

REPUBLIC OF SOUTH AFRICA

MAINTENANCE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary
of Bill and prior notice of its introduction published in Government Gazette No. 45616 of
10 December 2021)
(The English text is the official text of the Bill)*

(MR M G E HENDRICKS, MP)

[B17—2022]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Maintenance Act, 1998, so as to delete incorrect numbering as well as obsolete Roman numerals, and to add a new definition; to align existing text with the proposed definition; to provide for where a complainant or a person acting on behalf of a complainant may lodge a complaint; to further provide for mandatory powers for maintenance officers when instituting investigations and enquiries relating to maintenance; to provide for certain entitlements and allowances to be extended to complainants; to further provide for the option to refer disputes to mediation or arbitration; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 99 of 1998

1. Section 1 of the Maintenance Act, 1998 (hereinafter referred to as “the principal Act”), is hereby amended— 5
- (a) by the deletion of the number “(1)” in front of the introductory line;
 - (b) by the deletion of the Roman numerals before and after each definition; and
 - (c) by the addition before the definition of “court in the Republic” of the following definition:
 - “‘complainant’ means any person legally entitled to be maintained by any other person, who lodges a complaint, or on whose behalf a complaint is lodged, relating to maintenance in accordance with this Act;”.

Amendment of section 6 of Act 99 of 1998, as substituted by section 1 of Act 9 of 2015 15

2. Section 6 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1)(b) for subparagraph (i) of the following subparagraph:
 - “(i) the identification or whereabouts of any person who is legally liable to maintain the **[person mentioned in such complaint]** complainant or who is allegedly so liable;”;
 - (b) by the substitution for subsection (2) of the following subsection:
 - “(2) After investigating the complaint the maintenance officer may institute an enquiry in the maintenance court within the area of jurisdiction in which the **[person to be maintained]** complainant or the person in whose care the **[person to be maintained]** complainant is, resides with a view to enquiring into the provision of maintenance for the **[person so to be maintained]** complainant.”; and

- (c) by the insertion of the following subsection after subsection (1):

“(1A) A complainant may lodge a complaint with any maintenance court in whose jurisdiction such complainant resides, and where such complainant is a minor, the person in whose care the complainant is, may submit such complaint on the complainant’s behalf, in relation to any complaint relating to maintenance.”. 5

Amendment of section 7 of Act 99 of 1998, as amended by section 2 of Act 9 of 2015

3. Section 7 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10

“In order to investigate any complaint relating to maintenance, a maintenance officer [**may**] ~~shall~~—”; and

- (b) by the substitution in subsection (3)(i) for subparagraph (i) of the following subparagraph:

“(i) the means of the [**complainant**] person lodging that complaint;”. 15

Amendment of section 9 of Act 99 of 1998, as amended by section 3 of Act 9 of 2015

4. Section 9 of the principal Act is hereby amended by the substitution in subsection (1)(a) for the words preceding subparagraph (i) of the following words:

“A maintenance officer who has instituted an enquiry in a maintenance court [**may**] ~~shall~~ cause any person, including any person legally liable to maintain any other person or any person in whose favour a maintenance order has already been made, to be subpoenaed—”. 20

Amendment of section 11 of Act 99 of 1998

5. Section 11 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading: 25

“**Rights and privileges of witnesses and complainants**”; and

- (b) by the insertion after subsection (1) of the following subsection:

“(1A) The entitlement and allowance contemplated under subsection (1) shall be extended to the complainant upon their lodgement of a claim under this Act, and upon each required attendance of such complainant for the purposes of the maintenance investigation or enquiry.”. 30

Insertion of section 14A in Act 99 of 1998

6. The following section is hereby inserted in the principal Act after section 14:

“Alternative dispute resolution

14A. (1) Should the parties to a maintenance investigation or enquiry elect to resolve any dispute arising therefrom through mediation or arbitration, such dispute shall be referred for mediation or arbitration in accordance with the applicable rules of the Rules Regulating the Conduct of the Proceedings of the Magistrates’ Courts of South Africa. 35

(2) The “Rules Regulating the Conduct of the Proceedings of the Magistrates’ Courts of South Africa” means the rules made by the Rules Board for Courts of Law under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), read with section 9(6)(a) of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act No. 31 of 2008), with the approval of the Minister responsible for justice.”. 40 45

Short title and commencement

7. This Act is called the Maintenance Amendment Act, 2022, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE MAINTENANCE
AMENDMENT BILL, 2022**

1. INTRODUCTION

The right to maintenance ensures the wellbeing and development of those who would otherwise be left desolate and socially and economically vulnerable due to their lack of means, which is enforceable against those who have a duty of care over such vulnerable persons. This duty of care may arise as a result of parental or marital relations. While significant strides have been made to reduce the vulnerability of women and children in enforcing these rights, there are still glaring legislative and, resultantly, systemic gaps, which prevent meaningful access to these rights. The proposed amendments aim to bridge these gaps to effectively empower vulnerable applicants to realise their constitutional rights and to ensure or improve access to the relief contemplated in the primary Act.

