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**REGULATIONS: LEGAL PRACTICE ACT, 2014**

**SELECT COMMITTEE ON SECURITY AND JUSTICE**

**21 AUGUST 2018**

1. **BACKGROUND**

The Legal Practice Act was promulgated to address some of the challenges within the legal profession:

* To provide a legislative framework for the transformation and restructuring of the legal profession in line with constitutional imperatives so as to facilitate and enhance an independent legal profession that broadly reflects the diversity and demographics of the Republic;
* to provide for the establishment, powers and functions of a single South African Legal Practice Council and Provincial Councils in order to regulate the affairs of legal practitioners and to set norms and standards;
* to provide for the admission and enrolment of legal practitioners;
* to regulate the professional conduct of legal practitioners so as to ensure accountable conduct; to provide for the establishment of an Office of a Legal Services Ombud and for the appointment, powers and functions of a Legal Services Ombud;
* to provide for a Legal Practitioners’ Fidelity Fund and a Board of Control for the Fidelity Fund;
* to provide for the establishment, powers and functions of a National Forum on the Legal Profession.

The Legal Practice Act made provision for a transitional body, namely the National Forum which would serve as an interim body for 3 years until the establishment of the South African Legal Practice Council. It is important to note that the final deadline for the existence of the National Forum is **31 October 2018.**

1. **LEGAL PROVISIONS**

**Section 109(1)(a)** of the Act provides that the Minister must, within six months after receiving recommendations from the National Forum as provided for in Section 97(1)(a), make regulations by publication in the Gazette, in consultation with the National Forum, in order to give effect to the recommendations of the National Forum as contemplated in Section 97(1).

In terms of **Section 109(1) (c)** the regulations must, before publication thereof in the Gazette, be approved by Parliament.

*It is important to note that the 6 month period has already expired on 30 April 2018 and to allow sufficient time for the Council to be elected and established before the statutory deadline 31 October 2018, the regulations have to be finalised as soon as possible[[1]](#footnote-1).*

1. **REGULATIONS IN TERMS OF SECTION 109 OF THE LEGAL PRACTICE ACT, 2014:**

Below is a summary of key aspects of the regulations**:**

* **Election Procedure for the election of legal practitioners for the purposes of constituting Council:** The regulations contain the procedure for election of legal practitioners for purposes of constituting Council[[2]](#footnote-2). The remainder of the election and nomination procedure as well as the referee process is set out in detail in the Regulations.
* **Establishment of Provincial Councils**

Nine provincial councils will be established in each province in South Africa. The regulations provide for the establishment of at least one committee of the Provincial Council at every centre within the Province concerned at which there is a seat of a Division of the High Court but no office of the Provincial Council.

The Provincial Council concerned –

(a) must determine the powers, duties and functions of a committee;

(b) must designate a member of a committee as chairperson and, if it deems it necessary, may designate a member of a committee as deputy chairperson;

(c) may, at any time, remove a member of a committee or dissolve a committee; and

(d) may determine the procedure for the conduct of the meetings of a committee.

* **Composition of Provincial Councils**

Each provincial council must consist of ten legal practitioners, with the exception of Gauteng which must consist of twelve practising legal practitioners.

The regulations also specify that fifty percent of the legal practitioners must be female and fifty percent should be male and the table on page 11 of the regulations provides a racial breakdown of the composition of Council members.

* **Powers and functions of Provincial Councils:**

All the powers and functions of Provincial Councils are listed in the regulations and include some of the following: to establish committees to assist the Council, to enrol duly admitted legal practitioners, to maintain a roll of legal practitioners, to receive and process applications for admission, to administer practical vocational training contracts, to cancel or suspend the enrolment of a legal practitioner, to receive and process applications for the issue of Fidelity Fund certificates, etc.

* **Practical Vocational training requirements that candidate attorneys must comply with before they can be admitted by the court as legal practitioners**

The regulation sets out the requirements of vocational training for any person intending to be admitted and enrolled as an attorney and includes practical vocational training as well as structured course work.

* **Practical vocational training requirements that pupils must comply with before they can be admitted by the court as legal practitioners**

The regulations set out the practical vocational training for pupils which includes structured course work.

* **Right of appearance of pupils in court or any other institution**

The regulation deals with the right of appearance of pupils in courts, boards and tribunals.

* **Mechanism to wind up affairs of National Forum**
1. **CONCLUSION:**

The regulations give effect to Section 97(1) of the Act and satisfy the requirements as set out therein.

**Possible Questions**

* **Explain how the Composition of the Provincial Councils was arrived at as set out on Page 11?**
* **What timeframe does the Department envisage for the winding up of the National Forum?**
* **What budget has been put in place to ensure a successful transition and for the establishment of the Provincial Councils?**
1. Letter from the Minister of Justice and Correctional Services, 13 July 2018, P3. [↑](#footnote-ref-1)
2. Section 7. (1) The Council consists of the following members: (a) 16 legal practitioners, comprising of 10 practising attorneys and six practising advocates, elected in accordance with the procedure prescribed by the Minister— (i) in terms of section 97(1)(a)(i); or (ii) in terms of this section, in consultation with the Council, if the procedure referred to in subparagraph (i) requires revision after the commencement of Chapter 2; [↑](#footnote-ref-2)