purposes of implementing the Act in its entirety. It is not necessary to wait for the Council to be established as pointed out by ClearlawSA. |
| General comments | ClearlawSA Pty Ltd | Proposes the deletion of section 94(3) that requires the approval of regulations by Parliament, as this could delay the implementation of the remainder of the Act. | The Department does not support this proposal. It is important that Parliament, representing the voice of the people, should be engaged on the important issues that the regulations are intended to cover. |
| General comments | Paralegal Association of South Africa | With reference to section 34(9) of the Act, which requires the Council to make recommendations to the Minister on the statutory recognition of paralegals, the Bill does not deal with paralegals at all. | A Regulation of Paralegals Bill is receiving attention by the Department. |
| General comments | Adv A C Paries | Legal practitioners unaffiliated to the National Forum are not informed and canvassed about the Bill and Act. Some are practitioners in the employ of State departments as prosecutors, etc. They call for provincial meetings in each proposed seat of the provincial councils. | No comment is made on the Bill.  The Act does not apply to persons not in private practice, such as State officials.  In terms of section 109(2)(b) of the Act, before the National Forum makes any rule, it must publish a draft of the proposed rule in the *Gazette*, calling on interested persons to comment.  Public comment on the Bill was also invited by the Portfolio Committee. |
| General Comments | Mr Nemusimbori and Adv Mokhine | The Side Bar advocates should be allowed to opportunity to participate in the National Forum. | The Act provides for the composition of the National Forum.  Comment will be requested on the regulations and rules. |

**AMENDMENTS TO THE BILL PROPOSED BY THE LAW SOCIETY OF SOUTH AFRICA AND NATIONAL FORUM ON THE LEGAL PROFESSION**

1. AMENDMENT TO SECTION 4

1.1 An amendment to section 4 of the Act, which provides for the establishment of the Council, is proposed by the National Forum. The Bill’s intention is to facilitate a smooth transition from the current dispensation to the new structures, specifically the Legal Practice Council, and to avoid implementation challenges that could be detrimental. This proposed amendment is consequential as it relates to the smooth implementation and transition and it is submitted that the National Assembly’s permission in terms of Rule 249(1) of the National Assembly Rules will be unnecessary.

1.2 The underlined portion below sets out the insertion in section 4 proposed by the National Forum:

“The South African Legal Practice Council is hereby established as a body corporate with full legal capacity, and exercises Jurisdiction over all legal practitioners and candidate legal practitioners as contemplated in this Act when section 120(4) comes into operation”.

1.3 Section 120 contains the short title of the Act and the commencement thereof. Section 120(2) provides that Chapter 10 comes into operation on a date fixed by the President by proclamation in the *Gazette*, which was 1 February 2015. Section 120(3) provides that Chapter 2 of the Act, dealing with the Council, comes into operation 3 years after the date of commencement of Chapter 10 or on any earlier date fixed by the President by proclamation in the *Gazette*. Section 120(4) provides that the remaining provisions of the Act come into operation on a date, after the commencement of Chapter 2, fixed by the President by proclamation in the *Gazette*.

1.4 This amendment is necessary to avoid conflicting jurisdiction between the new Council and the existing four law societies when Chapter 2 of the Act comes into operation in terms of section 120(3) and to ensure a smooth transfer. The existing law societies will continue to regulate the attorneys until section 120(4) comes into operation. In the overlapping period, the new Council can become established. Infrastructure must be put in place, staff and assets allocated from existing law societies, provincial councils must be elected, functions must be delegated, all regulations and rules must be in place, the database must be finalised and be in operation and work in progress must be transferred from the old to the new regulatory structures. While the Council is getting “operationally ready”, the existing law societies will continue to regulate the attorneys until their staff, assets, liabilities and work in progress are transferred when section 120(4) comes into operation.

2. AMENDMENTS TO SECTIONS 25(3) AND 30(3)

2.1 Amendments to section 25(3), and the consequential deletion of subsection (4) and section 30(3)(h) are requested by the National Forum and the Law Societies of SA.

2.2 These amendments do not directly relate to transition and implementation of the Council as it pertains to the right of appearance of legal practitioners and candidate legal practitioners. Due to the statutory deadline of 1 February 2018 and the fact that this amendment would possibly require the National Assembly’s permission, it is submitted that it should be dealt with at a later stage.

3. AMENDMENT TO SECTION 34

3.1 An amendment to section 34(7) is proposed by the National Forum that entails the insertion in subsection (7)(c)(ii) of the words “theft of trust money or assets entrusted to the juristic entity”. Section 34 deals with form of legal practice .

3.2 This proposed amendment does not directly relate to transition and implementation of the Council. Due to the statutory deadline of 1 February 2018 and the fact that this amendment would possibly require the Assembly’s permission, it is submitted that it should be dealt with at a later stage.

