

5.2 Chief Executive Officer's Statement

It is an inspiring and humbling experience to lead a successful organisation able to continue to deliver on its mandate each year and present a pleasing set of performance results. Inspiring because it raises the performance platform higher and enables and empowers us to strive for further excellence in the next period. Humbling because we are mindful that our services impact directly on many South Africans and can positively touch their lives to improve the quality of their lives and ensure they are able to live with dignity and be treated as equals before the law. In making the constitutional values of human dignity, equality and access to justice a reality for our people and our communities we contribute to making our Constitution a living document for many of the poorest and most vulnerable South Africans.

Legal Aid South Africa has completed another successful year 2011-2012 in which it delivered legal aid services to thousands of people within a sound financial and governance framework.

It continues to do so with a strong people centred approach ensuring that our clients remain the core focus of our delivery while our employees are also empowered to perform optimally in a work environment where the organisational culture is one of high performance and service excellence with integrity.

In the 2011-12 financial year we have achieved our targets on performance in all aspects of our business. We continue to increase access to justice by our presence in all the criminal courts in the country ensuring that no person is unrepresented because they are not able to afford the cost of their legal defence. We increased our capacity to assist clients in civil matters resulting in a 48% increase in the number of civil legal aid matters we were able to take on. In giving effect to Section 28 of the Constitution, we assisted 22,376 children in conflict with the law and 5,584 children in civil matters, including Estates matters. In total we were



“By ensuring access to justice for poor and vulnerable South Africans, we contribute towards making our Constitution a living document for many.”

able to assist clients in 428,653 legal matters of which 89% were criminal and 11% were civil legal aid matters. We also took on 23 Impact Litigation matters. In addition we assisted 254,286 clients with legal advice. We were thus able to increase access to justice for 682,962 persons in South Africa.

We were also pleased to achieve another year of excellent financial results with our eleventh unqualified audit and seventh year of no matters of emphasis. A spend of more than 99% of our Budget ensured that resources were directed to the much needed delivery of legal aid services. This is testimony to our sound financial management and governance practices all of which contribute to our sustainability in ensuring our continued capacity to deliver legal aid services to the indigent. A strong financial management and governance ethos is complemented by our commitment to a people-focussed development linking both to our clients and our employees. This commitment ensured that we were able to be accredited as a Best Employer for the third consecutive year.

Our practitioners handled 382,125 new matters in criminal courts in this period. We were able to increase our civil legal practitioner capacity which enabled us to expand our assistance in civil legal aid matters to take on 46,528 new matters. Our call centre advice matters increased in the past year but advice matters handled at Justice Centres and Satellite Offices did not grow. Although demand for legal advice remained low at our Satellite Offices a basic level of service is being maintained to provide assistance especially to rural communities.

We continued to cover all courts but because of budget constraints were not able to increase practitioner per court ratios. No increased capacity in criminal courts has meant a marginal increase of 2% in new criminal matters over the past year. Our Impact Litigation Unit is now fully functional and it assessed and took on 23 new matters affecting vulnerable groups. Our specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters is in place and practitioners are continuously trained in handling these specialist matters. Senior Litigators employed are working on complex matters and matters in higher courts.

We continued our various quality improvement programmes, including training and development, monitoring and supervision, case discussion, expert legal advice support, legal research and legal

newsletters. In addition to the monitoring of quality by our Justice Centre and Regional legal management, our independent legal quality assurance unit also continues to cross-audit the quality of our legal practitioners thus providing assurance on the case file and court based performance of our legal practitioners. Our independent legal quality assurance unit further expanded its coverage to also assess our paralegals, judicare practitioners and agency agreements. Quality targets are being met by legal practitioners in assessments done by both our Justice Centre (JC) management and our Independent Legal Quality Assurance Unit. The small minority not meeting quality targets are supported and developed to ensure their quality is improved.

