

# Draft Legal Practice Bill

August 2000

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## Important Notice concerning the Draft Legal Practice Bill

This is a first draft of the Legal Practice Bill which is released for comment. It is not complete and should be regarded as a draft in progress. Certain sections have not yet been drafted because they concern issues in respect of which the Department is awaiting comment from the Law Societies. Examples of such issues are the regulation of conveyancing practice and transitional arrangements with regard to the transfer of the powers, functions and assets of the four provincial law societies which presently exist in terms of the Attorneys Act 1979. The Department is also awaiting comment on certain issues from the National Paralegal Institute.

The publication of this draft in progress is part of the consultative process around the formulation and enactment of legislation to regulate legal practice. It follows the National Legal Forum on Legal Practice which took place in Pretoria in November 1999 and is based on the consensus reached at that Forum.

At the Forum consensus was reached on the following issues:

- All legal practitioners and paralegal practitioners should be regulated in terms of one statute.
- There should be one statutory regulatory body.
- The freedom on the part of legal practitioners and paralegal practitioners to practise as members of professional voluntary associations would be respected.
- All legal practitioners would be required to complete one year of post-graduate practical vocational training in order to qualify for registration and admission to practice and as wide a range of practical training options as is possible will be provided (the draft provides for this to be done by regulation).
- Formal admission exams should be replaced by a more flexible form of evaluation of the skills acquired during the course of practical vocational training.
- Any legal practitioner who receives, holds or handles funds belonging to a client or member of the public (including a deposit taken on account of fees and disbursements in respect of services to be rendered) must operate a trust account and be in possession of a Fidelity Fund certificate.

Written comments may be forwarded to -

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**REPUBLIC OF SOUTH AFRICA**  
**LEGAL PRACTICE BILL, 2000**

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(Draft)  
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(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B - 00]

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PN050400

GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

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**B I L L**

**To provide for the establishment of the South African Legal Practice Council; to provide for the requirements for the registration and enrolment as a legal practitioner; to provide for the admission of persons as legal practitioners in the courts; to provide for the registration of paralegal practitioners and to provide for matters connected therewith.**

**PREAMBLE**

WHEREAS the Constitution provides that the practice of a trade, occupation or profession may be regulated by law;

AND WHEREAS the public interest requires that certain aspects of the practice of law be regulated so as to ensure that every citizen has access to justice, and is equally protected by the law, and that consumers of legal services are protected

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:—

**Definitions**

In this Act, unless the context indicates otherwise-

1. **'a legal practice'** means a structure or arrangement in terms of which two or more legal practitioners practice in partnership with one another or practice as a corporation of the nature described in section 23(1)(a) of this Act.
2. **'Board of Control'** means the Legal Practitioners' Fidelity Fund Board of Control established in terms of section 25(1) of this Act.

3. **'candidate legal practitioner'** means a person who has obtained an LLB, or any other law degree accepted by the Panel for Recognition of Legal Qualifications established in terms of section 14 of this Act, who is undergoing practical vocational training as referred to in section 13(1)(b)(ii) of this Act.
4. **'community service'** means service which assists the state in the delivery of legal services as part of the process of the administration of justice, or which assists any non-governmental organization or institution which is providing services to the state or the public with the object of enhancing access to justice.
5. **'Council'** means the Legal Practice Council established in terms of section 1 of this Act.
6. **'court'** means a court recognised by the Constitution of the Republic of South Africa or any legislation of the Republic of South Africa.
7. **'Executive Director'** means the Executive Director of the Council appointed in terms of section 24) of this Act.
8. **'judicial officer'** means any judicial officer who sits in any court recognised by the Constitution of the Republic of South Africa or any legislation of the Republic of South Africa, including, but not limited to, superior courts, lower courts and small claims courts.
9. **'Minister'** means the member of the cabinet of the Republic of South Africa who is responsible for the administration of justice.
10. **'practical legal training institution'** means any institution which offers a practical legal training course or provides supervision of legal service delivery by students or candidate legal practitioners and/or practical legal training.
11. **'President'** means the President of the Republic of South Africa.
12. **'Roll'** means the roll of legal practitioners or the roll of paralegal practitioners established and maintained by the Council in terms of section 6 of this Act.
13. **'student'** means a person means a person who is studying at a tertiary education institution for the purpose of obtaining a qualification which would enable him or her to become a legal practitioner or a paralegal practitioner.

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## PART I

### SOUTH AFRICAN LEGAL PRACTICE COUNCIL

#### 1. Establishment of South African Legal Practice Council

(1) The South African Legal Practice Council is hereby established as a body corporate with full legal capacity.

(2) The Council shall be financed by annual registration fees payable by legal practitioners and paralegal practitioners and by an annual appropriation made by the Legal Practitioners Fidelity Fund, the amount of which shall be determined by the Fund in consultation with the Minister and the Council.

(3) The Council must report on its activities, the performance of its functions and its financial affairs to the Minister at least once a year.

#### 2. Constitution of Council

(1) The Council will consist of the following members to be selected (where applicable) and appointed by the Minister-

(a) A Chairperson who is a judge or retired judge, or person of similar calibre, selected by the Minister in consultation with the Chief Justice and the and the President of the Constitutional Court;

(b) eight persons selected from persons nominated by professional bodies which are representative of registered legal practitioners;

(c) two persons selected from persons nominated by professional organisations representative of registered para-legal practitioners;

(d) one person selected from persons nominated by organisations representing registered corporate lawyers;

(e) one person selected from persons nominated by organisations representing registered public service lawyers;

(f) one person nominated by the National Prosecuting Authority;

(g) the Chief State Law Adviser or his or her nominee;

(h) two law teachers selected from persons nominated by organisations representing law teachers, one of whom shall be a clinical law teacher;

(i) two persons selected by the Minister from persons nominated by organisations representing consumers of legal services or considered by the Minister to be representative of the interests of consumers of legal services and able to represent the interests of such persons, and who, in the opinion of the Minister, will contribute constructively towards the achievement of the objects of and performance of the functions of the Council.

(j) the Executive Director of the Council.

(2) In making the appointments referred to in subsection (1), the Minister shall take into account the extent to which a nominating organization is representative of the relevant constituency and the need for the Council to be representative of the society which it serves in terms of race and gender.

(3) Council members, other than those appointed ex officio, shall be appointed for a period of one year, which appointment shall be renewable, provided that where an appointee has been nominated by an organization, that organization indicates in writing that it accepts the renewal of the appointment.

(4) As soon as possible after the first Council appointed under this Act has been constituted, with the exception of the member provided for by subsection 1(j), it must appoint an Executive Director who will be responsible for the administration of the Council.

(5) The Executive Director appointed in terms of section (4) and all officials appointed by the Executive Director in consultation with the Council to attend to the administration of the Council and the performance of the functions for which the Council is responsible shall be public servants and their conditions of service shall be governed by public service laws and regulations.

(6) Any member of the Council may be employed by the Council in a full-time or part-time capacity for a fixed period of time on such conditions as the Council may determine.

(7) In making appointments in terms of sections (4) and (5) the Council and the Executive Director must take account of the need for the staff of the Council to reflect broadly the race and gender composition of South African society.

### **3. Vacation of Office and filling of vacancies**

(1) A member of the Council must vacate his or her office on the Council-

(a) if he or she, without the leave of the Chairperson, is absent from the Republic for a continuous period of six months or he or she has failed, without an excuse found to be acceptable by the Council, to attend three consecutive meetings of the Council; or

(b) the appointment of that person is terminated by the Minister for good cause on the recommendation of the Council or after consultation with the Council.

(2) When a member of the Council vacates his or her office before the expiration of his or her term of office, the Minister, may, after consulting with the persons or relevant nominating organizations referred to in sub-section (1), if any, appoint another member to fill the vacancy for the unexpired portion of such term of office.

## **5. Objects of the Council**

The object of the Council is to protect the public interest by-

(a) regulating the practice of law;

(b) determining, maintaining and enhancing appropriate standards of professional practice and ethical conduct on the part of legal and para-legal practitioners;

(c) promoting high standards of legal education and training;

(d) promoting access to justice for all members of the public;

(e) promoting access to the legal profession for persons aspiring to become legal or paralegal practitioners ;

(f) promoting and representing the legitimate interests of legal and paralegal practitioners; and

(g) advising the Minister with regard to matters concerning the practice of law.

## **6. Functions of the Council**

The functions of the Council are-

(a) to enroll as legal practitioners or paralegal practitioners persons qualified to be so enrolled in terms of the Act;

(b) to remove from the Rolls the names of legal practitioners or paralegal practitioners in the circumstances provided in the Act;

(c) to maintain the Rolls of legal practitioners and paralegal practitioners;

(d) to publish updated Rolls annually;

(e) to make information relating to the admission and enrollment of legal practitioners and paralegal practitioners available to any person requesting such information upon payment of a prescribed fee;

(f) to participate in the establishment and operation of disciplinary structures, as provided for in Part V of this Act, to deal with complaints made against registered legal practitioners and paralegal practitioners;

(g) to determine the date and place of meetings of the Council and the business to be transacted at such meetings;

(h) to deposit all money received by it with a banking or financial institution;

(i) to keep proper accounts of the revenue and expenditure and of the assets and liabilities of the Council.

## **7. Powers of the Council**

The Council may for the purpose of achieving its objects-

(a) acquire or hire movable or immovable property;

(b) develop, hypothecate, let, sell or otherwise dispose of movable or immovable property of the Council;

(c) make donations and grants-in-aid in support of projects which would achieve any of the objects set out in section 5 of this Act.