2. OBJECTS OF THE BILL

The purpose of the Bill is to amend the Maintenance Act, 1998 (Act No. 99 of 1998) so as to provide for—

- 2.1 the locations where a person who is entitled to be maintained may submit a complaint for maintenance;
- 2.2 the powers of maintenance officers with regard to investigations and enquiries of maintenance matters;
- 2.3 extending the payment of entitlements and allowances to complainants; and
- 2.4 alternative dispute resolution in maintenance matters.

3. CONTENTS OF THE BILL

- 3.1 Clause 1 provides for the deletion of incorrect numbering, obsolete Roman numerals and the addition of the definition for “complainant”.
- 3.2 Clause 2 provides for the alignment of the existing text with the proposed definition for “complainant”. It further provides that where a complainant, or where the complainant is a minor, a person acting on the minor’s behalf may submit a complaint relating to maintenance.
- 3.3 Clause 3 deals with the powers of a maintenance officer when dealing with an investigation relating to maintenance matters.
- 3.4 Clause 4 deals with the powers of a maintenance officer when dealing with an enquiry relating to maintenance matters. It further aligns the text with the proposed definition of “complainant”.
- 3.5 Clause 5 amends a heading so as to align it with the new amendment catering for complainants.
- 3.6 Clause 5 further extends the entitlements and allowances provided to witnesses in terms of the Act to complainants as well.
- 3.7 Clause 6 states that parties involved in a maintenance matter may elect to have their dispute resolved through an alternative dispute resolution. The clause further contains a stand-alone definition to cater for a new term that would only appear in that section.
- 3.8 Clause 7 provides for the short title and commencement of the Act.

4. FINANCIAL IMPLICATIONS FOR THE STATE

The financial implications would include the following:

The Amendment to Regulation: No. R. 1361 of 1999—Maintenance Act 1998 [Government Gazette Vol. 413, No. 20627, 15 November 1999] would require such financial provision to be extended to Applicants as well, where such Applicants are viewed as being Constitutionally entitled (if not more so) to the equal protection and benefit of the law, and a budgetary provision must therefore be ensured for this. The monetary provision is regulated at R20, inter alia, and this, along with any other potential costs permitted in terms of the regulations, would therefore have to be doubled.

The prospects of aligning this provision with the Constitution and preventing claims for constitutional damages outweigh the potential costs.

5. DEPARTMENTS, BODIES AND PERSONS CONSULTED

- Sheigh Fataar — 2nd Deputy President of the MJC (Muslim Judicial Council)
- Keith Arries — Pastor
- Advocate Fairouz Nagia Advocate of the High Court of South Africa
- Fatima Hendricks — Social Worker
- Adv. Shameemah Salie — Family Advocate in the office of the Family Advocate for the Family Court in the Department of Justice
- Attorney Yusuf Khan Dalwai
- Lizette Baxter — Social Worker at AHOS (Athlone House of Strength)
- Attorney Ashwin Cassen
- Veli Luthuli — Al Jama-ah PR Councillor for Estcourt and Leader of Al Jama-ah's Women's League
- Natasja Stroebel — Maintenance Activist
- Sinazo January
- Yusuf Daniels — Author and Single Father
- Imraan Moosa — Al Jama-ah Ward Councillor for Lenasia
- Eugene Opperman of Oppermans Inc Attorneys
- the Sandvlei Community — the birth place of Islam
- Professor Haron — PhD Degree International Relations: South Africa-Malaysia, Drs. Degree Semitic Studies: Arabic, BA. Honours Semitic Studies: Arabic, MA. Degree Religious Studies: Islamic Studies, BA. Honours Religious Studies, BA. Degree Arabic and Islamic Studies
- Al Jama-ah Senior Parliamentary Researcher and
- Honourable Ganief Hendricks — Member of Parliament and President of Al Jama-ah.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, as its provisions do not in a substantial manner deal with any functional area of concurrent national and provincial legislative competence listed under Schedule 4 to the Constitution, nor do they deal with any other matter contained in section 76(3), (4) or (5).
- 6.2 The Member is of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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