

## **WORKING GROUP REPORT: Racial Dynamics in the South African Legal Fraternity**





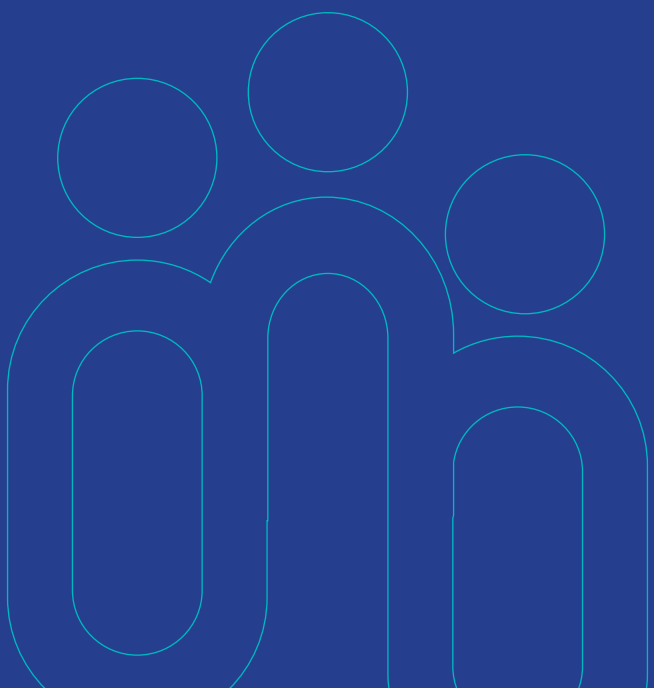
# CONTEXT

**A key aspect of the South African General Counsel for Diversity and Inclusion (SA GC for D&I) initiative is the creation of working groups** to facilitate comprehensive and multi-stakeholder conversations around critical themes linked to diversity, equity and inclusion (DEI) within the South African legal fraternity.

**These working groups discuss topics proposed and voted on by members of and partners to the initiative.** Each working group is tasked with using the discussions to create an output intended as a public-good resource for those wanting to enhance DEI. This document is such an output and we encourage readers to share it with others in the South African legal fraternity who may benefit from its content.

**This particular document is the fruit of the collaborative efforts of the Racial Dynamics in the South African Legal Fraternity working group, which started in late 2023 and concluded its work in early 2024.** The SA GC for D&I gratefully acknowledges the efforts of all of those who took part in these working group discussions and thanks their organisations for allowing them the time to do so.

**The discussions within the working groups adhere to the Chatham House Rule, ensuring the anonymity of individual contributors to the dialogue. For further information or to become part of the SA GC for D&I and its current or future working groups, visit [www.sagcdi.co.za](http://www.sagcdi.co.za).**



# THIS IS A LIVING DOCUMENT THAT REFLECTS ON RACIAL DYNAMICS WITHIN THE SOUTH AFRICAN LEGAL SECTOR

This document reflects on the complexities of racial dynamics within the South African legal sector, a topic deeply entwined with the nation's history and its legacy of economic, educational and social inequality. It is intended to exist as a living document (to be periodically updated) that will capture best practice examples and ideas for those working in the legal fraternity looking to build on efforts in support of improving racial dynamics, equity and belonging in their organisations. This first iteration of the document is the result of the concerted efforts of the Racial Dynamics in the South African Legal Sector working group of the SA GC for D&I, an initiative that promotes DEI in the South African legal profession. We welcome comments and inputs to continue to improve this document.



**Racial inequality manifests itself in multiple ways within the South African legal fraternity.** For instance, while some areas of legal practice showcase a diverse mix of lawyers, others do not. Anecdotally, we have heard that legal teams working on, for example, third-party claims or Road Accident Fund claims tend to be more diverse than legal teams working in commercial, intellectual property and financial law.

Path dependency is a significant concern and barrier to racial diversity


Limited racial diversity may be the result of unconscious biases and preferences for individuals similar to oneself (for example, when senior lawyers prefer to train, advise or work with juniors who graduated from the same tertiary education as them), or due to continuing with – or falling back on – “default” options (for example, a corporate may default to a specific firm or partner for a certain type of work or when the stakes are seen to be particularly high). This can lead to perpetuating existing inequality or exclusion. Awareness is the first step to countering this in a balanced and pragmatic way, and we encourage thoughtful approaches to enhancing diversity and addressing historical inequality, including along racial lines.