Our success in criminal matters is assessed by the quality of the defence we are able to provide to our clients to best protect their interests and where convicted to argue for the appropriate sentence noting the individual circumstances of our clients. This cannot be judged by acquittals alone and is a lot more complex. We were however pleased to achieve a 66% success rate in the criminal appeal matters that our practitioners argued in the Supreme Court of Appeal (SCA) with a 100% success rate in the SCA in its first term in 2012. This is higher than the average 54% success rate in criminal appeals in the SCA in that year. We were also successful in 94% of the impact matters that we finalised.

Our lawyers continued to play a significant role in representing poor clients in the Criminal Courts and influencing the course of our legal jurisprudence. In the high profile matter of *S v Hendriks* that was handled by our Cape Town Justice Centre, we challenged the validity of the use of Drager breathalyser device in drunken driving cases. The Western Cape High Court upheld our argument and ruled that the device was not reliable in its present form. We also contributed to bringing certainty to our legal system when we argued successfully in *S v Baartman 2011(2) SACR 79 (WC)* that the Minimum Sentences Act, which sets out 15 years as a minimum sentence for certain offences, was not applicable in Firearm Control Act matters since a maximum sentence of 15 years is set out for those matters in terms of this act.

Our lawyers appeared in a number of cases that caught the imagination of many South Africans. In what is now widely known as the Tereblanche murder case, our Pretoria High Court Unit appeared

for Chris Mahlangu whilst the legal representation for the second child accused was funded by us on brief to Judicare practitioners. Whilst Chris Mahlangu was found guilty in this matter, we were successful in ensuring that the child accused was acquitted of the murder charge.

In what is a significant civil judgment for security guards who transport money, our Port Elizabeth Justice Centre in *Kogana v SBV Security*, challenged a High Court decision in which a security guard was held liable to pay over R5million to his employer after a robbery. Our client stood to lose his house and his pension fund. The Supreme Court of Appeal ruled in our favour and saved a number of other security guards who would have found themselves liable to their employers for failing to prevent robberies.

In *Jonker v Manager Gali Thembani and 4 others*, our Queenstown Justice Centre vigorously opposed the Eastern Cape Department of Education's attempts to close down the provinces only school of industry, Gali Thembani School, and to move all the children at this school to a facility in Bhisho which housed children in need of care. Our view was that this arrangement would not have been in the best interest of both groups of children and it would also have been contrary to the provisions of the Child Justice Act and the Children's Act. The Eastern Cape High court agreed with our submissions and ruled in our favour.

Legal Aid South Africa was involved in a number of high impact cases in the past year. The unit was involved in the Pioneer Hi Bred International Inc. and Pannar Seed Merger which was heard in the Competition Tribunal. Our Impact Litigation Unit represented the African Centre for Bio-safety, an NGO that specialises in research on food security, protection of the indigenous seed and germplasm of staple food such as maize in Southern Africa. It was the first time since its inception that the Competition Tribunal allowed a third party to intervene in a merger hearing. In refusing the merger the Competition Tribunal took into account our submission that the merger would have a negative effect on subsistence farmers and food security in South Africa. The Competition Appeal Court subsequently set aside this decision allowing the merger but incorporating various measures to protect the interests of the subsistence farmers.

We also took on a number of impact matters relating to housing, the rights of children in need of care, as well as the rights of children in conflict with the law. Of

importance is the rights of children not to be treated as adults and to be incarcerated for the shortest possible time in compliance with section 28 (1) g of the Constitution of the Republic of South Africa. The unit intervened in the prosecution of a young female Zimbabwean refugee who was treated as an adult by the justice system. The decision of the Magistrate to prosecute the young offender without considering whether she was an appropriate candidate for diversion out of the justice penal system was set aside in a review application.

In the year under review we continued to give support to developing legal aid systems, hosting 14 international delegations visiting us to study our legal aid delivery model. A significant impact on increasing access to justice internationally was made with an international instrument, the UN Principles and Guidelines on access to legal aid in criminal matters being adopted by the United Nations Commission on Crime Prevention and Criminal Justice in Vienna in April 2012. This will facilitate the development of legal aid systems and increased access to justice by indigent persons, in all member countries, if these principles and guidelines are adopted by the UN General Assembly later this year.

