



## LEGAL PRACTICE BILL

- Draft approved by Cabinet in December 2010.
- Handed to LSSA in March 2011 for comment by May.
- Adjustments were reportedly made.
- Certification by State Law Advisors still in progress.

## LEGAL PRACTICE BILL

- Bill to be introduced in Parliament 'soon'
- Justice Portfolio Committee hearings
- Approval by Parliament and NCOP
- Implementation in 3 stages: Chapter 10
  - Establishment of Transitional Council
  - SA Legal Practice Council (LPC) 2 years later, followed by rest of the Act.

## KEY ISSUES

- **UNIFIED PROFESSION** – to what extent?  
Referral practice to remain (advocates)  
Public money → trust accounts (attorneys)
- **GOVERNING STRUCTURES**  
accredited voluntary organisations (AVOs); Regional Councils (RCs)
  - **LEGAL PRACTICE SOCIETY**
  - **RESERVED WORK**
  - **MDPs**
  - **FUNDING**

## SA LEGAL PRACTICE COUNCIL

### DoJ Bill: 21 Councillors

- 10 Attorneys (elected)
- 6 Advocates (elected)
- 1 Law teacher
- 3 Ministerial appointees
- 1 Legal Aid South Africa nominee

**Council must be representative of race, gender, disabled and regions.**

## SA LEGAL PRACTICE COUNCIL

- Determines policy, codes and rules
- Delegates functions to AVOs & RCs
- Registers and enrolls attorneys and advocates (LPs)
- Converts registration of LPs
- Reports to the Minister and Parliament

## REGIONAL COUNCILS

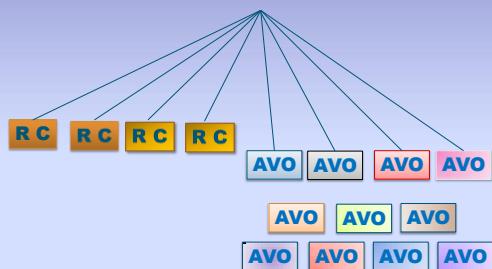
Delegated functions to be determined by TC and LPC

LSSA proposes functions to be listed in the Act:

- Administration of articles of clerkship
- Training, exams and admission
- Trust accounts, audits and Fidelity Fund certificates
- Discipline
- Suspensions and strikings
- Community service
- Assessment of fees



## DoJ LEGAL PRACTICE COUNCIL



## ACCREDITED VOLUNTARY ORGANISATIONS (AVOs)

Recognised by LPC, if

- have a code of conduct
- can exercise discipline
- have resources to perform delegated functions.



## CONSEQUENCES OF AVOs

- Fragmentation and disintegration of the attorneys' profession
- Different standards, training , ethics and discipline
- Costly and impractical
- Not in the public interest



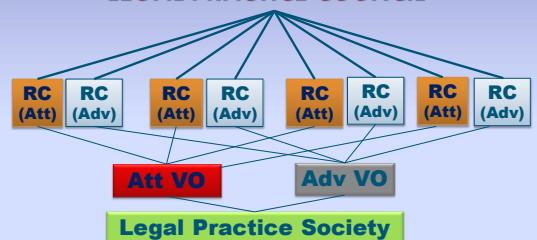
## LSSA LEGAL PRACTICE COUNCIL



Unified governing structure – no AVOs  
9 RCs: delegated functions only



## ALTERNATIVE LSSA PROPOSAL (statutory component) LEGAL PRACTICE COUNCIL



## GENERAL COUNCIL OF THE BAR

"In our opinion we as advocates have little to contribute to the day to day regulation of the practice of attorneys.... .

Attorneys have little if anything to contribute to the day to day regulation of practice in the referral profession.

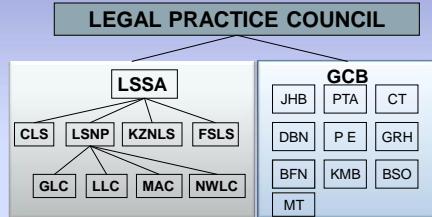
Two bodies falling under the LPC [should be recognised], the one to regulate the day to day affairs and discipline of the advocates, and the other to do the same for the attorneys. Both such bodies must function under the auspices of the LPC which must be responsible for overall policy and setting the standards which are common to the two professions; as well as ensuring that the two regulatory bodies which fall under it actually do perform their allotted functions."

