SUBMISSIONS TO THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

RE: COMMENTS ON THE LEGAL PRACTICE AMENDMENT BILL, 2026

Submitted by:
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1. Introduction

We refer to the call for comment in respect of the Legal Practice Amendment Bill, 2026 that proposes amendments to the Legal Practice Act 28 of 2014 ("LPA") published in the Government Gazette on 7 August 2026. We welcome the opportunity to make these submissions and to contribute to the proposed amendments.

LegalWise (RF) (Pty) Ltd ("LegalWise") and Scorpion Legal Protection (RF) (Pty) Ltd ("Scorpion") are companies underwritten by Legal Expenses Insurance Southern Africa Limited ("LEZA"). LegalWise and Scorpion have been providing affordable legal expenses insurance and paralegal assistance to South Africans for over 40 years. At the core of the purpose for legal expenses insurance is the empowering of affordable and timeous access to justice through which individuals can enforce and defend their legal rights.

The legal profession does not only include practising legal practitioners, it also includes non-practising practitioners who are on the non-practising roll. Section 30(3) of the LPA states that the Legal Practice Council ("LPC") must keep a roll reflecting the particulars of practising and non-practising legal practitioners. The proposed amendments seem to cater only to and for practising legal practitioners. They seek to exclude non-practising legal practitioners without considering the fact that non-practising legal practitioners are fully qualified, with the requisite law degree(s); went through practical vocational training; wrote board exams; have been duly admitted as Legal Practitioners by the High Court and have acquired years of knowledge and experience. Being registered on the non-practising roll, is a requisite for persons not working in law firms, but still working in the broader legal field. The expansion of "reserved work", seems very punitive to non-practising legal practitioners. The impact of this will result in non-practising legal practitioners losing their legal stream of income.

According to the statistics of the practitioner's profession 2017/2018[1], there were 35 541 practitioners in South Africa. These are the stats currently on the Law Society of South Africa website which were sourced from the LSSA LEAD Statistics on the Professions, July 2018.[2] However, these statistics appear to exclude non-practising legal practitioners.

While we support the objective of protecting members of the public from unqualified and unscrupulous service providers, we submit that the proposed amendment is overly broad, disproportionate to its stated purpose, and likely to have serious unintended consequences for access to justice, consumer choice, competition, and affordability of legal services.

The below submissions will address our concerns and inputs for consideration on the proposed amendments.

2. Original intention of the legislature

The proposed amendments to the LPA include, amongst other things, to reserve certain professional work for practising legal practitioners. This includes the drafting, preparation, canvassing, advertising, or offering of the following services:

[1] LSSA Website: https://www.lssa.org.za/about-us/about-the-practitioners-profession/statistics-for-the-practitioners-profession/

[2] LSSA Website: https://www.lssa.org.za/wp-content/uploads/2019/11/LSSA-STATS-DOC-2017-18.pdf

- agreements, deed or writing relating to immovable property or rights in immovable property;
- Wills or other testamentary documents;
- memoranda of incorporation or a prospectus of companies;
- agreements relating to the creation or dissolution of partnerships;
- administration, liquidation or distribution of deceased estates; and
- liquidation of companies.

2.1. Previous legislation

We acknowledge the fact that section 83 of the now repealed Attorneys Act 53 of 1979 contained similar provisions reserving certain work only for practising legal practitioners by making it an offence for anyone else to do that work.

However, the main difference is that unlike section 83(8) of the Attorneys Act limiting the drafting of certain documents to instances only when in "expectation of any fee, gain or reward". The new proposed amendments widen this scope to now also include instances "without reward".

2.2. Changes in society and consumers' behaviour

The services that are proposed to be reserved for practising legal practitioners are mostly routine services needed by South Africans, such as drafting of Wills and keeping them updated.

Research has shown that the behaviour of consumers has shifted over the past few decades and that many professions have changed their way of doing business to accommodate the changing consumer.