In the year under review we achieved our targets for community outreach programmes promoting an understanding of our constitutional rights as well as marketing the services of Legal Aid South Africa. Our successful branding at courts, prisons cells and police cells increased awareness of our services to our clients. In the past year our brand strategy showed positive responses with awareness of Legal Aid South Africa growing by 7% to 56% amongst the lower LSM groups.

Our audit report confirmed our financial management and compliance being in place as well as prudent expenditure management ensuring that more than 99% of our budget was spent. The mention by the Auditor-General of non-compliance of a specific supply change management process for certain of our procurement transactions has been explained in the notes to our Annual Financial Statements. The majority of this non-compliance resulted from not obtaining tax clearance certificates from judicare practitioners in matters costing us more than R30,000 per matter. In all instances where tax clearance certificates were not obtained, it is confirmed that services were rendered by the judicare practitioners

to clients who therefore received legal aid services. This situation has been addressed with a change to our judicare accreditation policy which requires practitioners to submit tax clearance certificates to be accredited to be part of our judicare data base to receive judicare instructions. The condonement of the National Treasury for the non-compliance will also be attended to in the near future. Our comprehensive risk management also ensured that our managers were able to anticipate and mitigate risks and potential fraud resulting in only one minor fraud matter involving R2000 being reported in this period. The increasing number of civil matters resulted in an increase in the quantum of funds in our Trust Account holding clients' monies. The related challenge of unaccounted for deposits is being addressed to ensure that all funds are accounted for and directed to the right clients.

Our IT Platform was enhanced and upgraded with K2-workflow software upgrade and a switch to a SharePoint platform. However this caused challenges to stability and speed of the IT platform in the year. This has subsequently been addressed. A few delays in payments and data capture were also addressed within the financial year. Our increased user volumes and transactions and dependence on our IT platform for our business needs require a further expansion of our VPN bandwidth capacity in the new financial year. Our electronic links to clients using our websites was delayed due to the IT challenges mentioned above.

The 2011-2012 year marked the completion of our three-year Strategic Plan period 2009-2012. In this year we prepared a new Strategic Plan 2012-2017 for the next five-year period. Details of the process and content of this Strategic Plan are provided in this Annual Report. To a large extent we were able to make the strategic shift that we mapped for the 2009-12 Strategic Plan (SP) period as indicated below.

We aimed in the 2009-2012 period to explore and implement new ways of increasing access to justice within resource constraints. In the SP period we completed the expansion of the National Footprint (6 new JCs and 27 Satellite Offices), launched our Client Call Centre – the Legal Aid Advice Line in November 2010 and implemented a new delivery model using Agency Agreements with Legal Firms to improve coverage of courts in rural areas. No staffing increase in criminal courts, due to budget constraints, resulted in only a marginal

increase of 1-2% in new criminal matters over this SP period. We were able to expand civil legal aid capacity and establish civil units to improve coverage of civil matters which resulted in a 60% increase in the number of persons assisted in civil legal matters in the SP period [FY 2009/10 (29,024), FY 2010/11 (31,451) and 2011/12 (46,528)].

Our aim to increase the practitioner per court ratio and thus improve caseload management and quality was partially successful. Although we continued to cover all courts, because of budget constraints we were not able to increase practitioner per court ratios. Our court coverage ratio increased marginally per court type as follows: District Courts FY 2009/10 (80%), FY 2010/11 (83%) and 2011/12 (89%) and Regional Courts FY 2009/10 (94%), FY 2010/11 (96%) and 2011/12 (97.5%).

Improving specialist capacity to serve vulnerable groups was achieved with the specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters all in place. Our Impact Litigation Unit became fully functional and is assessing and taking on new matters affecting vulnerable groups. We employed Senior Litigators who are working on complex matters and matters in higher courts. Our practitioners have been trained in specialist matters and continuing training is also implemented. Expert panels were established to support our legal practitioners in specialist matters.

