

Legal Practice Act top of agenda at FSLs AGM

The Law Society of the Free State (FSLs) held its annual general meeting (AGM) in Welkom from 30 to 31 October where its members discussed the Legal Practice Act 28 of 2014 (LPA); uniform rules and the Attorney's Fidelity Fund.

Former Law Society of South Africa (LSSA) Co-chairperson and FSLs councillor, David Bekker, spoke on the LPA. He highlighted a number of sections of the LPA that he thought members of the law society should be aware of.

Mr Bekker explained that the main aim of the LPA is to –

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

Mr Bekker highlighted s 120 of the LPA, which states that chapter 10 comes into operation after a promulgation date and that chapter 2 will only be in operation three years after chapter 10, adding that the legal profession should not be in a panic as there will be a smooth transition and time to adjust.

Mr Bekker spoke on s 96 of the LPA that speaks about the National Forum and transitional provisions. He spoke about the composition of the forum and said the forum will determine issues not yet determined such as making recommendations to the Justice Minister on the establishment composition, powers and functions of the provincial councils and their areas of jurisdiction and practical vocational training requirements that candidate attorneys or pupils must comply with before they can be admitted by the court as legal practitioners.

Mr Bekker went over a few more chapters of the LPA and urged members to read the Act in order to familiarise themselves with it and appreciate its importance.

He also noted that there would not be law societies anymore, but that there would be a regulatory body such as those that the doctors and auditors currently have.

Mr Bekker said that s 14 talks about the minister's powers and the Minister being able to dissolve the Legal Practice Council (LPC). He added that the Minister has to first approach the ombud to investigate and if the Minister is still unhappy, then he or she can take the matter to the High Court.

Mr Bekker said that s 23 deals with the establishment of provincial councils. He said that this section states that the LPC must, at the commencement of chapter 2, establish at least four provincial councils. He added that the section goes on to say that there may not be more than one provincial council per province. 'At the LSSA strategic planning session, it was suggested that some provincial councils should be combined in some provinces so that there are sufficient members to ensure that a council can be afforded'. He said that the LSSA would apply to get the clause not allowing more than one provincial council in a province removed.

Mr Bekker said that since advocates will be allowed to accept briefs directly from clients, they will need to have fidelity fund certificates and trust accounts. He said that this means that they will have to go for bookkeeping training and have bookkeeping systems in place.

Mr Bekker said that s 35 of the LPA states that fees regarding legal services must be in accordance with the tariffs made by the Rules Board. He added that there must be a cost estimate in writing.

Uniform rules

Law Society of the Free State council member, Jan Maree, spoke on uniform rules for the provincial law societies. He said that the process started two or three years ago and that at last year's AGM the FSLs members approved the rules. Mr Maree added that the rules were supposed to be approved by the four provincial law societies last year but one of the law societies did not approve them.

He highlighted some aspects of the amendments that he felt needed to be mentioned. Mr Maree said that there were a few rules that members had suggested should be changed. These rules included:

- Rule 2.60 that deals with voting by proxy. Mr Maree explained that currently, members can carry more than five proxies in the bigger law societies such as the Law Society of the Northern Provinces and the Cape Law Society. He said that voting by proxy is a long standing practice. 'The view is that due to the large number of members who are unable to attend the AGM, one should not exclude those members from voting by proxy. Rule 2.60 that was approved last year, states that no member is able to carry more than five proxies. There is a view that the limitation of five [proxies] is too small a number, and that the number should be increased,' he said. The proposed rule is that the law

society council will from time to time determine the number of proxies a member can carry. The rule will also make provision for the larger law societies to allow their members to carry more than five proxies.

- Mr Maree said that in terms of r 2.66, which provides that voting for the removal of a council member cannot be done by proxy, members were of the view that this 'protection' of council members is not warranted and that it should be removed.
- Speaking on r 32, Mr Maree said that the former rule speaks about law society councils and the assessment of fees. He added that it provides that council can recommend a refund of certain overpayments. 'There is a view expressed by members that council does not have the power to recommend a refund, so rule 32 was deleted in its entirety,' he said.

The amendments to the rules were unanimously approved and adopted.

The new council of the FSLS is:

- Vuyo Morobane – President
- Deidre Milton – Vice President
- Christina Marais – Chief Executive Officer
- David Bekker
- Johannes Fouché
- Etienne Horn
- Nolitha Jali
- Sizane Jonase
- Jan Maree
- Tsiu Matsepe
- Martha Mbhele
- Joseph Mhlambi
- Adila Obbes
- Henri van Rooyen.

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