(d) accept, draw, endorse, issue, make, pay or perform any other act in respect of negotiable instruments;

(e) invest the funds of the Council which are not immediately required upon such security as may from time to time be determined by the Council;

(f) borrow or raise money, in such a manner as the Council may think fit, which is required in connection with the performance of the functions of the Council;

(g) employ such officials and staff as may be necessary to enable it to carry out its functions and to determine, subject to section 2(5), the remuneration and other conditions of service of the staff of the Council;

(h) establish or promote or administer or assist in the establishment or promotion or administration of-

(i) insurance schemes;

(ii) medical aid schemes or medical benefit schemes;

(iii) pension funds or provident funds or pension schemes or benevolent schemes, to benefit officials and employees of the Council and the dependants of such officials and employees;

(i) conclude an agreement with any person or organization for the performance of any particular act or particular work or the rendering of particular services for the purpose of furthering the objects of the Council;

(j) enter into contracts in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers;

(k) appear in support of or in opposition to, or to abide the decision of any court, in any proceedings brought in terms of the provisions of this Act, and if permitted by any other law, such other law;

(l) do anything that is necessary for or conducive to the attainment of the objects of the Council;

(m) prescribe the books, records, certificates or other documents to be kept, maintained or issued by persons registered in terms of this Act, and to provide for the inspection thereof by persons authorised to do so by the Council, and the circumstances and manner in which alterations may be effected thereto;

(n) fix the subscriptions, fees, levies or other charges which shall be payable to the Council by persons registered with the Council and grant rebates in respect of such subscriptions, fees, levies or other charges in recognition of unremunerated community service performed by legal practitioners and paralegal practitioners.

(o) prescribe the information to be furnished to the Council by any person registered with the Council who-

(i) commences or discontinues to practise as a practitioner;

(ii) takes up employment or ceases to be employed as a practitioner;

(iii) enters into or withdraws from a partnership or corporation of practitioners;

(iv) while practising, changes his or her business or residential address;

(p) prescribe the manner of assessment of the fees payable by any person to a legal practitioner or legal practice in respect of the performance on behalf of such person of non-litigious work and in respect of expenses reasonably incurred by the legal practitioner or practice in connection with the performance of that work and, at the request of such person or legal practitioner or of its own accord, assess such fees in the prescribed manner;

(q) pay an allowance to any person to cover expenses reasonably incurred by him or her in connection with any act performed at the request of, or under the directions of the Council, on behalf of or for the benefit of the Council and/or the furtherance of its objects;

(r) to establish regional sub-structures of the Council, in respect of such regions as the Council may determine from time to time, and-

(i) determine the duties, functions and powers of such sub-structures;

(ii) designate in respect of each sub-structure a place as its headquarters; and

(iii) determine the constitution of bodies to be responsible for the management of the affairs of such sub-structures, provided that the principles regarding representivity reflected in sections 2(1) and 2(2) of this Act are applied;

(s) accredit training institutions which offer practical legal training courses which qualify or contribute towards the qualification of candidate legal practitioners as legal practitioners;

(t) accredit professional organizations as Accredited Disciplinary Structures, as provided in Part V of this Act;

(u) determine the manner in which the Council shall conduct its business;

(v) do anything which is required for the proper and effective carrying out of its duties, the performance of its functions or the exercise of its powers.

## **8. Meetings of Council**

(1) The first meeting of the first Council constituted in terms of this Act shall take place at the time and place notified by the Director-General after consultation with the Chairperson. Further meetings of the Council shall be convened by the Executive Director after consultation with the Chairperson.

(2) If the chairperson of the Council is absent from a meeting of the Council, the members present shall appoint one of their number to preside.

(3) The decision of the majority of the members of the Council present at a meeting of the Council shall be the decision of the Council and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(4) The quorum for any meeting of the Council shall be fifty percent of its membership.

#### **9. Committees of Council**

(1) The Council may, after consultation with the Minister, appoint one or more committees to assist it in the exercise of its functions, and may at any time alter the constitution of such a committee and fill a vacancy which occurs in the membership thereof.

(2) The Council may include as a member of a committee any member of the Council.

(3) The members of a committee shall elect from among their number the chairperson of the committee, unless the Council has appointed a chairperson.

(4) The Council may delegate and assign to a committee appointed in terms of subsection (1) such of its powers and functions as it may deem fit, but shall not be divested of any power so delegated, and may amend or withdraw a decision of such a committee.

(5) A committee may determine the procedure to be followed at its meetings.

#### **10. Validity of decisions taken by, or acts performed under authority of, Council**

No decision taken by the Council or act performed under authority of the Council shall be invalid by reason only of the existence of a vacancy on the Council or of the fact that a person who was not entitled to sit as a member of the Council, sat as a member of the Council, if the decision was taken or the act was authorised by the requisite majority of the members of the Council who were present at the time and entitled to sit as members.

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## **PART II**

### **REGULATION OF LEGAL PRACTICE**

#### **11. Regulation of legal practice**

(1) No person is qualified to practise as a legal practitioner except in accordance with the provisions of this Act.

(2) No person may offer or deliver legal services to any member of the public for reward unless he or she is registered as a legal practitioner in terms of this Act.

(3) A legal practitioner who is employed by a corporation, other than a legal practice as defined, or by an organ of state, or by a non-governmental organization, and who provides legal services only to his or her employer may apply to the Council to be placed on the roll of legal practitioners, and shall be entitled to appear in court on behalf of his or her employer as a legal practitioner if he or she has been admitted as a legal practitioner of the Courts of the Republic of South Africa in terms of section 18 of this Act.



(4) A paralegal practitioner may apply for registration in terms of this Act and shall be registered if he or she complies with the requirements for registration which are proclaimed by the Minister after consultation with the Council.

(5) No provision of this Act prevents legal practitioners or paralegal practitioners from being members of voluntary professional associations and practising according to the rules of such organizations, provided that such rules are not inconsistent with the provisions of this Act or any other law.

(6) A voluntary professional organization may not require legal practitioners or paralegal practitioners who are not members of that organization to comply with its rules of practice which are not rules of practice imposed by this Act.

## **12. Persons qualified to be enrolled as legal practitioners**

The Council must, on application in accordance with this Act, enroll a person as a registered legal practitioner if-

(1) such person, in the discretion of the Court, is a fit and proper person to be so enrolled; and

(2) the Council is satisfied that such person has satisfied the following requirements or, where applicable, has been exempted in terms of the provisions of this Act, namely that such person-

(a) is a South African citizen and is ordinarily resident in the Republic, or is in possession of a residence permit issued by the government of the Republic of South Africa; and

(b) is duly qualified or has been declared to be qualified for admission by the panel referred to in section 13(3).

## **13. Qualification for registration as a legal practitioner**

(1) The following persons are deemed to be duly qualified for the purposes of section 12(2)(b), namely, any person who:

(a) (i) has satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic after completing a period of study of not less than four years for that degree, or

(ii) has satisfied all the requirements for the degree of bachelor other than the degree of *baccalaureus legum*, of any university in the Republic and, after he or she has been admitted to the status of any such degree by any such university, has satisfied all the requirements for the degree of *baccalaureus legum* of any such university after completing a period of study for such degrees of not less than five years in the aggregate; and

(b) (i) has completed, during the course of his or her period of study for the degree referred to in paragraph (a) above, or thereafter, a period of 200 hours of unremunerated practical legal training involving the delivery of, or assistance with the delivery of, legal services, at least one hundred hours of which is in the nature of community service as defined;

(ii) has completed a period of one year of practical legal training as a candidate legal practitioner, as prescribed from time to time by the Minister after consultation with the Council; and

(iii) has furnished the Council with a certificates of satisfactory performance in respect of the requirements of sub-sections 12(2)(b)(i) and (ii) signed by a person who has supervised and is qualified to supervise such practical legal training.

(2) A candidate legal practitioner or law student who is doing practical legal training in fulfilment of the requirements of section 12(2)(b) may be supervised by -

- (a) A legal practitioner who has been admitted to practice for a period of not less than three years;
- (b) A judicial officer, public prosecutor; registrar of a court or clerk of a court magistrates court;
- (c) The director of a practical legal training institute, which has been accredited by the Council.

#### **14. Recognition of legal qualifications of persons not deemed to be qualified**

There shall be established, in terms of this Act, a panel to be known as the Panel for the Recognition of Legal Qualifications, which shall consider applications from persons not deemed to be duly qualified for registration as legal practitioners, and such panel shall be deemed to be a sub-committee of the Council.

(1) The Minister, in consultation with the Council, shall as soon as practicable after the commencement of this Act appoint a panel consisting of-

- (a) a judge or retired judge of the High Court, or person of similar calibre ;
- (b) two legal practitioners; after consultation with organizations representing legal practitioners;
- (c) two lecturers in law, after consultation with organizations representing law teachers; and
- (d) two persons who, in the opinion of the Minister, have the necessary expertise to serve on the panel, to perform the functions assigned to the panel in terms of this Act.

(2) The member of the panel referred to in subsection (1)(a) shall be the chairperson of the panel.

(3) If the chairperson is absent from a meeting of the panel, the panel shall from among its number elect a chairperson for that meeting.

(4) The Minister, in consultation with the Council, may from time to time designate a person to serve on the panel in the place of a member of the panel who for any reason is no longer able to serve on the panel.

(5) A member of the panel who is not in the full-time service of the State shall, in respect of his or her services as such member, be paid such remuneration and allowances as may be determined by the Minister with the concurrence of the Minister of Finance.

(6) Meetings of the panel shall be held at such time and place as the chairperson may determine.

(7) The procedure at meetings of the panel shall, subject to the provisions of this section, be determined by the chairperson of the panel.

