



LAW SOCIETY
OF SOUTH AFRICA

LEGAL SERVICES SECTOR CHARTER

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GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA



the doj & cd

Department:
Justice and Constitutional Development
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FOREWORD

The adoption by the Council of the Law Society of South Africa and the advocates' profession of the Legal Services Sector Charter is a historic occasion and a milestone for the profession. The Charter is the result of an extensive process of consultations which culminated in the legal profession undertaking the responsibility for the drafting of the Charter in consultation with the Department of Justice and Constitutional Development. The Charter embodies the profession's commitment to transformation and recognises that a strong, independent and representative profession is essential to ensure access to justice and to protect the Bill of Rights.

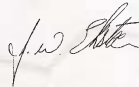
The Charter recognises and embraces the specific nature of the legal profession and the profession's responsibility to address not only economic imbalances but the wider social inequalities which beset our society.



HMS MSIMANG
LAW SOCIETY OF SA



DH GUSH
LAW SOCIETY OF SA



J ESKTEEN
ADVOCATES

PREAMBLE

Recognising that, whereas significant progress has been made in restructuring and transforming our society and its institutions, systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy. Recognising further that a strong, independent and representative legal services sector and profession is essential for the protection of the rights contained in the Bill of Rights, as well as the right of access to justice for all.

The Government and the Stakeholders in the legal services sector therefore adopt this Charter to be a binding and guiding principle to provide for an independent legal profession and to eradicate the inequalities of the past.

CHAPTER 1: INTRODUCTION

1.1 OBJECTIVES

The objectives of the Charter are

- i) to give effect to the Constitution, the Promotion of Equality and Prevention of Unfair Discrimination Act and the Broad-based Black Economic Empowerment Act through the facilitation of the transformation of the legal services sector, and the promotion and empowerment of historically disadvantaged individuals (HDIs);
- ii) to ensure access to justice in all respects namely,
 - a) access to legal services;
 - b) access to legal work;
 - c) access to the courts; and
 - d) access to the legal profession;
- iii) to entrench the independence of the legal profession;
- iv) to create an affirming and enabling environment;
- v) to promote equality and prevent unfair discrimination;
- vi) to provide mechanisms for the
 - a) transformation of the legal services sector;
 - b) facilitation of economic empowerment;
 - c) removal of inequalities within the legal services sector; and
 - d) implementation of positive measures to protect and advance HDIs.

1.1.1 ACHIEVING THE OBJECTIVES

The Charter seeks to achieve the objectives by

- i) identifying the challenges to access to justice and by outlining the responsibilities and obligations of stakeholders in addressing those challenges;
- ii) recording the legal profession's commitment to transform the statutory regulation of the legal profession;
- iii) improving the availability of quality legal services by
 - a. ensuring the provision of continuing and sustained education and skills training;
 - b. enhancing, developing and empowering legal professionals, and in particular HDIs, in all fields of legal expertise;
- iv) addressing challenges of entry into the legal profession, with specific emphasis on challenges experienced by HDIs by
 - a. ensuring the availability of quality legal training and education;
 - b. ensuring the availability of continuing legal training and education; and
 - c. providing quality workplace learnership opportunities;

- v) devising and implementing measures to address the provision and availability of pro bono services and community-based paralegal services, thus ensuring access to affordable legal services for all people in South Africa, particularly marginalised, poor and rural communities;
- vi) ensuring proper access to the courts by embodying a commitment to improving and developing the infrastructure of and the allocation of resources to the courts;
- vii) facilitating the transformation of the legal services sector so as to ensure it is representative of the demographics of South Africa, and by ensuring a body of well-trained and competent professional providers of legal services to enable appointments to be made to the judiciary;
- viii) adopting measures to promote the equitable distribution of legal work effectively and meaningfully, and to eliminate barriers and provide equal opportunities by empowering HDIs through ensuring equal participation in the economic opportunities within the legal services sector;
- ix) ensuring and enhancing representivity in respect of ownership, management, control and employment of legal practices;
- x) creating conditions conducive to ensuring that historically disadvantaged providers of legal services are able to establish, manage and build sustainable practices;
- xi) creating an enabling environment to reflect the diversity of our society and to ensure the promotion of equality and the prevention of discrimination.

