ESTATE PLANNING
TRUSTS
WILLS
ESTATES
BENEFICIARY FUNDS

FISA®
THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA

BY ELECTRONIC COMMUNICATION

11 September 2026

ATTENTION: MS F BHAYAT

The Department of Justice and Constitutional Development
Floor 14
Office Number 27
Momentum Building
329 Pretorius Street
PRETORIA
0001

E-mail: FBhayat@justice.gov.za

Dear Ms Bhayat

SUBMISSIONS ON THE LEGAL PRACTICE AMENDMENT BILL, 2026

We refer to the invitation published in Government Gazette No. 55166 on 7 August 2026, inviting interested parties and stakeholders to submit written comments on the *Legal Practice Amendment Bill*, 2026 ("the Bill").

The Fiduciary Institute of Southern Africa ("FISA") hereby wishes to make submissions in respect of the proposed amendments contained in the Bill, with particular reference to clause 7, which proposes amendments to section 33 of the *Legal Practice Act* 28 of 2014 ("the LPA").

FISA is the professional body representing fiduciary practitioners in Southern Africa. Its members practise in areas including estate planning, will drafting, trust administration, deceased estate administration and related fiduciary services. FISA accordingly has a direct and material interest in the proposed amendments insofar as they affect the professional functions undertaken by fiduciary practitioners and the services available to members of the public.

Because clause 7 also intersects directly with the longstanding question of who may lawfully undertake the liquidation and distribution of deceased estates, FISA uses this opportunity to address the status and continued suitability of Government Notice R910 of 22 May 1968 ("Regulation 910") and the regulatory framework contemplated in the *Administration of Estates Act* 66 of 1965.

Our detailed submissions and recommendations are set out below.

1. FISA'S OVERALL VIEW

FISA fully supports appropriate and effective regulation in the interests of protecting members of the public against dishonest, unethical, incompetent and genuinely unqualified persons who purport to provide fiduciary services. The Department has indicated that clause 7 is intended, among other things, to protect the public against exploitation by unqualified persons who advertise the listed services. FISA supports that objective.

FISA is, however, concerned that the mechanism presently proposed draws the relevant distinction principally between practising legal practitioners and everyone else. In specialist fiduciary fields, enrolment with the Legal Practice Council ("LPC") is not, without more, a reliable measure of competence, just as non-enrolment with the LPC is not evidence of incompetence.

Admission as a legal practitioner does not, in itself, establish specialist competence in will drafting or deceased estate administration. Conversely, non-attorney fiduciary practitioners may possess relevant academic qualifications, specialist training and many years of practical experience devoted specifically to these fields.

FISA therefore submits that public protection should be directed at the competence, qualifications, experience, ethical conduct and accountability of the person providing the service. FISA does not advocate unrestricted or unaccountable fiduciary practice. It advocates an objective, competency-based framework that protects the public while recognising appropriately qualified and accountable practitioners.

FISA itself is a voluntary professional association rather than a statutory regulator. Its members are, however, required to subscribe to FISA's Code of Ethics and continuing professional development requirements, and FISA maintains professional standards and disciplinary mechanisms. The Fiduciary Practitioner of South Africa (FPSA®) designation additionally requires relevant academic preparation, practical fiduciary experience and continuing adherence to professional and ethical standards. These arrangements demonstrate that meaningful competency and accountability standards can operate outside LPC enrolment and could inform a statutory accreditation model.

The materials accompanying the Bill and the Department's public explanation identify the consumer-protection objective, but do not identify the particular harm said to necessitate these restrictions or explain why less restrictive competency-based measures would be insufficient. Given the effect on existing practitioners, service models and consumers, FISA respectfully recommends that the Department identify the evidence supporting the intervention and undertake or publish an appropriate regulatory or socio-economic impact assessment before implementation.

2. CLAUSE 7: PROPOSED AMENDMENTS TO SECTION 33

2.1 <u>Existing position and effect of clause 7</u>

Section 33 of the LPA presently regulates the authority to render legal services. In broad terms, section 33(1) reserves remunerated court appearances and the preparation or execution of documents relating to court proceedings to practising legal practitioners; section 33(2) prohibits a non-legal practitioner from holding himself or herself out as a legal practitioner; and section 33(3) preserves work which another law expressly reserves to advocates, attorneys, conveyancers or notaries.

Clause 7 would materially extend that position. It would add a new section 33(1)(c), change section 33(2) from a prohibition on "holding out" as a legal practitioner to a prohibition on "acting as" a legal practitioner, and insert a new section 33(5) restricting the advertising or making known of preparedness to undertake specified work.