(8) The majority of the members of the panel shall form a quorum for a meeting of the panel.

(9) The decision of the majority of the members of the panel present at any meeting thereof shall be the decision of the panel, and in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

#### **15. Functioning of the panel**

(1) On receipt of an application for admission to legal practice of a person not deemed to be qualified to be admitted, the panel shall consider such application, together with all relevant documents submitted to it, and make a recommendation to the Council and, where the applicant wishes to be admitted with the right to practise in the Courts of the Republic of South Africa, to the High Court.

(2) In considering an application the panel shall-

(a) where the applicant has foreign qualifications or has been admitted to the practice of law in a foreign country -

(i) evaluate the academic qualifications of the applicant, including the extent to which the syllabus in terms of which the applicant has been educated and the standard of training received by the applicant corresponds with the syllabus and standard of education which are normally required by a university in the Republic for the completion of a degree referred to in section 12(2)(a); and

(ii) consider the nature of any practical training or post-graduate professional training undergone by the applicant;

(iii) consider whether or not the applicant, on account of his or her academic and professional qualifications would have the right to practise as a legal practitioner in the Courts of the other country concerned;

(iv) evaluate, where applicable, the nature and extent of the legal practice experience of the applicant in the country concerned; and

(v) consider whether the applicant is a fit and proper person to be admitted to the practice of law in the Republic of South Africa.

(b) In considering an application from a person with South African qualifications and/or experience who is not deemed to be legally qualified, the panel must consider -

(i) whether the nature of the qualifications and the nature and extent of the applicant's exposure to the practice of law can reasonably be expected to qualify such person for admission as a legal practitioner; and

(ii) whether the applicant is a fit and proper person to be admitted to the practice of law in the Republic of South Africa.

(3) The panel may for the purposes of performing its functions in terms of this section -

(a) call upon the applicant to furnish it with any documentation which it requires to peruse in order to make a decision;

(b) call upon the applicant to attend an interview before the panel;

(c) consult with any person, organisation or institution before a recommendation is made.

(4) After considering an application the panel may-

(a) make a recommendation to the Council and, where the applicant wishes to be admitted with the right to practise in the Courts of the Republic of South Africa, to the High Court, that the applicant be admitted to practice.

(b) recommend that the applicant should undergo any further training of either an academic or practical nature and recommend that the applicant be admitted to practice upon proof of fulfilment of the requirement prescribed by the panel.

(5) The administrative work incidental to the performance of the functions of the panel shall be carried out by officers of the Council and all costs shall be borne by the Council.

## **16. Roll of legal practitioners**

(1) The Council must keep a register of legal practitioners to be known as the Roll of Legal Practitioners in which it must record the names, qualifications and practice address of all legal practitioners registered by the Council, as well as the date of registration.

(2) Registrars of the High Courts must notify the Council of the issue of a certificate of right of appearance before the Courts of the Republic of South Africa within 30 days of the issue of such certificate and the Council shall endorse the practitioner's entry on the roll to reflect the fact that the practitioner has such right of appearance.

(3) If the Council or a court orders any legal practitioner to be struck off the roll or suspended from practice, the Council must enter a reference to such order opposite the name of the legal practitioner concerned in the Roll.

#### **17. Enrollment of persons who were enrolled as attorneys or advocates before the commencement of this Act**

(1) The Council must enter in the Roll of Legal Practitioners the name of every person who immediately before the commencement of this Act-

(a) was admitted and enrolled as an attorney in the Republic under the Attorneys Act, 1979 (Act 53 of 1979); or

(b) was admitted and enrolled as an advocate in the Republic under the Admission of Advocates Act, 1964 (Act 74 of 1964).

(2) The enrolment of a person in accordance with subsection (1)-

(a) shall be subject to the terms of any order of Court whereby he or she has been suspended from practice as an advocate or attorney before the commencement of this Act, provided that the Council may delete reference to a court order made under previous legislation if it believes that there is good reason to do so and that the public interest will not be prejudiced by such deletion, or if a High Court orders the deletion of such reference ;

(b) shall not relieve such person of liability under this Act for unprofessional or dishonourable or unworthy conduct on his or her part before the commencement of this Act.

#### **18. Right of appearance as a legal practitioner in court**

(1) Any person who appears in any Court in the Republic of South Africa as a legal practitioner representing a client must be in possession of a certificate issued by a Registrar of a High Court of the Republic of South Africa stating that he or she has been admitted by that Court with the right of appearance in the Courts of the Republic of South Africa.

(2) Any person who before the coming into operation of this Act was admitted as an advocate or as an attorney with right of appearance in the High Court shall be entitled to be issued with has a certificate referred to in sub-section (1), provided that he or she furnishes to Registrar

(a) a certificate from the Council confirming that he or she is registered with the Council as a legal practitioner in terms of this Act;

(b) a letter, under his or her signature, advising the registrar that he or she subscribes to the terms of the oath prescribed in the first schedule to this Act.

(3) Any person who before the coming into operation of this Act was admitted as an attorney without right of appearance in the High Court shall be entitled to be issued with has a certificate referred to in sub-section (1), provided that he or she furnishes to Registrar

(a) a certificate from the Council confirming that he or she is registered with the Council as a legal practitioner in terms of this Act and stating that there is no reason why he or she should not be admitted with the right of appearance in all courts of the Republic of South Africa;

(b) a letter, under his or her signature, advising the registrar that he or she subscribes to the terms of the oath prescribed in the first schedule to this Act.

(4) Any person who has been admitted to practise as a legal practitioner in terms of this Act may apply to a High Court for the right to appear as a legal practitioner before the Courts of the Republic of South Africa.

(5) The High Court shall admit a person who brings an application referred to in sub-section (1) if -

(a) the applicant submits to the Court a certificate from the Council confirming that the applicant is registered with the Council as a legal practitioner in terms of this Act and stating that the Council knows of no reason why the applicant should not be admitted as a Legal Practitioner of the Courts of the Republic of South Africa;

(b) the Court is satisfied that the applicant is a fit and proper person to be so registered; and

(c) the applicant appears before the Court and takes the oath prescribed in the First Schedule to this Act.

#### **19. Appearance of Candidate Legal Practitioners in Courts and before other institutions**

(1) Any candidate legal practitioner who has satisfied all the requirements for the degree referred to in section 13(1)(a) of this Act, or who has been admitted to the status of such degree by the Panel for the Recognition of Legal Qualifications in terms of section 14 of this Act, and is who undergoing practical legal training as prescribed in section 13(1)(b)(i) of this Act, is entitled to appear in any lower court, and before any board, tribunal or similar institution in or before which his or her supervisor is entitled to appear, instead of or on behalf of such supervisor, provided that he or she has the permission of the supervisor to do so and acts under the general direction of the supervisor.

(2) A supervising legal practitioner in private practice may charge reasonable fees for the appearance of the candidate practitioner, and a client in whose favour a court makes an order of costs may recover the fees for the attendance of the candidate practitioner according to the tariff which would be applicable had the supervisor appeared personally.

#### **20. Legal practitioners entitled to practise throughout the Republic**

(1) Any person who has been or is deemed to have been registered as a legal practitioner in terms of any provision in this Act, is entitled to practise as a legal practitioner throughout the Republic unless his or her name has been ordered to be struck off the Roll of Legal Practitioners or unless he or she is subject to an order suspending him or her from practice as a legal practitioner.

(2) Any person who has been admitted to practise as a Legal Practitioner of the Courts of the Republic of South Africa may appear in any court of the republic of South Africa as a legal practitioner.

#### **21. Removal of legal practitioners from roll**

(1) A person who has been registered and enrolled by the Council as a legal practitioner or admitted and registered as a Legal Practitioner of the Courts of the Republic of South Africa, may, on application, be struck off the roll by a High Court, or have his or her registration amended by order of the Court, if -

(a) he or she, in the opinion of that court, is not a fit and proper person to continue to practice as a legal practitioner; or

(b) he or she does not qualify to continue practising as a legal practitioner as contemplated in section 12.

(2) An application referred to in sub-section (1) may be brought by the Council, or by the Ombudsman, or by any person or organization-

(a) acting in their own interest;

(b) acting on behalf of another person who cannot act in their own name;

(c) acting as a member of or in the interest of, a group or class of persons, including members of the applicant organization; or

(d) acting in the public interest.

## **22. Readmission and enrolment**

(1) A court may, on application, readmit and/or order the re-enrolment of any person who was previously admitted and enrolled as a legal practitioner and has been removed from or struck off the roll, as a legal practitioner, if-

(a) such person, in the opinion of the court, is a fit and proper person to be so readmitted and re-enrolled; and

(b) the court is satisfied that the applicant's qualifications comply with the requirements of this Act.

(2) In considering whether a person is a fit and proper person to be re-enrolled the Courts shall take into account any circumstances which prevailed in the Republic prior to 27 April 1994 which may have been relevant to the applicant being removed or struck off the Roll and shall bear in mind the need to redress the inequities suffered by certain categories of persons in the past.

(3) Any person who applies to a court to be readmitted and/or re-enrolled must, at least one month before the date of his or her application, deliver to the Council a copy of his or her application for readmission and/or re-enrolment and copies of all affidavits, certificates and other documents or papers which are referred to therein or connected therewith.

(4) Upon production to the Council of the application, together with the affidavits, certificates, documents and other papers referred to therein, the Council must, upon payment of any fees prescribed under this Act, certify on such application that the provisions of this section have been complied with.

(5) Unless such certificate has been obtained, the person concerned may not make his or her application to a court.