These changes in society led to other industries providing non-litigious services to their clients. For example:

- Accounting firms, fiduciary practitioners and trust companies are providing "consulting work" to their clients and include a form of legal advice.
- The banking industry and financial planners also provides legal advice to the clients, drafting of Wills and testamentary documents, assistance with administration of deceased estates, drafting of financial agreement (such as mortgage and loan agreements), and so on.
- Legal Expenses Insurance includes in-house paralegal services to their policy holders and assistance with basic agreements, Wills and so on.
- Various other entities are built around providing non-litigious services to the public, some with a pure focus on Wills and administration of deceased estates.

For many consumers, particularly lower-income households, legal expenses insurance provides affordable access to such services through the in-house services. By restricting these services to practising legal practitioners, consumers who already pay legal insurance premiums will incur additional legal costs to obtain services they currently receive as part of their existing legal cover.

Regardless of the provisions in section 83 of the Attorneys Act being classified as offences, these industries were allowed to continue providing these services without being prohibited or taken to task. This indicated an acceptance of sorts and emphasised the changes in society and the need for greater and more affordable access to justice.

2.3. Missing provisions for more than a decade

The above changes in respect of non-litigious work being dealt with by other institutions that provide more affordable services, are in line with the Preamble of the LPA where it specifically states that "access to legal services is not a reality for most South Africans".

The LPA came into effect on 1 February 2015 without similar provisions from the Attorneys Act regarding the reserved work being included. It can, therefore, be argued that the legislature's intention was to acknowledge the reality mentioned in the Preamble and to allow non-litigious work to be done outside of the legal industry.

Section 33 of the LPA only came into effect on 1 November 2018. Provisions regarding reserved work for non-litigious work still were not included in the LPA. This strengthens the argument that it was again not the intention of the legislature to limit the access to legal services for the consumer.

The continued actions of deliberately excluding the reserved work from the LPA begs the question as to why, after a decade since the LPA came into effect, is the reserving of certain non-litigious work being considered. The consequences will be that the progress made towards allowing a broader access to legal services to South Africans, will now be set back and so will people's access to justice and legal services.

3. Purpose of the proposed amendments

Legislation is enacted with the intention to achieve a certain objective, which should be clear so that the legislation does not appear arbitrary.

The Minister has indicated that one of the purposes of the Amendment Bill is to promote access to justice. Further reasons provided for the proposed amendments include to develop and enhance the skills of legal practitioners, to ensure access to the legal profession, and to address certain practical challenges in the application of the LPA.

The Preamble of the Amendment Bill indicates various purposes it intends to achieve. The proposed amendment to insert subsection 33(1)(c) and subsection 33(1)(e) appears to fall under the purpose to "regulate the authority to render legal services".

3.1. Legal services and validity of documents

There is no definition in the LPA or any other legislation that defines the term "legal services". Without a clear definition, where does one draw the line between what can only be done by a legal practitioner and what not.

Section 33(3) of the LPA provides the following:

> No person may, in expectation of any fee, commission, gain or reward, directly or indirectly, perform any act or render any service which in terms of any other law may only be done by an advocate, attorney, conveyancer or notary, unless that person is a practising advocate, attorney, conveyancer or notary, as the case may be.

The current provisions specifically limit the legal services to those that "in other law" is stated to be done by legal practitioners.

Amending the LPA to state that these documents may only be drafted by practising legal practitioners, is to encroach on the scope of other legislation. The main legislation, i.e. Alienation of Land Act 68 of 1987, Wills Act 7 of 1953 and Companies Act 71 of 2008 do not provide that only practising legal practitioners may draft these documents. It should also be noted that the Administration of Estates Act 66 of 1965 also does not limit the winding up of a deceased estate to legal practitioners. The proposed amendment is too far reaching and can create disharmony amongst the different pieces of legislation.