These amendments should be considered separately because they do not have the same legal effect. Proposed section 33(1)(c)(ii) would directly restrict remunerated will drafting. Proposed section 33(5)(b), by contrast, does not itself reserve deceased estate administration to legal practitioners, but would prevent a non-legal practitioner from advertising or making known a preparedness to undertake such work.

2.2 <u>Proposed section 33(1)(c)(ii): wills and testamentary writings</u>

Clause 7 proposes that no person other than a practising legal practitioner may, in expectation of a fee, commission, gain or reward, draw up or execute "any will or other testamentary writing". If enacted without an appropriate qualification or exception, this would newly exclude non-attorney fiduciary practitioners from remunerated will drafting notwithstanding their qualifications, specialist experience or professional accountability.

The expression "draw up or execute" is not defined and may extend beyond substantive will drafting. Modern fiduciary processes can include taking instructions, data capture, document assembly through controlled templates or digital systems, and facilitating witnessing or execution. FISA submits that the legislation should clearly distinguish reserved drafting from administrative, technological and execution-support functions, particularly given the criminal consequences of section 33.

Will drafting is an established part of fiduciary practice and is closely connected with estate planning and the later administration of deceased estates. FISA accepts that defective or inappropriate wills can cause substantial prejudice and that the public requires meaningful protection. The appropriate response, however, is to regulate who is competent and accountable to provide the service, rather than to assume that legal practitioner status is the only appropriate proxy for competence.

FISA accordingly recommends that the proposed reservation of will drafting be reconsidered so that persons who satisfy prescribed fiduciary competency and accountability requirements may lawfully continue to provide the service. Such a framework could expressly recognise accredited fiduciary practitioners or prescribed categories of persons while retaining the prohibition against unqualified providers.

2.3 <u>Proposed section 33(2): "act as a legal practitioner"</u>

The proposed substitution in section 33(2) is also material. The existing provision prohibits a person from holding himself or herself out as a legal practitioner.

Clause 7 would instead prohibit a non-legal practitioner from "acting as a legal practitioner", in addition to prohibiting representations which indicate or imply that the person is a legal practitioner.

The expression "act as a legal practitioner" is not defined and is potentially wider than the existing prohibition. Fiduciary practitioners routinely perform specialised administrative and advisory functions in which legal rules are applied, without representing themselves as attorneys or purporting to perform work which is genuinely reserved to attorneys, advocates, conveyancers or notaries. FISA is concerned that legitimate fiduciary work should not inadvertently be characterised as "acting as" a legal practitioner.

This concern is heightened by section 93(2) of the LPA, under which a contravention of section 33 is a criminal offence punishable by a fine, imprisonment for a period not exceeding two years, or both. Where criminal liability may follow, the scope of the prohibited conduct should be clear and reasonably foreseeable.

FISA therefore recommends that the existing "holding out" formulation be retained, alternatively that "act as a legal practitioner" be clearly defined and expressly exclude lawful fiduciary and administrative services performed within a practitioner's authorised scope.

2.4 Proposed section 33(5): advertising restriction

Proposed section 33(5) would prohibit any person other than a practising legal practitioner from directly or indirectly canvassing, advertising, touting for, or making known his or her preparedness to undertake specified work, including the drawing up of wills and the administration, liquidation or distribution of deceased estates. The prohibition expressly applies whether the work is undertaken for or without remuneration.

The breadth of the phrases "directly or indirectly", "in any other manner" and "make known their preparedness" creates material uncertainty. Read literally, the provision could extend beyond improper solicitation to a professional website, factual consumer education or informational material, a business card, an entry in a professional directory, digital lead generation, a referral relationship or even a response to a person who directly enquires whether the practitioner provides the service.

There is a further statutory anomaly. Section 33(1) is expressly made "subject to any other law". Proposed section 33(5) contains no corresponding qualification. A person may therefore be lawfully entitled under another law or a future prescribed regulatory framework to perform estate-related work, yet be prohibited by section 33(5) from truthfully communicating that the service is available.

FISA submits that the public-interest objective would be better served by regulating false, misleading, improper or unauthorised advertising and solicitation, while allowing persons who are lawfully authorised and appropriately qualified to provide a fiduciary service to communicate that fact to the public. At a minimum, proposed section 33(5) should be expressly subject to other applicable law and should accommodate prescribed or accredited fiduciary practitioners.

3. HISTORICAL CONTEXT: THE FORMER ATTORNEYS ACT

The Minister's public explanation of the Bill notes that a similar advertising restriction was contained in section 83(2) of the repealed *Attorneys Act* 53 of 1979. FISA considers the historical context important because the former statutory regime was not an absolute attorney-only model.