(6) The Council, the Ombudsman or any person or organization referred to in s22(2) may oppose an application for readmission or re-enrolment by delivering notice of its intention to oppose to the applicant, whereupon the applicant shall be obliged to serve copies of all relevant court documentation on that party if the application is proceeded with and the party who gave notice of intention to oppose may apply to the court for leave to intervene as a party in the application.

(7) A Court which orders the readmission and/or re-enrollment of a person may order that all reference in the Roll to the previous striking off of the person be deleted from the Roll, provided that the court is satisfied that this will not prejudice the public interest.

### **23. Juristic person may practice as a Legal Practice Company**

(1) A private company may, notwithstanding anything to the contrary contained in this Act, conduct a practice if-

(a) such company is incorporated and registered as a private company under the Companies Act, 1973 (Act 61 of 1973), with a share capital, and its memorandum of association provides that all present and past directors of the company shall be liable jointly and severally with the company for the debts and liabilities of the company contracted during their periods of office;

(b) only natural persons who are practitioners and who are in possession of current fidelity fund certificates are members or shareholders of the company or persons having any interest in the shares of the company;

(c) the name of the company consists solely of the name or names of any of the present or past members of the company or of persons who conducted, either of their own account or in partnership, any practice which may reasonably be regarded as a predecessor of the practice of the company: Provided that the words "and associates" or "the company" may be included in the name of the company.

(2) Every shareholder of the company shall be a director of the company, and only a shareholder of the company shall be a director thereof.

(3) If a shareholder of the company or a person having any interest in the shares of the company, dies or ceases to conform to any requirement of subsection(1)(b), he or she, or his or her estate, as the case may be, may, as from the date on which he or she dies or ceases so to conform, continue to hold the relevant shares or interest in the shares in the company for a period of six months or for such longer period as the Council may approve.

(4) No voting rights shall attach to any share held in terms of subsection (3), and the holder of any such share shall not act as a director of the company or receive, directly or indirectly, any director's fees or remuneration or participate in the income of or profits earned by the company in its practice.

(5) If the articles of association of the company so provide, the company may, without confirmation by a court, upon such conditions as it may deem expedient, purchase any shares held in it, and the authorized share capital of the company shall not be reduced thereby.

(6) Shares purchased in terms of subsection (5) shall be available for allotment in terms of the articles of association of the company.

(7) Notwithstanding anything to the contrary contained in any other law, the articles of association of the company may provide that a member of the company may not appoint a person who is not a member of the company, to attend, speak or vote in his stead at any meeting of the company.

(8) If the company ceases to conform to any requirement of subsection (1), it shall forthwith cease to practise, and shall, as from the date on which it ceases so to conform, not be recognised in law as a legal practitioner: Provided that the provisions of this subsection shall not, during the period referred to or contemplated in subsection (3), apply to a company by reason only that a shareholder of the company or a person having any interest in the shares of the company has ceased to be a legal practitioner or to be in possession of a fidelity fund certificate.

(9) Any reference in this Act to a legal practitioner or to a partner or partnership in relation to legal practitioners, shall be deemed to include a reference to a company under this section or to a member of such a company, as the case may be, unless the context otherwise indicates.

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## PART III

### LEGAL PRACTITIONERS' FIDELITY FUND

#### 24. Continued existence of the Fidelity Fund

(1) The fund established by section 8 of the Attorneys' Admission Amendment and Legal Practitioners' Fidelity Fund Act, 1941 (Act 19 of 1941), shall notwithstanding the repeal of that Act, and the repeal of the Attorneys Act 53 of 1979, continue to exist under the name the Legal Practitioners' Fidelity Fund (hereinafter referred to as 'the Fund').

#### 25. Fund to vest in and to be held in trust by Board of Control

(1) The Fund shall vest in and be administered by a Board of Control to be known as the Legal Practitioners' Fidelity Fund Board of Control.

(2) The Fund shall be held in trust by the Board of Control for the purposes mentioned in this Act.

(3) The Board of Control may sue and be sued under its name.

#### 26. Constitution of Board of Control

(1) The Board of Control shall consist of-

(a) the Legal Practice Ombudsman;

(b) the Chairperson of the Council;

(c) two members of Council appointed annually by the Council;

(d) the Chief State Law Adviser or his or her nominee;

(e) two persons who are not members of Council, appointed by the Minister, selected by the Minister from persons nominated by professional organizations representative of legal practitioners who hold Fidelity Fund Certificates;

(f) one person appointed by the Minister, selected by the Minister from persons nominated by professional organisations representative of registered para-legal practitioners;

(g) one law teacher appointed by the Minister, selected by the Minister from persons nominated by organisations representing law teachers;

(h) two persons selected by the Minister from persons nominated by organisations representing consumers of legal services or considered by the Minister to be representative of the interests of consumers of legal services and able to represent the interests of such persons;

(i) one person selected and appointed by the Minister on account of his or her financial expertise.

(2) In making the appointments referred to in sub-sections (1)(e) to (i), the Minister shall take into account the extent to which the nominating organization is representative of the relevant constituency and the need for the Board to be representative of the society which it serves in terms of race and gender.



(3) Council members shall be appointed for a period of one year, which appointment shall be renewable, provided that where an appointee has been nominated by an organization, that organization indicates in writing that it accepts the renewal of the appointment.

(4) As soon after the appointment of members of the Council as it is practicable to do so, the Council must elect from among its members a chairperson and a vice-chairperson.

#### **27. Period of Office of members of Board of Control**

(1) Board members shall be appointed for a period of one year, which appointment shall be renewable, provided that where an appointee has been nominated by an organization, that organization indicates in writing that it accepts the renewal of the appointment.

(2) A member of the Board of Control who has been appointed by Council or the Minister shall hold office until his or her successor has been appointed, notwithstanding that more than a year may have elapsed since his or her appointment.

#### **28. Vacation of office by members of the Board of Control**

(1) A member of the Board of Control shall vacate his or her office if he or she-

(a) resigns and his or her resignation is accepted by the Board; or

(b) ceases to hold an office by virtue of which he or she is ex officio a member of the Board;

(c) is incapacitated by physical or mental illness;

(d) is convicted of an offence which, in the opinion of the majority of the Board members precludes him or her from serving as a member of the Board of Control;

(e) if he or she, without the leave of the Chairperson of the Board, is absent from the Republic for a continuous period of six months or he or she has failed, without an excuse found to be acceptable by the Board, to attend three consecutive meetings of the Board;

(f) the appointment of that person is terminated by order of a High Court for good cause on application made by the Board or any person or organization referred to in section 22(2) of this Act.

#### **29. Meetings and resolutions of the Board of Control**

(1) The Board of Control shall meet at such times and at such place as it or its Chairperson, or in the absence of the Chairperson the Vice-Chairperson, may determine.

(2) Fifty percent of the members of the Board of Control shall constitute a quorum at a meeting thereof.

(3) If the Chairperson and Vice-Chairperson are both absent from a meeting of the Board of Control, the Board shall from among its number elect a chairperson for that meeting.

(4) The decision of the majority of the members of the Board of Control

present at a meeting thereof shall be a decision of the board of control, and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his or her deliberative vote.

(5) A resolution in writing of the Board of Control signed by all its members shall be as valid as if it had been passed at a meeting of the Board.

### **30. Committees of Board of Control**

(1) The Board of Control may appoint one or more committees to assist in the exercise of its functions, and may at any time alter the constitution of such a committee and fill a vacancy which occurs in the membership thereof.

(2) The members of a committee appointed in terms of subsection (1) shall from among their number elect the chairperson of the committee, unless the Board of Control has appointed a chairperson.

(3) The Board of Control may-

(a) delegate and assign to a committee appointed in terms of subsection (1) such of its powers and functions as it may think fit;

(b) instruct such a committee, either generally or in a specific case, to enquire into and to advise the Board of Control on any matter in relation to the functions of the Board of Control.

(4) The Board of Control shall not be divested of any power delegated to a committee thereof and may amend or withdraw a decision of such a committee.

### **31. Purpose of the Fund**

(1) Subject to the provisions of this Act, the Fund shall, in the first instance, be applied for the purpose of -

(a) reimbursing persons who may suffer pecuniary loss as a result of theft committed by a legal practitioner or a candidate legal practitioner attached to such legal practitioner, or a person employed by such a legal practitioner, of any money or other property entrusted by or on behalf of such persons to the legal practitioner or to such a candidate legal practitioner or a person employed in the course of the legal practitioner's practice or while acting as executor or administrator in the estate of a deceased person or as a trustee in an insolvent estate or in any other similar capacity; and

(b) reimbursing persons who may suffer pecuniary loss as a result of theft of money or other property entrusted to an employee referred to in paragraph (cA) of the definition of "estate agent" in section 1 of the Estate Agents Act, 1976 (Act 112 of 1976), or a legal practitioner or candidate legal practitioner referred to in paragraph (d) of that definition, and which has been committed by any such person under the circumstances, and in the performance of an act, contemplated in those paragraphs, respectively.

(c) the payment of expenses incurred by the Board of Control in establishing a claim referred to in sub-sections (a) and (b) above;

(d) the refund of costs or any portion thereof incurred by a claimant in establishing a claim or exhausting the legal remedies contemplated in section 42(1).

(e) the payment of legal expenses incurred in defending a claim made against the Fund or otherwise incurred in relation to the Fund;

(f) the payment of premiums payable in respect of contracts of insurance entered into by the Board of Control;

(g) the payment of expenses incurred in the administration of the Fund and investigations by the Board of Control or its committees in respect of matters which concern the Fund, including allowances to members of the Board of Control in respect of their services or their reasonable travelling and accommodation expenses incurred in connection with the affairs of the Fund.