It is not stated in the proposed amendment whether the listed documents or services would be invalid if they are done by non-practising legal practitioners or whether there would only be consequences on those who drafted the documents and provided the services. If the document would be invalid, then the amendment can be said to be adding an additional requirement for validity of the document which is not in the main legislation. If the document would be invalid, then this magnifies the concern that the purpose, intention or goal to be achieved by the proposed amendment is questionable.

It is further questioned why the Amendment Bill only focusses on specific documents, but leave out other types of documents that can also have dire consequences for the consumers, such as loan agreements, sale agreements of movable goods, and so on.

3.2. Self-help by the consumer

It is noted that the proposed insertion of subsection 33(1)(c) and subsection 33(1)(e) to the LPA does not take away a person's right to draft their own documents. If the proposed amendments are approved and in effect, it would mean that a lay-person with no knowledge of the law can draft their own documents, but a non-practising legal practitioner with the necessary skills and qualifications are not allowed to.

With the focus on drafting of Wills, a Will is fundamentally an expression of a person's testamentary wishes. South African law allows individuals to draft their own Wills, provided the statutory formalities are met. If a testator may legally draft their own will, it becomes difficult to argue that the activity is inherently reserved exclusively for practising legal practitioners.

South African succession law places significant emphasis on testamentary freedom. The testator's intention is the central consideration of a Will and not the person who drafted it. Considering case law regarding applications under section 2(3) of the Wills Act where Wills are under dispute, the legal question is based around ensuring that the document represents the testator's testamentary intention and that the formalities are addressed, not whether the Will was written by a legal practitioner or not.

One could argue that testamentary freedom includes the freedom to choose who assists in recording and drafting one's Will. Limiting that assistance to practising legal practitioners interferes with personal autonomy without necessarily improving outcomes.

The Department of Justice itself recognises that Wills may be prepared not only by legal practitioners, but also by banks, trust companies, executor companies, accountants, and other suitably qualified persons This weakens the proposition that Will drafting is exclusively for practising legal practitioners.

As mentioned before, the preamble to the LPA itself acknowledges that "access to legal services is not a reality for most South Africans". These are sentiments that seem to be echoed in the court rules (Uniform Rules of Court and Magistrates' Courts Rules) which allow a Plaintiff to self-represent, draft and sign their own pleadings with no legal practitioner required.

The High Court in *Damons N.O and Another v Bezuidenhout* (121475/2024) (2025) ZAGPPHC 820 recently ruled that a person who holds a legal qualification and in fact any other person may draft any document according to section 33(1)(b) of the LPA. This means that any person may draft court documents. The court held that a document cannot be said to be intended for use by the mere drafting, it is only once it is appropriately signed and introduced to the legal proceedings that it is in use.

This court ruling and the court rules are progressive as they promote access to justice and ensure that people who cannot access or afford legal practitioners are not prejudiced. The proposed amendment on the other hand, would directly contradict the preamble to the LPA as it would require access to legal practitioners for one to perform basic acts, such as drafting a Will.

3.3. Complex legal services

Although it is understood that more complex agreements and legal documents might require the assistance of a legal practitioner, one should avoid treating everything as complex. This will be illustrated by focusing on a basic Will as an example.

The Amendment Bill incorrectly treats all testamentary work as though it involves complex legal advice. In practice, most Wills prepared for ordinary consumers are straightforward documents dealing with basic testamentary instructions. It does not involve complex estate planning that requires trust structures, tax planning, asset protection strategies, offshore assets, and business succession planning.

The legislation should rather distinguish between routine Will preparation and complex estate-planning services.

4. Skill and qualification

Many legal insurance providers, fiduciary practitioners, trust companies, banks with estate divisions, accountants, insolvency practitioners and financial planners involved in estate planning employ non-practising legal practitioners in various positions, such as legal advisors, corporate governance professionals, compliance officers, in-house counsel or company secretaries. The proposed amendments to the LPA set the impression that only practising legal practitioners are suitably qualified to provide the services in question.

