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

**Introduction**

The Select Committee on Security and Justice invited stakeholders and interested persons to make written submissions on the Legal PracticeBill [B 11 - 2017]. 2written submissions has been received.

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

**List of commentator:**

National Bar Council of South Africa

ClearLaw SA

**TABLE**

**SUBMISSIONS/RECOMMENDATIONS BY CLAUSE**

| **Clause** | **Name** | **Submission / Recommendation** | **DOJCD Response** |
| --- | --- | --- | --- |
| 3 | 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.  They did not comment on the amended B - Bill and the matter is now addressed in the new clause 3 |
| 4 | 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?  The amendment will create a monopoly and frustrate the existence of paralegals.  It will hamper access to legal services by the poor. | With reference to the comments made by the National Bar Council 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”. 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 setsout 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.  The reference to paralegals in this context is inappropriate as paralegals cannot render the services referred to in section 33. Paralegals are not included in the definition of legal practitioner.  The insertion of the word ‘practising’ is for the protection of the public and not the legal fraternity. |
| 8 | 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. | They did not comment on the amended clause 8 where a final date of 31/10/2018 is inserted. |
| 9 | ClearlawSA Pty Ltd | Clause 6(d) (now clasue 9(e)) 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 wordingshould 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. |
| 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.  During the enactment of the principal Act Parliament deliberated on aspects relating to the new option of advocates with fidelity fund certificates. The intention was that access to legal services by the public should be enhanced but that the different professions of attorneys and advocates be perpetuated. If the legislator wishes to fuse the professions it should form part of in depth discussions and consultations and it is submitted that the Amendment Bill is not the mechanismto achieve this. |
| 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. |