1.2 SCOPE AND STAKEHOLDERS

1.2.1 SCOPE

To ensure that the legal services sector embodies equality and reflects the diversity of our society in which all persons can participate fully and freely. No persons seeking access to legal services should be prevented from doing so because of historical disadvantages or discriminatory treatment.

i) CREATING AN AFFIRMING ENVIRONMENT

The Charter seeks to create an enabling and affirming environment

- a) in order to allow all role-players in the legal services sector to realise their full potential, thereby contributing positively to the transformation of the legal profession and the legal services sector. Transformation must address barriers associated with the past as well as any continuing discrimination, it must provide the mechanisms for achieving this;
- b) by removing barriers to access and participation, as well as creating conditions that enable legal practitioners to develop to their full potential; and
- c) by enabling the users of legal services to access affordable and quality services.

ii) CREATING AN ENABLING ENVIRONMENT

The Charter seeks to ensure the provision of legal services in an environment that is conducive to effective access to justice by

- a) the proper resourcing of courts and the provision of an adequate and properly maintained infrastructure, as well as the implementation of policies to reduce backlogs and delays in the finalisation of cases and the provision of adequate interpretation services;

- b) ensuring access to affordable legal services to all; particularly to those in poor, rural and marginalised communities by providing adequate and proper legal services such as pro bono services, community-based paralegal services, justice centres, advice offices, university law clinics, as well as the provision of community services and by investigating legal insurance.

iii) **AFFIRMING DIVERSITY**

The Charter, in affirming diversity,

- a) and recognising the rich diversity of the people of South Africa and the prejudices that exist in our society, seeks to eradicate such prejudices and recognise and affirm the diversity that exists in South Africa; and
- b) embodies an obligation on the legal services sector and the Government to provide culture awareness and diversity-awareness training programmes so as to ensure the eradication of prejudices, maintain public trust and confidence in the profession and the legal system, and to ensure that legal services are provided free of prejudice.

iv) **PROMOTION OF EQUALITY AND PREVENTION OF DISCRIMINATION**

The Charter

- a) embraces the Bill of Rights contained in the Constitution of South Africa and seeks to apply its founding values to the legal services sector and the provision of justice.

1.2.2 **STAKEHOLDERS**

This Charter shall apply to all persons engaged in the practice of law specifically the organised legal profession; public and private institutions or bodies rendering legal services; private and public institutions and persons who consume legal services; and the Government.

THE STAKEHOLDERS IN THIS CHARTER ARE:-

- i) The Government - The State at all levels has a constitutional responsibility for ensuring the right of access to justice and the right of every citizen to be treated equally before the law. The Department of Justice and Constitutional Development in particular has the constitutional responsibility to ensure that the regulation of the courts enhances access to justice for all. As a user of legal services, the Government has an obligation to ensure the equitable distribution of its legal work.
- ii) The legal profession - Referral and trust account practitioners, as defined in the Legal Practice Act to be promulgated.
- iii) Paralegals - Non-profit, community-based paralegals providing legal services to the poor and rural communities, as defined in the Legal Practice Act to be promulgated.
- iv) The Legal Aid Board - An independent statutory body mandated by the State to enhance access to justice by providing legal services to those who cannot afford such services.
- v) Universities, and in particular, their law faculties and clinics - As providers of legal training and education and of access to legal services through the operation of law clinics.

- vi) The private sector - In so far as it provides legal services to the public; and as users of legal services.
- vii) Civil society - In so far as it plays a complimentary role in the delivery of legal services on behalf of poor and marginalised persons and communities.
- viii) All users of legal services.