Former section 83 contained material qualifications and exceptions. Among other things, the legislation accommodated remuneration received for services rendered in specified fiduciary capacities, permitted a person to respond to a direct enquiry in circumstances contemplated by the Act, and contained exemptions for particular categories of persons and institutions. Parliament also amended the Attorneys Act through the *Judicial Matters Second Amendment Act* 122 of 1998 to accommodate qualifying boards of executors and trust companies in relation to remunerated will drafting, subject to prescribed academic requirements for the person performing the work.

Accordingly, if the policy intention is to draw upon the protective framework which historically existed under section 83, FISA submits that it would be inappropriate to revive the prohibitions without similarly considering the qualifications, exceptions and alternative competency mechanisms which accompanied them.

FISA also notes that proposed section 33(5)(c) retains the historical reference to "judicial management", terminology associated with the former company-law regime. This reinforces the need to modernise the underlying regulatory approach rather than simply transplant provisions from repealed legislation.

4. REGULATION 910 AND DECEASED ESTATE ADMINISTRATION

4.1 <u>Nature and effect of Regulation 910</u>

Regulation 910 was promulgated in Government Gazette 2080 of 22 May 1968 under the *Attorneys, Notaries and Conveyancers Admission Act* 23 of 1934 and was subsequently amended. Subject to specified exemptions, it prohibits persons other than attorneys, notaries, conveyancers or the historical category of law agent from liquidating or distributing deceased estates.

The Regulation defines liquidation or distribution broadly to include acts relating to the liquidation or distribution of an estate, excluding the realisation, transfer or valuation of estate assets or rights in those assets. Its exemptions include, among others, historically defined boards of executors and trust companies, public accountants under the legislation then applicable, certain brokers or agents, nominated executors acting personally, specified relatives, certain banking institutions and persons in the full-time service of someone lawfully liquidating and distributing an estate.

The Western Cape High Court in *Koch v Weiland N.O. and Another* (16526/2020) [2022] ZAWCHC 96 confirmed, for purposes of the matter before it, that Regulation 910 remained in force. The Court also emphasised that the

Regulation addresses the acts involved in liquidating and distributing an estate; it does not itself determine who may be appointed as executor.

4.2 FISA's view on the continued validity of Regulation 910

Notwithstanding the finding in Koch, FISA respectfully remains of the view that Regulation 910 did not survive the repeal of the statutory framework under which it was promulgated and should be regarded as having been repealed in its entirety.

FISA's position is based on the wording of section 119 of the LPA. Section 119(2)(a) preserves a regulation made under a law referred to in section 119(1), namely a law listed in the Schedule to the LPA. Regulation 910 was made under the national *Attorneys, Notaries and Conveyancers Admission Act* 23 of 1934. That Act is not listed in the Schedule. The Schedule includes the *Attorneys Act* 53 of 1979 and a separate Act 23 of 1934 identified as the Transkei legislation, but not the national 1934 Act under which Regulation 910 was promulgated.

FISA appreciates that the Court in Koch relied on the earlier saving mechanism in section 86(3) of the *Attorneys Act* 53 of 1979 and thereafter on section 119 of the LPA. FISA respectfully differs from the conclusion that this is sufficient for purposes of section 119(2)(a): in FISA's view, the fact that Regulation 910 was preserved under the Attorneys Act did not alter the law under which the Regulation was originally made for purposes of the express wording of section 119(2)(a). FISA has separately sought clarity from the Department on this issue.

FISA accordingly requests the Department to reconsider the status of Regulation 910 and to confirm its position. FISA's view remains that the Regulation has been repealed in its entirety.

4.3 Regulation 910 should in any event be replaced by a modern framework

Irrespective of the differing legal views as to whether Regulation 910 technically survived, FISA submits that it is not an appropriate modern framework for protecting the public. Its eligibility and exemption categories are rooted in professional classifications, legislation and institutional circumstances dating from the 1960s rather than in current, demonstrable fiduciary competence and accountability.

This is not a new concern. In Discussion Paper 110 (Project 134: Administration of Estates), the South African Law Reform Commission provisionally recommended that Regulation 910 be repealed and that public protection instead be addressed through appropriate safeguards, including competency and security considerations.

Parliament subsequently inserted sections 103(1)(eA) and (eB) into the *Administration of Estates Act* through the *Judicial Matters Amendment Act* 8 of 2017. Those provisions empower the Minister to prescribe which persons, including juristic persons, are prohibited from liquidating or distributing deceased estates and to prescribe exemptions from such prohibitions.