(h) the establishment and operation of the office of a Legal Ombudsman as provided for in Part V of this Act.

(i) the payment of fees and expenses to the Council in respect of any function performed by the Council as agent for the Fund;

(j) the payment of any expenses incurred by Council or the Ombudsman in connection with the striking off of any practitioner who fails to comply with the provisions of this Act.

(2) Provided there are sufficient funds available, the Fund may, in the discretion of the Board of Control, also be applied for the following purposes -

(a) payment of the premium or any portion thereof payable in respect of a professional indemnity group insurance policy taken out in favour of legal practitioners;

(b) the provision of financial assistance to legal practitioners, particularly those who have recently started practising on their own account, in respect of costs incurred in relation to the keeping of a trust account and the obtaining of a Fidelity Fund certificate.

(c) the provision of financial support to institutions providing legal education and training, with the object of enhancing the standards of legal practice.

(d) the defraying of the whole or a portion of the costs and expenses incurred by the Council for the purposes of or in connection with steps taken by it to enforce the provisions of this Act;

(e) loans and interest thereon;

(f) all claims, including costs and interest, payable in terms of this Act;

(g) other moneys which are payable or may be paid from the Fund in accordance with this Act or the regulations made thereunder.

(3) The rate of interest payable on the amount of any judgment obtained or a claim admitted against the Fund shall not exceed the prevailing rate of interest prescribed under section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975).

### **32. Obligation to keep a trust account and hold a Fidelity Fund certificate**

(1) Every legal practitioner who practises on his or her own account, or in partnership, or as a director of a legal practice company and who or which receives, holds or handles funds belonging to a client or any member of the public must keep a separate trust banking account, as provided in section , and must be in possession of a Fidelity Fund certificate, unless he or she is exempted from these requirements by virtue of the provisions of section 33.

(2) The provisions of sub-section (1) and (2) shall apply to any practitioner, legal practice partnership or legal practice company who or which takes a deposit on account of fees to be debited or disbursements which may be incurred in respect of services to be rendered .

(3) No legal practitioner practising other than a practitioner described in sub-section (1), or candidate legal practitioner or para-legal practitioner shall receive, hold or handle funds belonging to a client or any member of the public, or take a deposit on account of fees to be debited or disbursements which may be incurred in respect of services to be rendered unless his or her employer or supervisor is in possession of a Fidelity Fund certificate, unless the employer or supervisor is exempted from these requirements by virtue of the provisions of section 33.

(4) A legal practitioner, candidate legal practitioner or paralegal practitioner who practises or acts in contravention of subsections (1) and (2) shall -

(a) be guilty of an offence and liable on conviction to a fine not exceeding ..... or to imprisonment for a period not exceeding ..... years;

(b) be liable to be struck off the Roll; and

(c) not be entitled to any fee, reward or disbursement in respect of anything done by him or her while so practising or acting.

(5) A Fidelity Fund certificate shall indicate that the practitioner concerned practises subject to the provisions of this Part of the Act and the fact that the practitioner holds such certificate shall be endorsed against his or her enrollment by the Council.

### **33. Exemption of state-employed legal practitioners from requirement to hold a Fidelity Fund certificate**

(1) A legal practitioner who is in the full-time employment of the State or the Legal Aid Board shall not be required to obtain and hold a Fidelity Fund certificate.

### **34. Application for and issue of Fidelity Fund certificate**

(1) A legal practitioner who is required in terms of sections 32 to be in possession of a Fidelity Fund certificate shall apply in the prescribed form to the secretary of the Council for such certificate.

(2) An application in terms of subsection (1) shall be accompanied by the contribution payable by certificate holders in the amount fixed by the Board of Control.

(3) The Board of Control shall determine the amount of the contribution annually and must give notice of the amount of the contribution by notice in the Government Gazette not later than 30 September each year.

(4) In fixing the amount of the contribution payable by certificate holders, the Board of Control shall take into account the value of the Fund and the extent of the expenses and liabilities which the Fund is likely to incur in the forthcoming year and future years.

(5) The Board of Control may -

(a) exempt a category of practitioners from making the whole or part of the contribution

(b) exempt a particular practitioner from making the whole or part of the contribution, after consideration of a written application from that practitioner, if it believes that there is good reason to do so

(6) Where a legal practitioner applies for a Fidelity Fund certificate on or after 1 July in any year, he or she shall in respect of that year pay half of the amount of the contribution which is payable for that year in terms of subsection (2).

(7) Upon receipt of the application in terms of subsection (1), the secretary of the Council shall forthwith issue to the applicant a Fidelity Fund certificate in the prescribed form if he or she is satisfied that the applicant paid the required contribution to the Fund and has discharged all his or her liabilities to the Council in respect of registration fees.

(8) A Fidelity Fund certificate shall be valid until 31 December of the year in respect of which it was issued.

(9) A document purporting to be a Fidelity Fund certificate which has been issued contrary to the provisions of this Act, shall be null and void and shall on demand be returned to the Council.

### **35. Board of Control may refund contribution in certain cases**

If any legal practitioner in respect of whom no claim has been made under this Act, or in respect of whom such claim has not been sustained, dies or ceases to practise, the Board of Control may, in its discretion, if it is satisfied that no claim is likely to be made, pay to him or her or his or her estate a sum not exceeding the aggregate amount of his or her contributions to the Fund.

### **34. Revenue of fund**

The Fund shall consist of-

- (a) the annual contributions by legal practitioners holding Fidelity Fund certificates;
- (b) interest paid to the Fund in terms of this Act;
- (c) the revenue obtained from investments of the Fund;
- (d) money recovered by the Fund in terms of this Act;
- (e) money received on behalf of the Fund from any insurance company;
- (f) money which may be appropriated by Parliament;
- (g) other money lawfully paid into the Fund.

### **35. Banking account**

- (1) Money in the Fund shall be paid into a banking account at a financial institution to the credit of an account to be known as the Legal Practitioners' Fidelity Fund Account.
- (2) The Board of Control may from time to time invest moneys of the Fund which are not immediately required for the purposes mentioned in this Act.

### **36. Audit**

- (1) The accounts of the Fund shall be audited by a registered accountant and auditor appointed by the Board of Control.
- (2) A person appointed under subsection (1) shall, at least once in every year and not later than a date to be determined by the Board of Control, draw up a balance sheet and profit and loss account of the Fund and forthwith submit certified copies thereof and of his or her report thereon to the Chairperson of the Board of Control and to the Council.

### **37. Insurance contracts for purposes of indemnifying Fund and legal practitioners**

- (1) The Board of Control may in its discretion enter into a contract with any person or company carrying on fidelity insurance business in the Republic whereby the Fund will be indemnified to the extent and in the manner provided in such contract against liability to pay claims under this Act.
- (2) A contract referred to in subsection (1) shall be entered into in respect of legal practitioners practising as described in generally.
- (3) A claimant against the Board of Control shall not have-
  - (a) a right of action against a person or company with whom a contract of indemnity has been entered into in terms of this section, in respect of such contract; or

(b) a right to any money paid by the insurer in accordance with such contract.

(4) Any money paid by an insurer in accordance with a contract of indemnity shall be paid into the Fund for appropriation by the Board of Control.

### **38. Acquisition, forming and administration of insurance company scheme**

The Board of Control may-

(a) (i) acquire or form, and administer, a public company; or

(ii) together with any other person or institution establish a scheme, underwritten by a registered insurer, so as to provide insurance cover, subject to the provisions of the Insurance Act, 1943 (Act 27 of 1943), to legal practitioners in respect of claims which may proceed from the professional conduct of such legal practitioners;

(b) enter into deeds of suretyship to the satisfaction of the Master of the High Court so as to provide security on behalf of a legal practitioner in respect of work to be done by such legal practitioner as executor in the estate of a deceased person, or as trustee in an insolvent estate, or as curator to the person or property in the case of a person who is unable to manage his or her own affairs, or in any other similar capacity, or by any other person in such capacity where a practitioner acts as agent for the person concerned; and

(c) levy premiums and fees for the provision of such insurance or security, as the case may be.

### **39. Limitation of liability of Fund**

(1) The Fund shall not be liable in respect of any loss suffered-

(a) by any person as a result of theft committed by a legal practitioner while such legal practitioner is in the employment of any person who is not a legal practitioner;

(b) by a family member of a legal practitioner as a result of any theft committed by that legal practitioner;

(c) by any legal practitioner as a result of any theft committed by any partner or employee of that legal practitioner or by any employee of any partnership in which the legal practitioner is a partner;

(d) by any legal practitioner as a result of any theft committed by any member or employee of a legal practice company of which the legal practitioner is a member;

(e) as a result of theft committed by a legal practitioner whose fidelity has been guaranteed by a person, either in general or in respect of the particular transaction, to the extent to which it is covered by the guarantee;

(f) by any person as a result of any theft committed by any legal practitioner after such person has received a notification in writing from the secretary of the Council or the board of control warning him or her against the employment or continued employment of such legal practitioner;

(g) by any person as a result of theft of money which a legal practitioner has been instructed to invest on behalf of such person.

(2) A claim for reimbursement as contemplated in section 25 shall be limited-

(a) in the case of money entrusted to a legal practitioner, to the amount actually handed over, without interest; unless interest has been recovered, or unless the Board of Control, in its discretion, decides to pay interest; and

(b) in the case of securities or other property, to an amount equal to the average market value of such securities or property at the date when written demand is first made for their delivery, or, if there is no average market value, the fair market value as at the date of such securities or other property, without interest.

(3) Only the balance of any loss suffered by any person after deduction from the loss of the amount or value of all money or other benefits received or receivable by that person from any source other than the Fund, may be recovered from the Fund.