With the above context in mind, we have started to collect guidance, ideas and best practices to help legal professional bodies, firms and clients monitor complex racial dynamics and address racial inequality within the South African legal fraternity. These are captured below and will be updated periodically. Please get in touch with us on the SA GC for D&I website with any feedback.

# THIS LIVING DOCUMENT ALSO PROVIDES THE SOUTH AFRICAN LEGAL FRATERNITY WITH BEST PRACTICE GUIDELINES FOR MONITORING COMPLEX RACIAL DYNAMICS AND ADDRESSING RACIAL INEQUALITY

Goal	Guidance, ideas and best practices to consider
1. Creating an enabling environment for racial equity in the legal sector	<ul style="list-style-type: none"> <li>• <b>Encouraging the “buy side” of the legal sector</b> to incentivise law firms to commit to racial diversity (e.g., organisations can request or even insist on more diverse teams of lawyers)</li> <li>• <b>Encouraging “supply side” inclusivity.</b> For example, the “twinning” concept often used in the developmental context can be used in the legal sector, where an established legal institution is paired with a newer or smaller institution so that the latter gains experience and exposure</li> <li>• <b>Hosting regular events for networking and relationship building</b> to encourage more diverse interactions and to help individuals (especially those at junior levels) build broad professional networks within their firms and across the industry. This is particularly helpful for individuals whose background means they do not come into the profession with strong legal sector and corporate networks</li> <li>• <b>Addressing similarity biases</b> (when people have an unconscious tendency to prefer people who are similar to them and to view those people in a more positive light) in hiring, promotion and resource assignment</li> </ul>
2. Encouraging racial equity internally in our organisations	<ul style="list-style-type: none"> <li>• <b>Encouraging senior management to visibly commit to racial diversity</b></li> <li>• <b>Encouraging staff to participate in networking and relationship-building events,</b> especially in the case of younger team members who may not have strong personal networks because of where they grew up, what schools they went to or where they studied</li> <li>• <b>Considering skills development/bursary programmes</b> for underrepresented population groups intended for legal practice areas that currently lack racial diversity</li> <li>• <b>Ensuring previously disadvantaged population groups have access to the skills development support and opportunities</b> required for them to succeed</li> <li>• <b>Providing equitable access to opportunities and experiences and thoughtfully</b> considering how these are shared throughout a cohort of employees</li> </ul>
3. Measurement, tracking and reporting for racial diversity and equity	<ul style="list-style-type: none"> <li>• <b>Incorporating racial diversity goals into a company’s (purpose and) strategy</b></li> <li>• <b>Moving beyond B-BBEE scorecards</b> and seeking to track recruitment, retention, promotion, compensation and skills development by diversity categories, including race</li> <li>• <b>Tracking a company’s participation in racial diversity initiatives,</b> including using staff surveys to highlight status of staff wellness and their senses of belonging, and the impacts of the diversity initiatives on them.</li> <li>• <b>Tracking both the time spent mentoring junior professionals and the variety of cases allocated to junior professionals</b> to ensure equitable exposure to learning and a fair distribution of skills development</li> <li>• Tracking racial diversity progress transparently and communicating this within the organisation with candour and sensitivity</li> <li>• <b>Designing KPIs for measuring performance of the leadership specific to racial diversity</b></li> <li>• <b>If not already in place, consider setting KPIs and metrics</b> – the SA GC for D&amp;I has developed a tool for this, available <a href="#">here</a></li> </ul>



## THE SA GC FOR D&I WILL REVISE THIS LIVING DOCUMENT REGULARLY TO ENSURE THAT IT IS UP TO DATE AND REFLECTS CURRENT BEST PRACTICES

Version	Date	Edits made	Responsible
1	2023/12/12	Initial draft	Sammy Pan and Mark Robertson on behalf of the working group
2	2024/02/23	Final draft	Sammy Pan and Mark Robertson on behalf of the working group
3	2024/03/30	Formatting	Sammy Pan and Mark Robertson on behalf of the working group