CHAPTER 2: ACCESS TO JUSTICE

2.1 OVERVIEW

- i) A prerequisite of the Rule of Law is access to justice. The Constitution of the Republic of South Africa guarantees the right of access to the courts, equality before the law and the right to equal protection and benefit of the law. Access to justice is a cornerstone of this Charter in terms of access to legal services, access to legal work, access to the courts and access to the legal profession. To enhance access to justice for all the people of the Republic of South Africa it is necessary to identify the challenges relating to access and to outline the responsibilities and the obligations in addressing those challenges.
- ii) Access to legal services envisages quality legal services. Users of legal services have the right to have their matters dealt with by qualified, competent independent legal practitioners who are subject to the regulation of appropriate regulatory bodies. All users of legal services have the right to be treated with dignity and respect and without discrimination. They have the right of access to information on the availability of legal services and a legal practitioner of their choice within a transformed legal services sector.
- iii) Access to legal services includes the provision of affordable legal services and adequate legal aid services particularly to the marginalised, poor and rural communities.
- iv) Access to the courts means access to properly resourced, effective and efficient courts.
- v) Access to the legal profession requires improving the quality of legal services by encouraging continuous and sustained programmes for skills enhancement and professional qualifications; monitoring and evaluating academic qualifications and improving the regulation of legal services and the development of common ethical standards for all legal practitioners.
- vi) Access to legal work requires removing inequalities and implementing positive measures designed to protect and advance HDIs.

2.2 ACCESS TO LEGAL SERVICES

2.2.1 CHALLENGES

- i) To address the conditions and factors that undermine and prevent access to legal services, in particular for historically disadvantaged communities. The systemic social and economic inequality that characterise South African society have distorted the ability of persons to access legal services. Socio-economic status, race, gender, disability and geographic location are significant obstacles to access justice.
- ii) The distribution of legal practitioners, particularly in rural and historically black communities, continues to affect the access of these communities to legal services adversely.

2.2.2 UNDERTAKINGS BY STAKEHOLDERS

THE LEGAL PROFESSION

The legal profession undertakes to

- i) recognise the ethical obligation to carry out pro bono work and develop and enhance the pro bono system with a view to making it compulsory for all practitioners;
- ii) develop and implement pro bono programmes by investigating and developing a comprehensive referral system for persons seeking pro bono legal services;
- iii) define and establish a community-service programme to be dealt with and included in the legislation envisaged in Chapter 3 below;
- iv) enhance access to legal services in rural areas through initiatives to ensure the sustainable provision of legal services in such areas;
- v) investigate the need for legal insurance in so far as it might promote access to legal services;
- vi) investigate the affordability of services, including the review of disparities and affordability of legal fees, and consider measures aimed at enhancing the affordability of legal services; and
- vii) co-operate with university law faculties' legal aid clinics and outreach programmes.

THE GOVERNMENT

The Government undertakes to

- i) facilitate access to legal services in rural and other under-served areas through the appropriate provision of courts and infrastructure;
- ii) enhance the Legal Aid Board's ability to provide legal services to the indigent;
- iii) provide for the regulation of non-commercial, community-based paralegal practitioners so as to provide access to primary legal services in rural, poor and marginalised communities; and
- iv) consider the development of an in forma pauperis system in the courts to enable judges and magistrates to assist persons in need of legal representation, in consultation with the legal profession and the Legal Aid Board.

2.3 ACCESS TO LEGAL WORK

2.3.1 CHALLENGES

- i) Access to legal work is a problem throughout the legal services sector, and it has unfairly prejudiced HDIs.
- ii) The lack of consistent and adequate support of HDIs from Government departments and other large users of legal services.
- iii) The overriding challenge is to ensure equitable procurement from HDIs within the legal services sector by complying with procurement strategies which will enhance and promote equality, thereby creating opportunities for the establishment of new enterprises and the development of existing enterprises.

