

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

LEGAL AID BILL

[B 8—2014]

*(As agreed to by the Portfolio Committee on Justice and Correctional Services
(National Assembly))*

[B 8A—2014]

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AMENDMENTS AGREED TO

LEGAL AID BILL

[B 8—2014]

CLAUSE 1

1. On page 3, in line 34, to omit “appointed” and to substitute “designated”.
2. On page 3, after line 36, to insert:

“**“candidate attorney”** means a person undergoing practical vocational training (articles of clerkship) with a view to being admitted and enrolled as an attorney;”.
3. On page 3, in line 48, to omit “24” and to substitute “23”.

CLAUSE 3

1. Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Objects of Legal Aid South Africa

3. The objects of Legal Aid South Africa are to—
(a) render or make available legal aid and legal advice;
(b) provide legal representation to persons at state expense;
and
(c) provide education and information concerning legal rights and obligations,
as envisaged in the Constitution and this Act.

CLAUSE 4

1. On page 4, in line 19, after “practitioners”, to insert “and candidate attorneys”.
2. On page 4, in line 41, after “Constitution”, to delete “,” and to insert “and”.
3. On page 4, in line 42, after “Act”, to omit “and any other law”.
4. On page 4, in line 42, after “result”, to insert:

“and render or make legal aid and legal advice available”.

CLAUSE 6

1. On page 5, in line 9, after “Africa”, to insert:

“after consultation with the Board”.

2. On page 5, in line 10, to omit “collectively” and to substitute “as a whole”.

CLAUSE 7

1. Clause rejected

NEW CLAUSE

1. That the following be a new Clause:

Qualification for membership of Board

- 7.** (1) A director must, subject to subsection (2)—
- (a) be a fit and proper person;
 - (b) be a South African citizen;
 - (c) not be an unrehabilitated insolvent;
 - (d) not be a person declared to be of unsound mind by a court of the Republic;
 - (e) not be a person who has been convicted in a court of first instance—
 - (i) of an offence and sentenced to more than 12 months’ imprisonment without the option of a fine; or
 - (ii) of an offence, which involves any element of dishonesty, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, other than a conviction for an offence committed prior to 27 April 1994 associated with political objectives; or
 - (iii) of an offence under the Companies Act, 2008 (Act No. 7 of 2008), the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984 (Act No. 69 of 1984), the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Act, 2001 (Act No. 38 of 2001), the Financial Markets Act, 2012 (Act No. 19 of 2012), or Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004):
- Provided that if the person in question lodges an appeal against the conviction or sentence, he or she must be suspended from office, pending the outcome of the appeal;
- (f) not have been prohibited from being a director of a company; or
 - (g) not have been removed from an office of trust, on the grounds of misconduct involving dishonesty.
- (2) When constituting the Board in terms of section 6, the following factors must, as far as is practicable, be taken into account—
- (a) the racial and gender composition of South Africa;
 - (b) the objects of Legal Aid South Africa and the Board;
 - (c) representation of persons with disabilities;
 - (d) provincial representation; and
 - (e) experience in and knowledge of—
 - (i) business management;
 - (ii) information technology;
 - (iii) the provision of legal services, including experience as a practising attorney or advocate;
 - (iv) corporate governance;
 - (v) accounting or auditing;
 - (vi) community-based knowledge relevant to legal aid;

- (vii) legal education and training;
- (viii) civil and criminal proceedings and the functioning of the courts and tribunals in general; and
- (ix) knowledge in public interest law.

CLAUSE 10

1. On page 6, in line 8, after “when” to omit “that person”.
2. On page 6, in line 9, after “(a)” to insert:
“he or she”.
3. On page 6, in line 10, after “(b)” to insert:
“he or she”.
4. On page 6, in line 10, after “7;” to omit “or”.
5. On page 6, in line 11, after “(c)” to insert:
“in the case of a director”.
6. On page 6, in line 11, after “(d),” to insert:
“he or she”.
7. On page 6, in line 12, after “Africa” to omit “.” and to substitute “; or”.
8. On page 6, after line 12, to insert:
“(d) his or her term of office as director expires.”.
9. On page 6, after line 20, to insert:
“(3) Before removing a director from office in terms of subsection (2), the Minister must afford the person in question an opportunity to be heard.”.

CLAUSE 13

1. On page 6, after line 48, to insert:
“(3) When constituting a committee the following factors must, as far as is practicable, be taken into account—
(a) the racial and gender composition of South Africa;
(b) the objects of the committee in question; and
(c) representation of persons with disabilities.”.

