



**SOUTH AFRICAN HUMAN RIGHTS
COMMISSION**

**LEGAL PRACTICE AMENDMENT
BILL [B11-2017]**

**For submission to the Portofolio Committee
on Justice and Correctional Services**

July 2017



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1. Introduction

The South African Human Rights Commission (SAHRC / Commission) welcomes the opportunity to engage with Portfolio Committee on Justice and Correctional Services on the Legal Practice Amendment Bill [B11-2017].

The Commission has an interest in the Bill as the institution provides legal services to persons whose human rights have been allegedly violated. The Commission has considered the Bill in terms of its constitutional mandate to “promote the protection, development and attainment of human rights;” and “to take steps to secure the appropriate redress where human rights have been violated.”

2. The mandate of the South African Human Rights Commission

2.1 Constitutional and Statutory Mandate

The SAHRC is a constitutionally created independent state institution. It is mandated by section 184 of the Constitution of the Republic of South Africa¹ which states,

184. (1) The South African Human Rights Commission must-

¹ of 1996. Hereinafter the ‘Constitution’.

- (a) promote, respect for human rights and a culture of human rights;
- (b) promote the protection, development and attainment of human rights; and
- (c) monitor and assess the observance of human rights in the Republic.

In September 2014, the new South African Human Rights Commission Act 40 of 2013 came into effect, repealing its predecessor the Human Rights Commission Act 54 of 1994. Section 13 of the new Act expands on the powers and functions of the Commission.

Accordingly, section 13(1)(a)(i) provides,

- (a) The Commission is competent and is obliged to-
 - (i) Make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and the law, as well as appropriate measures for the further observance of human rights;

Section 13(1)(b)(v) further states,

- (b) The Commission-
 - (v) Must review government policies relating to human rights and may make recommendations.

It is within these mandates that the SAHRC shares its comments on the Bill.

3. SAHRC Concerns with the Amendment Bill

3.1. Status of the Commission as a law clinic under the Legal Practice Act

The Legal Practice Act defines a law clinic as a law clinic referred to in section 34(8). Section 34(8) provides that;

- “(a) Subject to the approval of the Council in terms of the rules, a law clinic may be established by—

(i) a non-profit juristic entity registered in terms of the Non-profit Organisations Act, 1997 (Act No. 71 of 1997), to conduct a legal practice if, in terms of its founding documents—

(aa) the majority of its members of its governing body is comprised of legal practitioners; and

(bb) upon its winding-up, dissolution or voluntary deregistration, any asset remaining after all liabilities have been met, are transferred to another non-profit organisation having similar objectives to it; or

(ii) any university in the Republic if it is constituted and governed as part of the faculty of law at that university, and is subject to the provisions of paragraphs (b) and (c).

The Commission highlights that it is neither a university nor a non-profit making organisation although the institution provides legal services to persons free of charge in instances where an alleged violation of human rights occurred. It is unclear whether in terms of the current Bill, the Commission can continue providing legal services.

Under the Act the SAHRC cannot be considered a law clinic. We urge amendment of the Bill to include the Commission and other relevant Chapter 9 institutions as having the authority to establish a law clinic subject to the Council's approval.

It should be noted that the Commission employs admitted attorneys to investigate complaints of human rights abuses and has registered its offices as law clinics in nine of the provinces. While investigating such complaints the Commission has on occasion initiated litigation in order to secure appropriate redress.

4. Conclusion

The Commission welcomes the amendments to the Legal Practice Act and wishes Parliament successful deliberations during the finalisation of the Bill. The Commission, however, urges the Portfolio Committee to consider the SAHRC's concerns and avails itself for engagement to provide further insights in this regard.

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