2.3.2 UNDERTAKINGS BY STAKEHOLDERS

THE LEGAL PROFESSION

The legal profession undertakes to identify and implement equitable procurement strategies to promote access to legal work for HDIs.

THE GOVERNMENT

The Government undertakes to identify and implement equitable procurement strategies to promote access to legal work for HDIs.

2.4 ACCESS TO COURTS

2.4.1 CHALLENGES

- i) The absence of adequate and properly resourced courts and facilities has resulted in impaired access to the courts. Legal services are provided in circumstances that are not conducive to effective and equitable justice. Courts are poorly resourced and maintained, and infrastructure is in a state of disrepair. Courts are often inaccessible to people with disabilities.
- ii) The absence of adequate interpretation services for those who are not conversant in the languages used in courts prejudices them in their access to the courts and justice.
- iii) The backlogs and delays in the finalisation of cases due to, inter alia, inadequate staff and poor training, compromise the efficiency of the justice system.

2.4.2 UNDERTAKINGS BY STAKEHOLDERS

THE GOVERNMENT

The Government undertakes

- i) with the support of the legal services sector and in particular the legal profession, to take steps to improve the infrastructure and increase capacity at the courts to ensure that conditions under which legal services are performed are improved; and to provide better access; as well as
- ii) to adopt a programme of creating and maintaining the courts and infrastructure, and in particular making available courts in rural areas as an essential element to providing access to courts.

THE LEGAL PROFESSION

The legal profession undertakes to

- i) assist and co-operate with the courts to ensure the expeditious completion of cases and the reduction of backlogs.

2.5 ACCESS TO THE LEGAL PROFESSION

2.5.1 CHALLENGES

- i) The shortage of legal practitioners in South Africa as a result of historical barriers to entry into the profession.
- ii) The transformation of the legal services sector and in particular the legal profession to ensure that it is representative of the racial and gender composition of South African society so as to ensure a body of well-trained and competent professional providers of legal services, and to enable appointments to be made to the judiciary which reflect the demographics of South Africa.
- iii) To ensure that legal training and education includes social context awareness training.

2.5.2 UNDERTAKINGS BY STAKEHOLDERS

THE LEGAL PROFESSION

The legal profession undertakes to

- i) address challenges of entry into the legal profession particularly by HDIs, and ensure the standardisation and availability of legal training and education including continuing legal training and education;
- ii) provide skills development and skills transfer development programmes so as to create a body of qualified and competent practitioners;
- iii) ensure that legal training and education includes social context awareness training; and
- iv) develop mentorship programmes and encourage legal practitioners and legal academics to provide assistance, skills development and the transfer of skills.

CHAPTER THREE: TRANSFORMATION OF THE LEGAL SERVICES SECTOR TOWARDS A TRANSFORMED AND UNIFIED LEGAL PROFESSION

3.1 OVERVIEW

The legal services sector, and in particular the legal profession, occupies an important place in South Africa's democracy and in the economy. However, the legal profession's ability to perform optimally is hampered by inequalities and unfair discrimination. The organised profession is committed to the transformation of the legal sector and recognises the need to transform the statutory regulation of legal practice.

3.2 TOWARDS A TRANSFORMED AND UNIFIED LEGAL PROFESSION

- i) The organised legal profession's representative bodies are committed to transforming the regulatory regime of the profession. The nature and structure of the regulatory body and its relationship with the organised profession will be prescribed by the Legal Practice Act.
- ii) In view of the current disparate requirements affecting access to the legal profession and governance of the legal profession, the Legal Practice Act must be completed, approved and promulgated.
- iii) The Act must address the following:
 - a. A unified legal profession.
 - b. Standards of education and training.
 - c. Qualification criteria for admission to the profession.
 - d. Licence to practise.
 - e. Discipline in respect of unprofessional conduct and misconduct.
 - f. Public indemnity in respect of negligence by practitioners.
 - g. A fidelity fund for the legal profession.