The explanatory memorandum to the Bill which introduced that amendment is particularly relevant. It recognised that the existing regulations required revision and that, because deceased estate administration was no longer the exclusive preserve of attorneys, an enabling provision governing who may liquidate and distribute estates was better located in legislation dealing specifically with deceased estates rather than legislation regulating attorneys.

The legislative process remains current. Section 9 of the *Judicial Matters Amendment Act* 15 of 2023, enacted but not yet commenced, would substitute section 103(1) while retaining the Minister's powers to prescribe prohibited persons and exemptions. The Department has indicated that it is developing regulations before commencement of section 9. This presents a timely opportunity to address Regulation 910 within a coherent, estate-specific framework.

FISA respectfully submits that this remains the appropriate legislative approach. If the Department does not agree with FISA's interpretation that Regulation 910 has already been repealed, FISA recommends that it be expressly revoked and replaced through a coherent, modern framework under the *Administration of Estates Act* rather than preserved, reinforced or indirectly recreated through section 33 of the LPA.

5. A COMPETENCY-BASED REGULATORY FRAMEWORK

FISA supports a framework which draws a clear distinction between persons who are competent, appropriately qualified and accountable to provide fiduciary services, and persons who are not. Such a framework could be developed under the Administration of Estates Act for deceased estate administration and, where appropriate, through corresponding amendments to the LPA for will drafting.

Without seeking to prescribe the final regulatory model, FISA submits that the following safeguards warrant consideration:

1. prescribed minimum academic or professional qualifications, together with an appropriate recognition-of-prior-learning mechanism;
2. minimum relevant practical experience for the category of fiduciary work to be undertaken;
3. registration or accreditation through a recognised statutory or professional framework;
4. compulsory continuing professional development and adherence to an enforceable code of professional and ethical conduct;
5. effective complaints, investigation and disciplinary procedures;
6. appropriate professional indemnity insurance, security or other consumer-protection safeguards having regard to the nature of the work;
7. clearly defined scopes of permitted fiduciary work; and
8. clear referral requirements where conveyancing, litigation, regulated financial advice or other genuinely reserved specialist work is required.

A framework of this nature would directly address the Department's stated concern about unqualified or unscrupulous providers while preserving consumer choice and recognising professionals who have developed specialist expertise in fiduciary practice.

Any such framework should accommodate the range of service models through which fiduciary services are delivered. A juristic person, trust company, financial institution or fiduciary business should be capable of acting through appropriately qualified, supervised and accountable personnel. Institutional status should not of itself establish competence, but neither should competent employed specialists be excluded merely because they operate within an organisation.

5.1 <u>The potential role of FISA</u>

FISA does not submit that membership of FISA, by itself, should automatically create a statutory right to perform reserved work. Rather, FISA offers its existing professional infrastructure as evidence of, and a possible building block for, a workable accreditation system.

FISA is able to assist the Department and the Master's Office in developing appropriate competency standards, scopes of practice, experience requirements, recognition-of-prior-learning criteria, continuing professional development standards, ethical requirements and accountability mechanisms. The FPSA® designation may also provide a useful reference point when considering what a specialist fiduciary competency standard could require.

FISA would welcome a structured consultation process with the Department, the Office of the Chief Master, the LPC and other affected professional and industry bodies to develop a coherent regime which protects the public without creating unnecessary overlap between the *Legal Practice Act* and the *Administration of Estates Act*.

6. PUBLIC-INTEREST, CONSTITUTIONAL AND COMPETITION CONSIDERATIONS

FISA recognises that Parliament may regulate occupations and professional services in the public interest. At the same time, section 22 of the Constitution protects the right of citizens to choose and practise a trade, occupation or profession, subject to lawful regulation. The Constitutional Court in *Affordable Medicines Trust and Others v Minister of Health and Another* 2006 (3) SA 247 (CC), and more recently in *Solidarity Trade Union and Others v Minister of Health and Others* [2026] ZACC 19, has emphasised the need for occupational regulation to be rationally connected to its legitimate purpose and, where the regulation materially limits the protected choice of occupation, capable of justification under section 36.

FISA does not contend in this submission that clause 7 is necessarily unconstitutional. It does submit that, where established practitioners may be prevented from performing or truthfully advertising core services and contravention carries criminal consequences, careful consideration should be given to whether the restriction is appropriately tailored to the identified consumer harm and whether less restrictive competency-based measures can achieve the same objective.

