

Dear Minister Lamola and Minister Dlamini Zuma,

1. We act for the Cape Town Attorneys Association ("the CTAA"). The CTAA is a voluntary association of attorneys who practise within the territorial area of jurisdiction of the Cape Town Magistrates Court which has amongst its objects the promotion of the common interests of its members and the responsibility of dealing with legislation which pertains to its members.
2. The CTAA's members render "essential services" as defined in the regulations promulgated by the Minister of Cooperative Governance and Traditional Affairs on 25 March 2020 ("the 25 March regulations"). The 25 March regulations empower the "head of an institution" to "determine the essential staff required" to perform essential services (regulation 11B(2)) and issue to those staff a permit which entitles them to leave their place of residence in order to perform an essential service. The "head of an institution" was defined as meaning "the accounting officer of a public institution and the chief executive officer or the equivalent of a chief executive officer of a private institution". An "institution" was defined to be any public or private institution engaged in the supply of an "essential service".
3. At the time the 25 March regulations were promulgated the CTAA took the view that its members were entitled to be issued with an essential services permit under the 25 March regulations. In fact, a number of such permits were issued to its members in terms of the 25 March regulations. The 25 March regulations have not been amended or

withdrawn insofar as they pertain to the issue of essential service permits. Accordingly they stand.

4. Acting under the authority given to Minister Lamola in the 25 March regulations, directions were promulgated by Minister Lamola on 26 March 2020, which were subsequently withdrawn and replaced by directions promulgated on 31 March 2020 ("the 31 March directions"). In these directions the definition of the "head of an institution" read differently to that provided for in the 25 March regulation. It was stated that for the purposes of the directions, the "head of an institution" was the Provincial Director of the Legal Practice Council. The directions promulgated by Minister Lamola also stand.
5. The result is that there is confusion as to whether or not for the purpose of rendering essential legal services "essential staff" should have a permit issued by the "head of an institution" as defined in the 25 March regulations, or by the "head of an institution" as defined in the 31 March directions, or whether it is permissible to obtain a permit from either. Our client takes the view that it is permissible to obtain a permit either under the 25 March regulations, or under the 31 March directions.
6. The issue is particularly pressing because members of the CTAA, and undoubtedly other legal practitioners, cannot obtain a permit under the 31 March directions if the matter they are attending to has not been enrolled for hearing. In practice this presents insurmountable difficulties as it is often not possible to obtain instructions and give advice about urgent matters without consulting with a client, obtaining all relevant evidential material, and drafting papers. As you will know this must be done prior to papers being issued and the matter can only

be enrolled for hearing after all this work has been done. Members of the public are thus effectively prevented from accessing the courts.

7. We are instructed to request that you please let us have your confirmation that you agree with the CTAA's position that essential service permits can validly be obtained either under the 25 March regulations or under the directions issued on 31 March.
8. As the matter is extremely urgent we are instructed to ask you please to let us have your response to this email by close of business tomorrow, 17 April 2020. If no response is received our client will assume that you do not agree with its position, and in this event we hold instructions urgently to apply to the Western Cape High Court for the necessary declaratory and other appropriate relief.

**16 April 2020**