3.3 STRUCTURE FOR REGULATION OF LEGAL PRACTICE

- i) A national regulatory body should be established by the Act comprising persons nominated by the professional organisations which represent legal and paralegal practitioners, and persons who represent the public interest.
- ii) The Council shall *inter alia* have the following powers and functions:
 - a) Prescribe qualifications for admission to legal and paralegal practice in accordance with the national legislation.
 - b) Maintain a roll of registered legal and paralegal practitioners.
 - c) Prescribe and levy annual fees for licence to practise.
 - d) Deal with complaints of malpractice and misconduct through regional complaints tribunals and the office of a legal practice protector or ombudsman.

- e) Collect interest on trust accounts for transmission to the profession's fidelity fund, and issue fidelity fund certificates.
- f) Provide legal education and training.

The legal profession commits itself to the process of adopting a Legal Practice Act.

CHAPTER FOUR: EMPOWERMENT OF HISTORICALLY DISADVANTAGED INDIVIDUALS

4.1 OVERVIEW

- (i) The successful implementation of initiatives to empower HDIs depends upon a government-driven empowerment process in a coherent regulatory environment, the commitment of the profession to achieve the empowerment of HDIs, as well as the transformation of the legal profession and the legal services sector.
- (ii) This chapter records the principles to be applied to the development of the scorecards so as to facilitate broad-based initiatives designed to transform and empower HDIs and to measure compliance therewith.
- (iii) The need and obligation to transform extends to all stakeholders in the legal services sector and the scorecards reflect the vastly differing types of enterprise, both in size and nature. The scorecards provide opportunities to satisfy appropriate transformational requirements.
- (iv) Ownership, management, preferential procurement, skills development, employment equity and socio-economic development are the elements which will be measured by means of the scorecards.
- (v) Compliance with the elements which are reflected in the scorecards requires that the stakeholders are committed to
 - a) the broadening of beneficial participation by HDIs in the ownership of companies, partnerships and associations within the legal services sector;
 - b) the promotion of managerial participation and responsibility of HDIs in organisations providing legal services and in leadership structures in the faculties and schools of law;
 - c) the promotion of ownership by HDIs which is accompanied by an equal level of managerial control;
 - d) compliance with employment equity plans;
 - e) investing in skills development initiatives in accordance with targets to be determined;
- f) the development of a pool of representative, well-trained and competent HDI professional providers of legal services, including candidate attorneys, by accelerated development through inter alia :-
 - international cooperation with other jurisdictions where appropriate;
 - mentorship programmes;
 - learnerships;
 - intra-industry exchange and internship programmes; and
 - skills development and the sharing of skills; as well as
- g) implementing procurement strategies and policies so as to realise the objectives of this Charter.

4.2 THRESHOLDS, COMPLIANCE AND TARGETS

- i) Scorecards will be developed which reflect targets and measure transformation in the legal profession and will, therefore, take into account the unique features of the sector.
- ii) Separate scorecards will be developed to address the specific requirements and peculiarities within the legal profession.
- iii) The separate scorecards will apply to
 - a. small attorneys' firms;
 - b. medium attorneys' firms;
 - c. large attorneys' firms; and
 - d. the advocates' profession.
- iv) The elements addressed in the scorecards may include inter alia ownership, management and control, employment equity, skills development, preferential procurement, enterprise development, socio-economic development and social transformation.
- v) The allocation of points and weightings in the scorecards will identify and prioritise the transformational elements relevant to the specific entities and encourage compliance.
- vi) The scorecards will serve as the performance management element of the Charter.

4.3 TRANSITIONAL ARRANGEMENTS

- i) A technical committee (TC) will be appointed by the Minister in consultation with the legal profession upon adoption of the Charter by the legal profession.
- ii) The mandate of the TC will be to draft scorecards in accordance with clause 4.2 above, and to ensure that the scorecards address the transformational imperatives of the Charter.
- iii) Upon completion and adoption of the scorecards, the TC will hand over to the Charter council for implementation and monitoring.
- iv) The TC will complete draft scorecards by the end of January 2008.