4.1. Non-Practising Legal Practitioners

The proposed amendment appears to, incorrectly, assume that non-practising legal practitioners are unqualified to, for example, draft basic testamentary documents.

Non-practising legal practitioners have:
- obtained law degrees;
- completed practical vocational training;
- been admitted by the High Court; and
- acquired legal knowledge and experience.

The absence of a Fidelity Fund Certificate does not eliminate a person's legal qualifications or competence. A distinction should therefore be drawn between:
- a person who has never been legally qualified; and
- an admitted legal practitioner registered as a non-practising legal practitioner.

4.2. Fiduciary Practitioners

Fiduciary practitioners are specialised professionals who manage assets, estates and legal trusts. The Fiduciary Institute of Southern Africa is a voluntary association without profit with individual fiduciary practitioner members. It sets high minimum standards for the profession and provides consumer education on fiduciary matters. Its members include trust companies and banks as well as legal, accounting and financial planning professions. The areas of focus include Wills, deceased estates, estate planning, impaired capacity, trusts and beneficiary funds.

4.3. Paralegal Professionals

Paralegal professionals are an important key aspect of the legal profession. They also obtain qualifications to work in the profession. For example, the University of Johannesburg provides Diploma in Paralegal Studies (NQF 6). It equips the Paralegal to provide support functions in law firms, legal advice offices, the Department of Justice, and various functions in insurance companies and other entities in the commercial sector.

It is well-known that paralegals routinely assist with:
- estate administration;
- document preparation;
- conveyancing support;
- legal research; and
- succession-related work.

Many paralegals possess substantial specialised expertise, particularly in Wills and Estates. An argument against exclusion is that competence should be assessed by training, experience, and accountability rather than professional title alone. A regulatory framework could require disclosure of status and qualifications rather than imposing a complete prohibition.

5. Consequences of amendments

5.1. Freedom to choose

Consumers are allowed the freedom to choose between:
- private legal practitioners;
- legal insurance providers;
- fiduciary service providers; and
- other lawful service models.

The proposed amendment substantially reduces consumer choice and may have anti-competitive effects. It effectively reserves an entire market segment to practising legal practitioners, which may:
- reduce competition;
- increase prices;
- limit innovation;
- reduce consumer choice; and
- restrict alternative service-delivery models.

The purpose of professional regulation should be public protection, not protection from competition.

5.2. Practical considerations

As previously mentioned, the proposed amendments do not remove a person's right to draft their own documents or provide the services themselves. The concern with the self-help aspect is that there is more room for error when a layperson drafts their own documents, than when a qualified and skilled non-practising legal practitioner does it.

Using a Will as an example again, those who cannot afford to go to a legal practitioner to draft their Will, will do it themselves and may not follow the correct formalities leading to their Will being declared invalid.

This leads to a significant unintended consequence of the proposed amendment that fewer South Africans are likely to have valid Wills. Where obtaining a Will becomes more expensive or less accessible, many consumers will simply postpone or avoid preparing one altogether.

This will inevitably result in:
- more intestate estates;
- increased reliance on the Intestate Succession Act;
- greater administrative burdens on families;
- delays in the administration of deceased estates; and
- increased workload for the Office of the Master of the High Court.

The Master's Office already experiences significant delays. Any legislative measure that discourages Will-drafting is likely to aggravate this existing backlog.

The above consequences could be avoided as there are currently more affordable methods available to get a Will drafted through other institutions that provide the service, like legal expenses insurance companies and banks.

5.3. Socio-economic impact

As mentioned, there are various institutions that provide similar services and have people in their employment. Restricting these drafting and services to only practising legal practitioners, will result in these institutions either to close down completely or to close down specific departments. This will lead to many losing their jobs, which will increase the unemployment rates in South Africa.

A possible solution to these consequences is for the Legal Practice Counsel to further investigate and allow the existence for multi-disciplinary practices as envisioned in section 34(9) of the LPA.