The advertising restriction also affects the communication of truthful commercial information. The Supreme Court of Appeal has recognised that commercial expression falls within the protection of section 16 of the Constitution, although it may be limited where justified. In FISA's view, there is an important distinction between prohibiting misleading or improper advertising and prohibiting a competent, lawfully authorised practitioner from truthfully stating what services he or she provides.

Competition considerations point in the same direction. The Competition Commission has previously expressed concern that overly broad reserved-work restrictions can exclude competent providers and that restrictions on truthful, non-deceptive advertising can inhibit competition and informed consumer choice. A competency-based framework would better balance consumer protection with access, choice, affordability and the continued availability of specialist fiduciary services, including in smaller communities and circumstances where practitioners provide reduced-fee or *pro bono* assistance. It would also avoid unnecessary fragmentation of integrated estate-planning and fiduciary service models through which consumers currently obtain related services from specialist teams or institutions.

7. EXISTING PRACTITIONERS AND TRANSITIONAL ARRANGEMENTS

Any new regulatory framework should make appropriate provision for practitioners who have lawfully built careers and businesses in fiduciary practice over many years. Abruptly excluding experienced practitioners would affect not only their livelihoods and employees, but also existing clients who have entrusted their testamentary and estate-planning affairs to those practitioners.

FISA therefore recommends appropriate transitional arrangements, including a reasonable implementation period and mechanisms for recognition of prior learning, established experience and demonstrated competence. A new regime should become operative only once the relevant accreditation, exemption or authorisation process is practically available.

FISA further recommends an express saving provision confirming that clause 7 does not affect the validity or effect of wills or other testamentary writings lawfully prepared before commencement. Existing client mandates and service arrangements should likewise receive an appropriate transition.

Before commencement, clear implementation guidance should address the scope of reserved drafting, administrative facilitation, permissible advertising and consumer education, referrals, exemptions or authorisations, and any accreditation process. The corresponding framework should be practically available before criminal consequences attach to conduct newly brought within section 33.

8. FISA'S RECOMMENDATIONS

In light of the above, FISA respectfully recommends that the Department:

1. reconsider clause 7 so that public protection is pursued through objective competency and accountability standards rather than LPC enrolment alone, and identify the consumer harm supporting the restrictions through an appropriate impact assessment;
2. amend proposed section 33(1)(c)(ii) to permit prescribed or accredited competent fiduciary practitioners to provide will-drafting services within an authorised scope, and delimit "draw up or execute" so that lawful administrative, technological and execution-support functions are not inadvertently captured;
3. retain the existing "holding out" formulation in section 33(2), alternatively define the proposed expression "act as a legal practitioner" with sufficient precision and expressly preserve lawful fiduciary and administrative work;

4. amend proposed section 33(5) so that it is subject to applicable law and permits truthful communication by persons lawfully authorised to provide the relevant service;
5. consider whether the advertising prohibition should instead target false, misleading, improper or unauthorised solicitation, and preserve appropriate exceptions such as responses to direct enquiries;
6. confirm the Department's position on Regulation 910, noting that FISA respectfully maintains that the Regulation has been repealed in its entirety notwithstanding the decision in *Koch v Weiland*;
7. if the Department does not accept FISA's interpretation of Regulation 910, expressly revoke and replace it with a modern regulatory framework under section 103 of the *Administration of Estates Act* rather than perpetuating an outdated category-based regime;
8. develop, with FISA and other affected stakeholders, a competency-based framework for deceased estate administration that accommodates individual practitioners and juristic providers acting through appropriately qualified, supervised and accountable personnel;
9. provide appropriate recognition-of-prior-learning and transitional arrangements, preserve the validity and effect of wills and testamentary writings lawfully prepared before commencement, and appropriately transition existing client mandates and service arrangements; and
10. ensure that new criminal exposure under section 33 is drafted with sufficient precision, supported by clear implementation guidance, and commences only once the corresponding authorisation or accreditation framework is operational.

9. CONCLUSION

FISA respectfully requests that clause 7 be reconsidered so that specialist fiduciary work and truthful advertising are regulated by demonstrable competence and lawful authorisation rather than LPC enrolment alone, while preserving the Department's consumer-protection objective. FISA further requests that Regulation 910 be resolved through a modern, estate-specific framework under the *Administration of Estates Act*, developed in consultation with FISA and other affected stakeholders.

Yours faithfully

ANGÉLIQUE KRÜGEL **CFP® FPSA® MTP(SA)™ TEP**
Chairperson: Deceased Estates Technical Committee
Mobile: 082 565 3565
E-mail: angelique@fisa.net.za