CHAPTER FIVE: GOVERNANCE AND IMPLEMENTATION OF CHARTER

5.1 OVERVIEW

- i) The oversight and implementation mechanisms of the Legal Services Sector Charter play an important role in the promotion of equality and the implementation of access to quality legal services by the legal profession.
- ii) A strong and independent legal profession is strategically positioned to lead and monitor the legal services sector in overcoming its challenges and to protect the interests of the public in the pursuit of the objectives of the Charter.

5.2 ESTABLISHMENT AND COMPOSITION OF COUNCIL

- i) As a transitional arrangement pending the promulgation of the Legal Practice Act and the establishment of a national regulatory body (Legal Practice Council), a Legal Services Sector Charter Council (hereinafter referred to as the Council) shall be established as the body responsible for the oversight and implementation of this Charter.
- ii) The implementation and oversight of the Legal Services Sector Charter will ultimately vest in a national regulatory body (Legal Practice Council) established in terms of the Legal Practice Act, and the functions and responsibilities of the Legal Services Sector Charter Council will be transferred to this body on the date of its establishment.
- iii) The Council shall represent the Charter's stakeholders.
- iv) Those persons nominated and appointed to sit on the Council shall be representative of the demographics and gender of South Africa's population.
- v) The Minister shall be responsible for appointing the secretariat to facilitate the functions of the Council.
- vi) The Council shall comprise twenty-one members who shall be appointed by the Minister of Justice and Constitutional Development as follows:-
 - a) Two representatives of the users of legal services from nominations received from recognised consumer bodies.
 - b) One state-employed member, nominated by the Legal Aid Board.
 - c) One paralegal, nominated by a recognised paralegal regulatory body.
 - d) Seven members of the attorneys' profession nominated by its recognised regulatory body.
 - e) Three members of the advocates' profession, nominated by its recognised regulatory body.
 - f) Two persons directly involved in legal education, one nominated by the regulatory body of the advocates' profession and one by the Law Society of South Africa.
 - g) One representative of the university law faculties and schools, nominated by universities.
 - h) Three representatives of Government, one of whom shall be a state-employed member of the legal profession, nominated by the Minister.
 - i) One representative from a recognised, credible organisation representing the interests of women in the legal profession.

5.3 GOVERNING PRINCIPLES

The Council shall be guided by the following basic principles:

- a) Equality
- b) Independence
- c) Transparency
- d) Fairness
- e) Good corporate governance
- f) Consultation and inclusivity
- g) Accountability and credibility
- h) Equitable socio-economic transformation
- i) Dignity
- j) Non-racism
- k) Non-sexism
- l) Transformative and inclusive mindsets.

5.4 POWERS AND FUNCTIONS OF COUNCIL

The duties and responsibilities of the Council are to

- i) implement and monitor the application of and compliance with the Legal Services Sector Charter;
- ii) develop and implement an effective mechanism to ensure compliance with the Charter;
- iii) conduct and/or commission such research as may be necessary to ensure the effective implementation of the provisions of the Charter;
- iv) develop and maintain a practice manual for the implementation of the Charter and for the application of the scorecards;
- v) report annually on the implementation of the Charter and the activities of the Council;
- vi) keep proper accounting records in accordance with generally-accepted accounting principles;
- vii) raise such funds that may be necessary to further the aims of the Charter;
- viii) adopt a good-governance policy and code of conduct for Council members; and
- ix) develop and adopt an independent dispute resolution procedure.

5.5 ANNUAL REPORTS

- i) The Council shall prepare an annual report for submission to the Minister of Justice and Constitutional Development, which report shall be made public.
- ii) The annual report shall inter alia contain
 - a) statistics on the implementation and monitoring of and compliance with the Charter;
 - b) the Council's audited financial statements; and
 - c) any other information relevant to the implementation or application of the Charter.