(4) Subject to subsection (5), a legal practitioner must be regarded as having been instructed to invest money for the purposes of subsection (1)(g), where a person-

(a) who entrusts money to the legal practitioner; or

(b) for whom the legal practitioner holds money, instructs the legal practitioner to invest all or some of that money in a specified investment or in an investment of the legal practitioner's choice.

(5) For the purposes of subsection (1)(g), a legal practitioner must be regarded as not having been instructed to invest money if he or she is instructed by a person-

(a) to pay the money into a trust account if such payment is for the purpose of investing such money in such account on a temporary or interim basis only pending the conclusion or implementation of any particular matter or transaction which is already in existence or about to come into existence at the time that the investment is made and over which investment the legal practitioner exercises exclusive control as trustee, agent or stakeholder or in any fiduciary capacity;

(b) to lend money on behalf of that person to give effect to a loan agreement where that person, being the lender-

(i) specifies the borrower to whom the money is to be lent;

(ii) has not being introduced to the borrower by the legal practitioner for the purpose of making that loan; and

(iii) is advised by the legal practitioner in respect of the terms and conditions of the loan agreement; or

(c) to utilise money to give effect to any term of a transaction to which that person is a party, other than a transaction which is a loan or which gives effect to a loan agreement that does not fall within the scope of paragraph (b).

(6) Subsection (1)(g) does not apply to money which a legal practitioner is authorised to invest where the legal practitioner acts in his or her capacity as executor, trustee or curator or in any similar capacity.

(7) A legal practitioner who has been instructed to invest money as contemplated in subsection (4) shall, as soon as practicable after he or she has received such instruction but prior to the receipt of the money to be invested, notify the person giving the instruction of the provisions of subsection (1)(g) in the form and manner prescribed by the Board of Control in terms of subsection (8).

(8) For the purposes of subsection (7), the Board of Control shall issue directives prescribing the form and manner in which a notice referred to in that subsection shall be given and may from time to time review and, if necessary, revise such directives.

(9) Any legal practitioner who contravenes subsection (7) shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding two years.

#### **40. Transitional provisions relating to liability of Fund for investments**

The Fund is not liable for loss of money caused by theft committed by a practitioner, candidate legal practitioner, employee or agent of a legal practitioner where the money is invested or should have been invested on instructions given before the date contemplated in section 39(1)(g) and where-

(a) the money is to be repaid, at any time after that date, to the beneficiary specified in any agreement whether with the borrower or legal practitioner;

(b) the theft is committed at any time after the expiration of 90 days after the investment matures or after the expiration of 90 days after the date contemplated in section 39(1)(g);

(c) repayment is subject to the lender making a demand or is subject to the occurrence of an impossible or uncertain event; or

(d) the repayment date is not fixed.

#### **41. Procedure for instituting claims against the fund**

(1) A person who has a claim against the Fund in respect of any theft contemplated in section 25 shall-

(a) give written notice of the claim to the Council and to the Board of Control within six months after the claimant became aware of the theft or by the exercise of reasonable care should have become aware of the theft; and

(b) within six months after a written request has been sent to him or her by the Board of Control, the claimant must furnish the Board with such proof as the Board may reasonably require.

(2) If the Board of Control is satisfied that, having regard to all the circumstances, a claim or the proof required by the Board has been lodged or furnished as soon as practicable, it may in its discretion extend any of the periods referred to in subsection (1).

#### **42. Actions against the Fund**

(1) No action may be instituted against the Fund unless the claimant has exhausted all available legal remedies against the legal practitioner in respect of whom the claim arose, or his or her estate, and against all other persons liable in respect of the loss suffered by the claimant: Provided that the Board of Control may waive this requirement where it is practically impossible for the claimant to exhaust all available legal remedies..

(2) Any action against the Fund in respect of any loss suffered by any person as a result of any theft committed by any legal practitioner, or an employee of any legal practitioner, shall be instituted within one year of the date of notification directed to such person or his or her legal representative by the Board of Control informing him or her that the Board of control rejects the claim to which such action relates.

(3) In an action against the Fund all defences which would have been available to the person against whom the claim arose, shall be available to the Fund.

(4) Any action against the Fund may, subject to the provisions of this Act and the regulations made thereunder, be brought in any court having jurisdiction in respect of the claim and the cause of action shall be deemed to have arisen where the cause of use of action against the legal practitioner arose.



#### **43. Subrogation**

On payment out of the Fund of money in settlement in whole or in part of any claim under this Act, the Fund shall be subrogated to the extent of such payment to all the rights and legal remedies of the claimant against any legal practitioner or any person in relation to whom the claim arose, or in the event of his or her death or insolvency or other legal disability, against any person having authority to administer his or her estate.

#### **44. Claims may be charged against future revenue of Fund**

(1) If the Fund at any time has insufficient assets to settle all claims and judgments, such claims and judgments shall, to the extent to which they are not settled, be charged against future revenue of the fund.

(2) The Board of Control may in its discretion determine the order in which claims and judgments in terms of subsection (1) shall be settled, and may, if the revenue of the Fund is not sufficient to settle all claims in full, settle any claim or judgment in whole or in part.

(3) Without limiting the discretion of the Board of Control it shall, in applying the Fund towards such settlement of claims and judgments, consider the following, namely-

(a) the relative degrees of hardship suffered or likely to be suffered by the various claimants should their claims against the fund not be settled in whole or in part;

(b) subject to paragraph (a), the full settlement of relatively small claims before relatively large claims are settled to a greater extent than the small claims;

(c) in equal circumstances, the priority of claimants according to the dates of the judgments or the dates when the claims were admitted by the Board of Control, as the case may be.

#### **45. Insolvency of Fund**

In the event of the Fund becoming insolvent it may be wound up in terms of the Insolvency Act.

#### **46. Exemption of fund from certain provisions of certain laws**

(1) The revenue of the Fund shall be exempt from the provisions of any law relating to payment of income tax or any other tax or levy by the State.

(2) Any provision of any law relating to insurance (other than a law relating to the compulsory insurance of employees) or the provision of security in connection therewith, shall not apply to the Fund.

#### **47. Indemnification in respect of certain acts**

No action for damages shall be instituted-

(a) against the Fund, the Board of Control or any member, official or employee of the Board of Control in respect of anything done in the *bona fide* exercise or performance of its or his or her powers or duties in terms of the provisions of this Act; or

(b) against the Council, a member of the Council or official or employee thereof, in respect of any notification issued in good faith for the purposes of section 39(1)(f).

#### **48. Preservation and disposal of records and documents in possession of Board of Control**

(1) Any record or document in possession of the Board of Control relating to any claim instituted against the Fund shall, subject to the provisions of subsection (2), be preserved at the office of the secretary of the Board of Control.

(2) The Chairperson of the Board of Control may, after the lapse of 5 years from the date on which any claim to which any record or document relates is settled by the Board of Control or adjudicated upon by the court or rendered unenforceable by lapse of time, direct that such record or document be removed to some other place of custody or be destroyed or otherwise disposed of.

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## PART IV

### TRUST ACCOUNTS

#### 49. Trust accounts

(1) Any practitioner, partnership of practitioners or legal practice company obliged in terms of section 32 to keep a trust account, shall open a separate trust banking account at a banking institution in the Republic and shall deposit therein the money received or held by him on account of any person.

(2) A practitioner, partnership or company obliged to keep a trust account may invest in a separate trust interest-bearing account with any banking or financial institution any money deposited in the practice trust banking account which is not immediately required for any purpose, provided that the trust interest-bearing account shall contain a reference to this section.

(3) Any separate trust interest-bearing account which is opened by a practitioner, partnership or company for the purpose of investing therein, on the instructions of any person, any money deposited in the practice trust banking account and over which the practitioner or practice exercises exclusive control as trustee, agent or stakeholder or in any other fiduciary capacity, shall contain a reference to this sub-section.

(4) Interest accrued on money deposited in terms of sub-sections (1) and (2) shall be paid over to the Fund by the practitioner or practice concerned at the time and in the manner prescribed by the Board of Control of the Fund.

#### 50. Accounting in respect of trust monies

(1) A practitioner or practice which is obliged to keep a trust account shall keep proper accounting records containing particulars and information in respect of any money received, held or paid on account of any person, of any money invested in a trust interest-bearing account referred to in sections 49(2) and 49(3) and of any interest on money so invested which is paid over to the practitioner or practice.

(2) The Council may itself, or through its nominee, at the cost of the Council, inspect the accounting records of any practitioner or practice in order to satisfy itself that the provisions of section 49 and sub-section (1) of this section are being observed, and, if on such inspection it is found that these provisions have not been complied with, the Council may write up the accounting records of the practitioner or practice and recover the costs of the inspection and writing up of the accounts from the practitioner or practice concerned.

(3) For the purposes of sub-sections (1) and (2), 'accounting records' includes any record or document kept by or in the custody or under the control of any practitioner which relates to -

(a) money invested in a trust interest-bearing account referred to in section 49(2) or 49(3);

(b) interest on money so invested;

(c) any estate of a deceased person or any insolvent estate or any estate placed under curatorship, in respect of which such practitioner is the executor, trustee or curator; or

(d) the practice of the practitioner, partnership or company.

### **51. Trust money and property not part of practice assets**

(1) No amount standing to the credit of any practice trust account shall be regarded as forming part of the assets of the practitioner, partnership or any partner, company or any member thereof, and may accordingly not be attached by the creditor of any such person or practice: Provided that any excess remaining after all claims of persons whose money has, or should have been deposited or invested in such trust account, and all claims in respect of interest on money so invested, shall be deemed to form part of the assets of the practitioner or practice.