In respect of documents and agreements relating to immovable property, housing will become more expensive as people will not be able to enter into transactions without a legal practitioner drafting the sale agreement. There is already the cost of a transfer attorney, the proposed amendment would only be an added financial burden to the consumer.

5.4. Enforcement

Despite the repealed Attorneys Act and the LPA making it an offence to contravene provisions in question, there is no monitoring mechanism in terms of which the contravention would be enforced. The proposed amendment also provides no enforcement mechanism, suggesting that the effectiveness of the law would be dependent on:

- the integrity of persons who have been rendering these services as non-practising legal practitioners; and
- the possibility of a lay-person reporting that a non-practising legal practitioner drafted their document. This would probably only take place where a document is being disputed or the person is unhappy with the services rendered. If the document is in dispute, the cycle of questions continues, would enforcement of the proposed provision mean the document is invalid, and if so, would that mean the LPA would override the validity requirements of the main governing legislation?

These questions illustrate the difficulty that may be faced in enforcing the proposed provision.

With consideration that consumers can continue to draft the reserved documents themselves, it can also be argued that what a person may lawfully do for themselves should not automatically become unlawful when performed by a competent, qualified person who is not currently practising as a legal practitioner.

5.5. Constitutional infringement and alternative remedies

Section 22 of the Constitution of the Republic of South Africa, 1996 protects the right to choose a trade, occupation or profession, subject to lawful regulation. A blanket prohibition preventing legally qualified non-practising legal practitioners from providing certain services, such as basic testamentary services, may constitute an unjustifiable limitation on that right.

The Amendment Bill goes beyond regulating who may perform legal work. It also prohibits persons from:

- advertising;
- canvassing;
- touting; or
- making known their willingness to provide such services.

This restricts commercial communication and may be broader than necessary to achieve consumer-protection objectives. Parliament should consider whether less restrictive measures could achieve the same objective.

Although not a specific constitutional right, the proposed amendments infringe the general overviewing right of having access to affordable justice and legal services.

At face value, this proposed amendment unfairly discriminates against non-practising legal practitioners. Rights may be limited only by a law of general application and the limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom (section 36 of the Constitution of the Republic of South Africa, 1996).

There are established industries in South Africa that provide these services through the use of non-practising legal practitioners (as mentioned above). These industries are being held accountable by bodies outside of the Legal Practice Counsel. For example, the Financial Sector Conduct Authority.

Apart from being held accountable by a higher regulatory authority, there are legal remedies that will protect the consumer against the various industries, for example:
- contractual liability;
- delictual liability;
- consumer protection legislation where applicable;
- criminal sanctions for fraud; and
- court supervision of testamentary validity.

6. Conclusion

In the light of the above, we respectfully submit that section 7 of the Amendment Bill is overly broad, disproportionate, and likely to undermine rather than advance access to justice.

The proposed amendment:
- reduces access to affordable legal services;
- limits consumer choice;
- creates anti-competitive effects;
- restricts the activities of legally qualified non-practising legal practitioners;
- risks increasing costs for ordinary South Africans.

Legal insurers, fiduciary practitioners, trust companies, banks' estate divisions, accountants, insolvency practitioners and financial planners involved in estate planning should not be viewed as competing with the legal profession. They have been providing affordable legal services to South Africans for decades.

Rather, these industries act as an important gateway into the legal system. Many matters ultimately referred to practising legal practitioners originate through these professionals and insurance providers. Accordingly, they complement rather than undermine the work of legal practitioners.

We therefore recommend that the Bill be amended to create an appropriate exception permitting legal insurance providers and other legitimate service providers that employ admitted non-practising legal practitioners to continue assisting consumers with non-litigious work, subject to appropriate consumer-protection safeguards.

Such an approach would better balance public protection, affordability, competition, and the constitutional imperative of meaningful access to justice.

We trust that you will find this submission useful. Should you have any comments or questions please do not hesitate to contact George Pelser at georgep@legalwise.co.za.

We appreciate the opportunity to make these written submissions.