4. AMENDMENT TO SECTION 62

4.1 An insertion of the following subsection in section 62 of the Act is proposed by the National Forum and the Attorneys Fidelity Fund:

"(3) The members of the board of control of the Attorneys Fidelity Fund who hold office as members of that board at the date of commencement of Chapter 2 shall remain in office in that capacity as members of the Board for a period of six months after that date or until the members referred to in subsection (1)(a) have been elected, whichever occurs later.”.

4.2 The Bill’s intention is to facilitate a smooth transition from the current dispensation to the new structures, specifically the Legal Practice Council, and to avoid implementation challenges that could be detrimental to the public or practitioners. This proposed amendment is consequential as it relates to the smooth implementation and transition and it is submitted that the National Assembly’s permission in terms of Rule 249(1) of the National Assembly Rules will be unnecessary.

4.3 The amendment is necessary to ensure a smooth transfer from the Board of Control of the Attorneys Fidelity Fund which will be in existence immediately before Chapter 2 of the Act commences (the “outgoing Board”), to the new Board of the Legal Practitioners’ Board of Control (the “new Board”) which will be constituted after the commencement of Chapter 2, in terms of section 62 of the Act. Unless the outgoing Board remains in control for the interim period, the current wording of the Act will result in a situation where the Fund will not be managed and will not be able to function, to the serious detriment of the public, legal practitioners and other stakeholders. The outgoing Board will be in the best position to ensure the effective functioning of the Fund until the new Board is constituted.

5. AMENDMENT TO SECTION 85

5.1 An amendment to section 85(6)(c) of the Act is proposed by the National Forum. Section 85 deals with the application for and issue of Fidelity Fund certificates. Section 85(6)(c) states that the Council must issue a Fidelity Fund certificate to an applicant if the person applying for a certificate has “discharged all liabilities in respect of enrolment fees”. The paragraph currently only refers to “enrolment fees” and it is proposed that “fees, levies, charges and contributions payable by the legal practitioner concerned in terms of this Act" be added.

5.2 This proposed amendment does not directly relate to transition and implementation of the Council. Due to the statutory deadline of 1 February 2018 and the fact that this amendment would possibly require the National Assembly’s permission, it is submitted that it should be dealt with at a later stage.

6. AMENDMENT TO SECTION 114

6.1 The National Forum and the Law Societies of South Africa propose the insertion of a new section 114(5) as set out below. Section 114 deals with transitional provisions relating to existing advocates, attorneys, conveyancers and notaries.

"Every attorney who, on the date referred to in section 120(4), has the right of appearance in the High Court, the Supreme Court of Appeal or the Constitutional Court in terms of any law retains that right after the commencement of this Act.”.

6.2 The National Forum states that the amendment is necessary in order to confirm the existing rights of appearance of attorneys in the High Court, the Supreme Court of Appeal or the Constitutional Court by virtue of the Admission of Legal Practitioners Act, 1995 (Act 33 of 1995) (which is to be repealed by s119 of the principal Act). Section 114 of the Act currently does not provide for the recognition of the right attorneys currently have, some with B.Proc degrees. It will be detrimental to the clients if an attorney suddenly after commencement of Chapter 2 does not have right of appearance any longer.

6.3 The Bill’s intention is to facilitate a smooth transition from the current dispensation to the new structures, and to avoid implementation challenges that could be detrimental. This proposed amendment relates to the smooth implementation and transition and it is submitted that the National Assembly’s permission in terms of Rule 249(1) of the National Assembly Rules will be unnecessary.

**ADDITIONAL PROPOSAL**

7. AMENDMENT TO SECTION 120

7.1 It is proposed by the Department that section 120(3) be amended as follows:

“Chapter 2 comes into operation **[three years after the date of commencement of Chapter 10 or]** on any **[earlier]** date fixed by the President by proclamation in the *Gazette*.”.

7.2 Due to circumstances beyond control of the Minister and the Department the statutory date of 1 February 2018 might be difficult to attain. The Department will be hard pushed to prepare regulations on the strength of recommendations made by the National Forum as contemplated in section 97(1) of the Act, read with section 109, before 1 February 2018 when Chapter 2 of the Act comes into operation, more particularly because the recommendations will be received from the National Forum at the end of October 2017. The processes required to be followed in promoting the regulations and the fact that the regulations must be approved by Parliament before they can be promulgated, suggest that the deadline of 1 February 2018 will not be met. This proposed amendment therefore will address this practical reality and contribute to a smoother transition and commencement of the Act.

7.3 This proposed amendment has a direct bearing on transition. The Bill’s intention is to facilitate a smooth transition from the current dispensation to the new structures, specifically the Legal Practice Council, and to avoid implementation challenges that could be detrimental. This proposed amendment relates to the smooth implementation and transition and it is submitted that the National Assembly’s permission in terms of Rule 249(1) of the National Assembly Rules will be unnecessary.