



**THE LAW SOCIETY OF THE
NORTHERN PROVINCES**

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Your ref:

Our ref: A Cook/Immigration Nationality & Refugee Committee

23 July 2018

Mr E Mathonsi
Committee Secretary
c/o Portfolio Committee on Home Affairs
W/S 3/102, 3rd Floor
90 Plein Street
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Per e-mail: emathonsi@parliament.gov.za

Dear Mr Mathonsi

INVITATION TO COMMENT ON DRAFT IMMIGRATION AMENDMENT BILL, 2018

The Law Society wishes to give nominal input on the Immigration Amendment Bill of 2018 which seeks to amend The Immigration Act 13 of 2002 so as to:

- I. insert a definition;
- II. revise and align the provisions relating to the detention of illegal foreigners for purposes of deportation with constitutional principles;
- III. provide for further extensions of detention of an illegal foreigner in certain circumstances;
- IV. provide guidance to an immigration officer as to when he or she may arrest and detain an illegal foreigner for purposes of deportation.

Having perused the draft bill we wish to comment that the amendments that are proposed align with the Court Order handed down by the Constitutional Court in the matter of Lawyers for Human Rights vs Minister of Home Affairs and others (2017) ZACC22 but

perhaps there was not enough emphasis or particularity on providing guidance to the Immigration Officers as to when he/she may arrest someone and this needs elucidation in the Bill.

In the Constitutional Court matter of Dawood the Apex Court struck down a statutory provision that conferred wide discretionally powers on Immigration Officers without giving guidelines. It was states that in such case guidance could be provided either in the Legislation itself or, where appropriate Legislative requirements that delegated Legislation be properly enacted by competent authority.

Regards



JULIAN POKROY

CHAIRPERSON: IMMIGRATION, NATIONALITY & REFUGEE COMMITTEE