Rashid Vahed SC, Chairperson, General Council of the Bar

*The Advocate, April 2011*



## GCB PROPOSAL



## LEGAL PRACTICE

### Candidate LPs:

LLB + PLT + exam, as prescribed by MoJ on advice of TC / LPC

### LPs:

admitted (and struck) by High Court; registered and enrolled by LPC as attorneys, advocates, notaries, conveyancers, patent or trade mark attorneys

Conversion from attorney ↔ advocate by LPC



## LEGAL PRACTICE

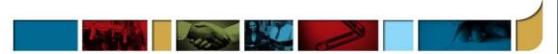
### ATTORNEYS:

may practise for own account, as part of a juristic entity, Legal Aid SA or public-interest legal centre

Attorneys may share money only with attorneys

### ADVOCATES

may not share fees by way of partnership, commission, allowance, etc



## LEGAL PRACTICE

Attorneys and advocates may practise in non-profit juristic entity.

University law clinic to be supervised by an attorney

MDPs: no provision, but SA Law Reform Commission is investigating



## LEGAL SERVICES

Only LPs who are admitted and enrolled, may render legal services for reward

'Legal services' not defined

LSSA proposed definition:

*Advice/assistance to public, relating to legal rights/obligations, not incidental to other advice/assistance. Includes appearance in Court.*



## COMMUNITY SERVICE

MoJ to prescribe by regulation

Component of PLT/recurring community service

Includes

- free legal services to public
- legal education and training
- Small Claims Court
- service to NPA
- service on regulating structures



## LEGAL SERVICES OMBUD

Attorney, advocate, academic, administrator of justice, with 10 years' experience.

President appoints after consultation with LPC, determines salary and term of office

Parliament appropriates funding

Ombud

- investigates handling of complaints by LPC/RCS
- makes recommendations to LPC and MoJ
- reviews decisions of Fidelity Fund Board
- employs Director and staff
- reports to Minister and Parliament



## FUNDING OF LPC & RCS

- membership and admin fees
- appropriation by Fidelity Fund
- other sources, eg fines

LSSA proposes funding from collection commission earned on interest paid over to the Fidelity Fund



## TRANSITIONAL COUNCIL

8 attorneys, 8 advocates, 1 law teacher, 2 Ministerial appointees, 1Legal Aid SA

TC to recommend to Minister in 18 months:

- LPC: procedure for first election
- RCS: establishment, areas of jurisdiction, powers and duties, election and functioning
- Existing law societies: abolition, transfer of assets, rights and obligations
- Staff of law societies, LSSA and Attorneys Fidelity Fund
- PLT requirements for candidate attorneys and pupils
- Fee structure and contingency fees



## REGULATIONS

Justice Minister to make regulations, to give effect to recommendations by the TC.

Regulations must be approved by Parliament before publication in the *Government Gazette*.



## TC POWERS AND FINANCES

- The TC may appoint committees and staff
- May subcontract
- Determines own procedures
- Decisions taken by majority vote
- Funding by AFF, existing law societies and bodies that nominate members of the TC



## CODES AND RULES

TC to publish Code of Conduct for LPs in 18 months

TC to make rules in 18 months, for

- PLT
- Fees
- Complaints to RCs
- DC procedures

Rules to be published in *Government Gazette* for comment in 30 days



## OTHER TRANSITIONAL PROVISIONS

- Existing law societies (including Bophuthatswana and Venda) to be abolished and taken over by LPC
- GCB, Bar councils, BLA, Nadel and other voluntary organisations to remain
- Bophuthatswana and Venda Fidelity Funds to be taken over by Attorneys Fidelity Fund
- Qualifications and status to be recognised
- Pending enquiries and applications to be dealt with by LPC
- 18 laws repealed



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