CLAUSE 17

1. On page 7, in line 41, after “to” to insert:
“subsection (3) and”.
2. On page 7, in line 42, after “employees;” to omit “and”.

3. On page 7, in line 43, after “employees” to omit “and agents,” and to substitute “; and”.
4. On page 7, after line 43, to insert a new paragraph:

“(c) designate certain officials as agents in cooperation with the Department of Justice and Constitutional Development.”.
5. On page 8, after line 2, to insert a new subsection:

“(3) When appointing employees and designating agents as contemplated in subsection (1), the following factors must, as far as is practicable, be taken into account—

 - (a) the racial and gender composition of South Africa;
 - (b) the objects of Legal Aid South Africa and the Board; and
 - (c) representation of persons with disabilities.”.

CLAUSE 22

1. On page 9, in line 17, after “recommendation” to omit “that,” and to substitute “whether or not”.
2. On page 9, in line 20, after “section” to omit “24” and to substitute “23”.
3. On page 9, in line 26, after “whether” to insert:

“or not”.
4. On page 9, in line 57, after “section” to omit “23” and to substitute “24”.

CLAUSE 23

1. Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Regulations

- 23.** (1) The Minister must, after receipt of recommendations of the Board, make regulations relating to—
- (a) the types of matters, both civil and criminal, in respect of which Legal Aid South Africa—
 - (i) provides legal aid;
 - (ii) does not provide legal aid; and
 - (iii) provides limited legal aid and the circumstances in which it does so;
 - (b) the requirements or criteria that an applicant must comply with in order to qualify for legal aid, as well as the terms and conditions on which such legal aid is made available to the applicant;
 - (c) the policy relating to the approval or refusal of legal aid, the termination of legal aid and appeals against such refusal or termination of legal aid; and
 - (d) any matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.
- (2) Any regulations made under subsection (1) must, before publication thereof in the *Gazette*, be tabled in Parliament by the Minister for approval.

(3) The regulations made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding one year.

CLAUSE 24

1. Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Legal Aid Manual

24. (1) The Board must compile, amend and approve a Legal Aid Manual and must at least every second year review the Legal Aid Manual relating to—

- (a) the procedures in terms of which applications for legal aid are administered;
- (b) the systems and methods whereby legal aid is delivered;
- (c) the requirements and criteria for the accreditation of private legal practitioners who render legal services to legal aid recipients on the instructions of Legal Aid South Africa and the terms and conditions subject to which such instructions are allocated to accredited legal practitioners, including the fees and disbursements that are payable by Legal Aid South Africa to accredited legal practitioners, taking into consideration the salary scales applicable to the public service; and
- (d) the regulation of any other administrative matter which the Board deems necessary for the effective and efficient functioning of Legal Aid South Africa.

(2) The Board must submit the Legal Aid Manual and any amendment thereof to the Minister who must—

- (a) table the Legal Aid Manual and any amendment thereof in Parliament; and
- (b) simultaneously give notice thereof by notice in the *Gazette*.

(3) The Legal Aid Manual and any amendment thereof takes effect 60 days after the publication of the notice referred to in subsection (2)(b) and is binding on all persons and organisations providing legal aid assistance in terms of this Act.

(4) The Board must publish the Legal Aid Manual and any amendments thereof on its website and a copy thereof must be available for inspection at all offices of Legal Aid South Africa.

CLAUSE 25

1. On page 11, in line 9, after “Aid” to insert “South Africa”.

CLAUSE 26

1. On page 11, in line 53, after “section” to omit “24” and to substitute “23”.
2. On page 11, in line 54, after “section” to omit “23” and to substitute “24”.

CLAUSE 27

1. On page 12, in line 2, after “Aid” to insert “South Africa”.

LONG TITLE

1. On page 2, in the third line, after “Constitution”, to insert:
“and to render or make legal aid and legal advice available;”.
2. On page 2, in the fifteenth line, after the first “and”, to insert “the designation of certain officials as”.
3. On page 2, in the nineteenth line, after “matters;”, to omit:
“to provide for the compilation of a Legal Aid Manual;”
4. On page 2, in the twentieth line, after “regulations;” to insert “to provide for the compilation of a Legal Aid Manual;”

ARRANGEMENT OF SECTIONS

1. On page 3, in line 22, after “23.”, to omit “Legal Aid Manual”, and to substitute “Regulations”.
2. On page 3, in line 23, after “24.”, to omit “Regulations”, and to substitute “Legal Aid Manual”.