(2) Trust property which is registered in the name of a practitioner or practice, or jointly in the name of the practitioner or practice and any other person in a capacity as administrator, trustee, curator or agent, shall not form part of the assets of the practitioner, practice or other person.

### **52. Prohibition on operation of trust account by a Court**

A High court may, on application made by the Council, and on good cause shown, prohibit a practitioner or practice from operating in any way on the practice trust account, and may appoint a curator bonis to control and administer such trust account, with such rights, duties and powers in relation thereto as the Court may deem fit.

### **53. Appointment of curator bonis by a Master of the High Court**

(1) If any practitioner practising on his or her own account, alone or in partnership -

(a) dies;

(c) becomes insolvent;

(c) is struck off the roll or suspended from practice

(d) is declared by a competent court to be incapable of managing his or her own affairs; or abandons his or her practice or ceases to practice,

a Master of a High court may, on application made by the Council or by any person having an interest in the trust account of that practitioner, appoint a curator bonis to control and administer such account, with such rights, duties and powers as the Master may deem fit: Provided that where the practitioner was practising in partnership with another legal practitioner or other legal practitioners, the Master shall allow the trust account to remain under the control of the remaining partner or partners, unless there is good reason not to do so.

(2) If a legal practice company is liquidated or placed under judicial management, whether provisionally or finally, a Master of a High court may, on application made by the Council or by any person having an interest in the trust account of that practice, appoint a curator bonis to control and administer such account, with such rights, duties and powers as the Master may deem fit.

(3) Any person who is prejudiced by a decision of a Master in terms of sub-sections (1) or (2), may, within 30 days after obtaining knowledge of the decision, appeal against that decision to a High court, and the court may confirm or vary the decision or give such other decision as in its opinion the Master should have given.

#### **54. Rights of banking and financial institutions in respect of trust accounts**

(1) Any banking institution with which a practice trust account, or any separate account forming part of a practice trust account, is kept shall not by reason only of the name or style by which the account concerned is distinguished, be deemed to have knowledge that the practitioner or practice is not entitled to all money paid into such account or with which such account is credited: Provided that the provisions of this subsection shall not relieve such banking institution from any liability or obligation which legally exists and to which it would be subject apart from the provisions of this Act.

(2) Notwithstanding anything in subsection (1), a banking institution at which a practice trust account, or any separate account forming part a trust account, is kept shall not, in respect of any liability of the practitioner or practice to such banking institution, not being a liability arising out of or in connection with any such account, have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against money standing to the credit of any such account.

(3) The provision of this section shall not be construed-

(a) as depriving any banking institution of any existing right;

(b) as taking away or effecting any claim, lien, counter-claim, right of set-off, or charge of any kind which a practitioner or practice has against or on any money held or received on account of any person;

(c) as relieving any practitioner or practice who or which has invested any money referred to in subsection (1) in a trust savings or other interest-bearing account referred to in section 49(2) or 49(3), of any liability in respect thereof.

(4) Any banking institution at which a practitioner keeps his trust account or any separate account forming part of his trust account, shall, if so directed by the Council, furnish the Council with a signed certificate which indicates the balance of such account at the date or dates stated by the Council.

#### **55. Application of this Part of the Act to the State Attorney**

The provisions of this Part of the Act shall not apply to a State Attorney or a member of his or her professional staff.

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### **PART V**

#### **DISCIPLINARY STRUCTURES**

##### **56. Appointment of a Legal Ombudsman**

(1) The President, in consultation with the Minister and the Council, shall appoint a person to be a Legal Ombudsman.

(2) The Legal Ombudsman shall be a South African citizen who is a fit and proper person to hold such office, who has specialised knowledge of legal practice, and who, as a minimum qualification, -

(a) is a judge or retired judge of a High Court; or

(b) is qualified to be admitted as a legal practitioner and has, for a cumulative period of at least 10 years after having so qualified-

- (i) practised as a legal practitioner; or
  - (ii) lectured in law at a university and had some experience of legal practice; or
  - (c) has acquired specialised knowledge of or experience of the administration of justice in aspects relevant to the regulation of legal practice over a period of not less than 10 years;
  - (d) has acquired cumulative experience amounting to not less than ten years in the fields mentioned in (a), (b) and (c) above.
- (3) The Legal Ombudsman shall not perform remunerative work outside his or her official duties.
- (4) The Legal Ombudsman is appointed for a non-renewable period of seven years.
- (5) The Legal Ombudsman may be removed from office by the President, acting in consultation with the Minister and the Council, on the ground of misconduct, incapacity or incompetence.

### **57. Objects of the establishment of the office of the Legal Ombudsman**

- (1) The objects of establishing the office of the Legal Ombudsman are -
- (a) To protect the public interest;
  - (b) To ensure the efficient and effective handling of complaints of misconduct made against legal practitioners; and
  - (c) To promote high standards of integrity in the legal profession.

### **58. Powers and Functions of the Legal Ombudsman**

- (1) The Legal Ombudsman has all the powers necessary to achieve the objects set out in section 57. More particularly, the Legal Ombudsman has the power to -
- (a) investigate the conduct of any legal practitioner or legal practice;
  - (b) report on that conduct; and
  - (c) take appropriate action.
- (2) The power of the Legal Ombudsman is subordinate to the power of the High Court to regulate the conduct of Legal Practitioners.
- (3) Any report issued by the Legal Ombudsman must be open to the Public and a copy thereof must be delivered to the Council within thirty days of the report being finalised.
- (4) The Legal Ombudsman shall have the power to appoint officials to his or her office to fulfill the functions of that office as defined in this Act.
- (5) The officials appointed in terms of section (4) shall be public servants and their conditions of service shall be governed by public service laws and regulations.
- (6) In making appointments in terms of section (4) the Legal Ombudsman must take account of the need for his or her office to reflect broadly the race and gender composition of South African society.

(7) The office of the Legal Ombudsman shall be financed by the by an annual appropriation made by the Legal Practitioners Fidelity Fund, the amount of which shall be determined by the Fund in consultation with the Minister and the Council.

(8) In the event of the Funds available in terms of sub-section (7) being insufficient to enable the office of the Legal Ombudsman to fulfill the functions which it is required to perform in terms of this Act, the Minister may request Parliament to make an appropriation for the additional funding of the office.

### **59. Accredited Disciplinary Structures**

(1) Any professional organization formed by and representative of legal practitioners may apply to the Council for accreditation as a disciplinary structure.

(2) The Council must consult with the Legal Ombudsman before deciding whether to grant the accreditation referred to in sub-section (1).

(3) The Council may, by notice published in the Government Gazette, grant to a professional organization accreditation as a disciplinary structure and such accreditation may be subject to conditions which must be set out in the notice.

(4) The accreditation referred to in sub-section (3) may be withdrawn or amended by the Council and notice of such amendment or withdrawal must be published in the Government Gazette.

(5) A professional organization shall be entitled to be furnished with written reasons for a refusal by the Council to grant it accreditation, or for withdrawal of its accreditation, or for amendment of the conditions subject to which it is accredited.

(6) Organizations which have been accredited by the Council in terms of this section will be known as Accredited Disciplinary Structures.

### **60. Disciplinary powers of the Council**

The provisions of this Part of the Act do not derogate in any way from the power which the Council has to take disciplinary action against legal practitioners and paralegal practitioners registered and enrolled by it.

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## **PART VI**

### **COMPLAINTS OF MISCONDUCT ON THE PART OF LEGAL PRACTITIONERS**

#### **61. By and to whom complaints may be made**

(1) Any person may make a complaint about the conduct of a legal practitioner-

(a) to the legal ombudsman; or

(b) to the Council; or

(c) to an Accredited Disciplinary Structure (hereinafter referred to as an ADS).

(2) The Council or an ADS may make a complaint to the Legal Ombudsman about the conduct of a registered legal practitioner.

(3) The Council or ADS must notify the Legal Ombudsman as soon as practicable after receiving a complaint under subsection (1).

(4) As soon as practicable after receiving a complaint under subsection (1), the Legal Ombudsman must notify the Council of a complaint received.

## **62. Time within which a complaint must be made**

(1) Subject to subsection (2), a complaint may not be made more than 3 years after the misconduct complained of is alleged to have occurred, or the complainant first obtained knowledge thereof.

(2) The Legal Ombudsman, the Council or an ADS may accept a complaint made more than 3 years after the conduct is alleged to have occurred, or the complainant obtained knowledge thereof, if satisfied-

(a) that there was a reasonable cause for the delay in making the complaint; or

(b) that it is otherwise in the public interest to do so.

## **63. Procedure for instituting complaint**

(1) A complaint must-

(a) be in writing in the form (if any) approved by the Legal Ombudsman; and

(b) identify and provide contact details with regard to the complainant and the legal practitioner about whom the complaint is made; and

(c) give details of the alleged misconduct of the legal practitioner; and

(d) if compensation is claimed, specify to the best of the complainant's knowledge any pecuniary loss suffered.

(2) The Legal Ombudsman, the Council or an ADS must give reasonable assistance to a person in formulating a complaint.

(3) The Legal Ombudsman, the Council or an ADS may require a complainant to give further details of the complaint and may require the complainant to verify any details of the complaint by sworn declaration or in another manner specified by the Legal Ombudsman, the Board or an ADS.

(4) A requirement under subsection (3) must be in writing and must allow the complainant a reasonable time to comply.

## **64. Dismissal of unjustified complaints**

(1) The Legal Ombudsman, the Council or an ADS may dismiss a complaint, by giving written notice to the complainant, if satisfied that the complaint is frivolous, vexatious, misconceived or lacking in substance.