An independent legal quality assurance unit was also implemented and became fully functional in the SP period. This quality assurance is expanding to cover quality assessments of all aspects of legal services delivery including paralegals, judicare practitioners and agency agreements. Quality targets are being met by legal practitioners as assessed by both JC management quality assessments as well as independent legal quality assurance unit assessments.

Our aim to consolidate the Legal Aid brand thus increasing public awareness of independent quality legal aid services was realised by the launch of our new corporate identity and 'Legal Aid South Africa' brand in this period. Brand awareness has increased each year FY 2009/10 (43%), FY 2010/11 (49%) and 2011/12 (56%) with an overall increase of 19% over 3 years to 56% awareness of Legal Aid South Africa amongst lower LSM groups.

In contributing to the functioning of the Criminal Justice System, the Criminal Justice System review protocols, legislative proposals and other interventions to improve case flow and the efficiency of the criminal justice system were monitored and implemented as they were rolled out.

Our aim to increase the financial maturity of the organisation and improve risk based management in all facets of the business, as well as maintain unqualified audits was achieved with unqualified audits and no matters of emphasis in each of the years in the SP period.

We were able to achieve our aim of consolidating and aligning our people development programmes. We developed our Competency Profiles and identified talent pools in the Leadership Pipeline and began a process of identifying and implementing development programmes for each talent pool. In this three-year SP period we were successfully accredited as a Best Employer for each year. Our recruitment levels were maintained at 95-96% year on year to ensure optimum resourcing directed to delivery. Our Leadership Programme was also successfully implemented with a focus on a training and development phase for individual managers and leaders.

Enhancing our IT platform from serving internal need to also increase access to justice that is to play a role in the delivery of services was partially achieved. We upgraded our Internet Line, upgraded to the Virtual Private Network, upgraded K2 workflow and SharePoint software. The latter two upgrades in the third year caused challenges to stability and speed of platform in that year which was subsequently addressed. Further upgrade of the VPN will be required in the next period. A link to clients with self-help modules will be further developed in the next period. A Judicare practitioner link was developed and implemented but usage is low on the part of judicare practitioners.

Business Intelligence is available to all staff providing online real-time access to management data. Our Corporate Dashboard is compiled electronically but all components of the dashboard are not electronically linked.

We successfully improved our Business Processes by implementing a risk based management of performance with individual responsibility for

tracking performance and allowing greater flexibility and also aligning supervision and support to the level of risk of individual practitioners and managers. A matrix management system was also successfully implemented to ensure greater focus on legal matters by our legal managers.

As we commence the first year of our new 5-year Strategic Plan period our greatest challenge continues to be inadequate funding. In our 2012/13 budget we have a R34million efficiency cut from government as well as a reduction of R30million which was meant for the continued implementation of OSD Phase I. This constrains our ability to achieve, in particular, improved court coverage as well as the necessary IT and support platform capabilities.

Our key focus areas in the next period will be sustainability and integrated planning and implementation as well as excellence, continued learning and improvement.

In presenting the pleasing results in this report I record my appreciation to all our stakeholders with whom we work and who in the past year shared their experience and wisdom with us in the formulation of our Strategic Plan for the next period. With them we collectively strive to increase access to justice in our country. The guidance and leadership of our Board of Directors, under the leadership of Judge President Dunstan Mlambo is always appreciated. I wish to sincerely thank all the employees of Legal Aid South Africa that contribute to the excellent performance which has come to be accepted as the norm for us at Legal Aid South Africa. The collective leadership of Legal Aid South Africa is to be credited for the success of this organisation. Every leader in our team works diligently and tirelessly to ensure that we can reach many more South Africans to achieve our vision of equality, justice and a quality life for all. Legal Aid South Africa citizens, you make us proud and ensure that we remain a leader in the provision of accessible and independent quality legal services to the poor and vulnerable. My heartfelt thanks to each one of you!



Ms Vidhu Vedalankar

Chief Executive Officer: Legal Aid South Africa