(2) The notice must include the reasons for the dismissal.

(3) The Council or an ADS must notify the Legal Ombudsman as soon as practicable after dismissing a complaint under this section, including the reasons for the dismissal.

(4) If the Council or an ADS dismisses a complaint under this section, the complainant may refer the complaint to the Legal Ombudsman in writing within 30 days, or such longer period as the Legal Ombudsman may allow, after receiving notice of the dismissal.

#### **65. The Council or ADS may refer complaints to Legal Ombudsman**

(1) The Council or an ADS may refer a complaint made to it to the Legal Ombudsman for investigation under section 66.

(2) The Legal Ombudsman may decline to investigate a complaint referred to him or her by the Council or an ADS under subsection (1) and refer the complaint back to the ADS for investigation, or further investigation or recommended action..

#### **66. Investigation by Legal Ombudsman**

(1) The Legal Ombudsman must investigate-

(a) a complaint made to him or her, other than a complaint dismissed by him or her under section 64 or section 65;

(b) the conduct of a legal practitioner if the Council or the Legal Practitioners Fidelity Fund requests an investigation.

(2) The Legal Ombudsman may investigate the conduct of any legal practitioner which comes to his or her notice if he or she has reason to believe that the conduct may amount to unprofessional or dishonourable or unworthy conduct, even though no complaint has been made about the conduct.

(3) The Council or an ADS must provide any reasonable assistance required by the Legal Ombudsman in the conduct of an investigation under this section, including access to, or copies of, any documents held by the Council or an ADS that relate to the matter under investigation.

#### **67. Investigation by the Council or ADS**

(1) The Council or an ADS must investigate a complaint made to it, other than a complaint dismissed under section 64.

(2) The Council or an ADS may investigate the conduct of any legal practitioner at a time when that legal practitioner was a regulated legal practitioner of that ADS or the Council if it has reason to believe that the conduct may amount to unprofessional or dishonourable or unworthy conduct, even though no complaint has been made about the conduct.

(3) The Legal Ombudsman must provide any reasonable assistance required by the Council or an ADS in the conduct of an investigation under this section, including access to, or copies of, any documents held by the Legal Ombudsman that relate to the matter under investigation.

#### **68. Legal Ombudsman to monitor investigations by the Council or an ADS**

(1) The Legal Ombudsman must monitor investigations being conducted by the Council or an the ADS under section 67.

(2) The Council or ADS must report to the Legal Ombudsman on request on the progress of an investigation it is conducting.

#### **69. Legal Ombudsman may give directions to the Council or ADS**



(1) The Legal Ombudsman may give written directions to the Council or an ADS on the handling of an investigation under section 67.

(2) If an ADS does not comply with the directions, the Legal Ombudsman must report the non-compliance to the Council.

(3) If directions given by the Legal Ombudsman in terms of sub-section (1) are not complied with by the ADS of Council within thirty days, or such shorter period as the Legal Ombudsman requires by written notice, the Legal Ombudsman may take over the investigation.

#### **70. Legal practitioner must provide information and documents**

(1) The Legal Ombudsman, the Council or an ADS may require a legal practitioner subject to an investigation under this section to provide-

(a) a full written explanation of the legal practitioner's conduct; and

(b) any other information or documents-

and to verify the explanation, information or documents by a sworn affidavit or another manner specified by the Legal Ombudsman, the Council or an ADS.

(2) For the purpose of an investigation under this Act, the Legal Ombudsman, the Council or an ADS may require a legal practitioner that is not under investigation to provide any information or documents and to verify the information or documents by a sworn affidavit or another manner specified by the Legal Ombudsman, the Council or an ADS.

(3) A requirement under subsection (1) or (2) must be in writing and must allow the legal practitioner at least 14 days to comply.

(4) A legal practitioner may not refuse to comply with subsection (1) or (2)-

(a) on the ground of legal professional privilege; or

(b) on the ground that the production of the record or giving of the information may tend to incriminate the legal practitioner.

(5) If a legal practitioner, before producing a document or giving an explanation or information, objects to the Legal Ombudsman, the Council or an ADS on the ground that the production of the document or giving of the explanation or information may tend to incriminate the legal practitioner, the document, explanation or information is inadmissible in evidence in any proceeding against them for an offence, other than-

(a) an offence against this Act; or

(b) any other offence in relation to keeping of trust accounts or the receipt of trust money; or

(c) an offence of perjury.

#### **71. Investigation to be conducted expeditiously**

(1) An investigation under this Act must be conducted as expeditiously as possible.

(2) Until an investigation arising from a complaint is completed and a decision is made under section 64, the body conducting the investigation must report its progress to the complainant and, if that body is the **Council or an ADS, to the Legal Ombudsman at not less than six monthly intervals.**

## 72. Procedure after an investigation is completed

(1) After completing an investigation under this Act, the Legal Ombudsman, the Council or an ADS must deal with the matter in accordance with this section.

(2) The Legal Ombudsman, the Council or an ADS carrying out an investigation shall compile a report of the investigation, and a report compiled by the Council or an ADS shall be submitted to the Legal Ombudsman.

(3) If such a report reveals *prima facie* evidence which in the opinion of the Legal Ombudsman, the Council or an ADS concerned makes it desirable that an enquiry in terms of section .... be instituted, the Legal Ombudsman, the Council or the ADS concerned shall serve a copy thereof on the legal practitioner concerned. (Suggestions and comments with regard to the enquiry procedure are invited)

(4) To the extent that such a report contains statements of witnesses which would have been admissible as oral evidence at an enquiry in terms of section 41 and 51, the provisions of section 213 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply *mutatis mutandis* in respect of those statements at such an enquiry.

(5) The person presiding at the enquiry shall keep or cause to be kept a record of the proceedings at the enquiry and of the evidence given.

(6) The Legal Ombudsman, the Council or an ADS conducting an enquiry may find the person concerned guilty of unprofessional or dishonourable or unworthy conduct, and may-

(a) in the case of a legal practitioner-

(i) impose upon him or her a fine not exceeding R10 000; or

(ii) caution or reprimand him or her;

(iii) for a special period or until otherwise decided by the Legal Ombudsman, the Council or an ADS, debar him or her from engaging or continuing to engage a candidate legal practitioner; and

(iv) recover from him or her the costs incurred in connection with such enquiry;

(b) in the case of a candidate legal practitioner-

(i) cancel or suspend his or her articles of clerkship or contract of service; or

(ii) impose upon him or her a fine not exceeding R2 000; or

(iii) reprimand or caution him or her;

(7) Where a person referred to in subsection (1) is found guilty of the conduct referred to therein, it may-

(a) on the conditions determined by it postpone the taking of any steps in respect of him or her or the imposition of any punishment upon him or her;

(b) impose a fine referred to in subsection (1), but suspend the payment of such fine, or any part thereof.

(8) (a) If the taking of any steps or the imposition of any punishment has been postponed for a particular period in terms of subsection (2), and if at the end of that period the Legal Ombudsman, the Council or an ADS concerned is satisfied that the person concerned has substantially observed all the

relevant conditions, it shall inform that person that no steps will be taken in respect of him or her or that no punishment will be imposed upon him or her.

(9) If the payment of a fine or any part thereof has been suspended by the Legal Ombudsman, the Council or an ADS for a particular period in terms of subsection (2), and if at the end of such period it is satisfied that the person concerned has substantially observed all the relevant conditions, the Legal Ombudsman, the Council or the ADS concerned shall inform such person that the payment of that fine or that part thereof will not be enforced.

(10) A fine imposed at an enquiry in terms of this section and the costs incurred in connection with such enquiry may be recovered by legal process in the magistrate's court having jurisdiction.

(11) A Legal Ombudsman, the Council and ADS may to such extent and in such manner as may be prescribed publish information relating to an enquiry held by it in terms of this Act.

### **73. Appeal against finding at enquiry**

(1) A person who has been found guilty in terms of section 72 may within a period of thirty days of the date of the decision being made appeal to a competent court against the finding by lodging with the registrar of that court a notice of appeal setting out in full his or her grounds of appeal.

(2) A person who appeals in terms of subsection (1) shall when lodging such notice of appeal shall on the same day deliver or send to the Legal Ombudsman, the Council and the ADS concerned a copy of the notice of appeal.

(3) The Legal Ombudsman, the Council or the ADS concerned shall within a period of thirty days of the date upon which he or she received the notice of appeal referred to in subsection (1), send to the registrar referred to in that subsection in respect of the enquiry concerned-

(a) three copies of the record referred to in section 72;

(b) the documentary evidence admitted at the enquiry;

(c) a statement of the finding of the Legal Ombudsman, the Council or ADS which held the enquiry and the reasons for such finding;

(d) any observations which the Legal Ombudsman, the Council or ADS may wish to make.

(4) An appeal in terms of subsection (1) shall be prosecuted as if it were an appeal from a judgment of a magistrate's court in a civil matter, and all the rules applicable to such last-mentioned appeal in respect of the hearing thereof shall *mutatis mutandis* apply to an appeal under this section.

(5) The court hearing an appeal under this section shall-

(a) confirm the finding appealed against; or

(b) set that finding, and the punishment imposed in respect thereof, aside; or

(c) confirm that finding, but set that punishment aside, and impose in its place such punishment as could have been imposed by the Legal Ombudsman, the Council or the ADS concerned.

(6) If a person succeeds in his or her appeal in terms of this section, the costs of the enquiry shall not be recoverable from that person by the Legal Ombudsman, the Council or the ADS concerned, and if such costs have already been recovered by the Legal Ombudsman, the Council or ADS, such costs shall be refunded.