

REPUBLIC OF SOUTH AFRICA

MAINTENANCE AMENDMENT BILL

(As amended by the Portfolio Committee on Justice and Correctional Services)
(The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 16B—2014]

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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 further regulate the lodging of complaints relating to maintenance and the jurisdiction of maintenance courts; to further regulate the investigation of maintenance complaints; to further regulate the securing of witnesses for purposes of a maintenance enquiry; to further regulate maintenance enquiries in order to make provision for the granting of interim maintenance orders; to further regulate the making of maintenance orders; to further regulate the making of maintenance orders by consent; to further regulate the circumstances in which maintenance orders may be granted by default; to further regulate the granting of cost orders; to regulate the effect a maintenance order made by a maintenance court has on a maintenance order made by another court; to further regulate the transfer of maintenance orders; to regulate the reporting of a maintenance defaulter to any business which has as its object the granting of credit or is involved in the credit rating of persons; to further regulate the attachment of emoluments; to increase the penalties for certain offences; to create certain new offences; to further regulate the conversion of criminal proceedings into maintenance enquiries; and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts as follows:—

Substitution of section 6 of Act 99 of 1998

1. The following section is hereby substituted for section 6 of the Maintenance Act, 1998 (hereafter referred to as the principal Act):

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“Complaints relating to maintenance

- 6.** (1) Whenever a complaint to the effect—
- (a) that any person legally liable to maintain any other person fails to maintain the latter person; **[or]**
 - (b) that good cause exists for the substitution or discharge of a maintenance order; or
 - (c) that good cause exists for the substitution or discharge of a verbal or written agreement in respect of maintenance obligations in which respect there is no existing maintenance order,

has been made and is lodged with a maintenance officer in the prescribed manner, the maintenance officer shall investigate that complaint in the prescribed manner and as provided in this Act.

(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, or the person in whose care the person to be maintained is, resides, carries on business or is employed with a view to enquiring into the provision of maintenance for the person so to be maintained.”.

Amendment of section 7 of Act 99 of 1998 10

2. Section 7 of the principal Act is hereby amended by the addition of the following subsection:

“(3) (a) If a complaint is lodged with a maintenance officer in terms of section 6 and the maintenance officer, after all reasonable efforts to locate the whereabouts of the person who may be affected by an order which may be made by a maintenance court pursuant to the complaint so lodged, have failed, the maintenance officer may apply to the maintenance court, in the prescribed manner, to issue a direction as contemplated in this subsection. 15

(b) If a maintenance court is satisfied that all reasonable efforts to locate the whereabouts of a person have failed, as contemplated in paragraph (a), the court may issue a direction in the prescribed form, directing one or more electronic communications service providers to furnish the court, in the prescribed manner, with the contact information of the person in question if that person is in fact a customer of the service provider. 20

(c) If the maintenance court issues a direction in terms of paragraph (b) the maintenance court shall direct that the direction be served on the electronic communications service provider in the prescribed manner. 25

(d) The information referred to in paragraph (b) shall be provided to the maintenance court within the time period set out by the court in the direction. 30

(e) An electronic communications service provider on which a direction is served may, in the prescribed manner, apply to the maintenance court for— 30

(i) an extension of the period referred to in paragraph (d) on the grounds that the information cannot be provided timeously; or

(ii) the cancellation of the direction on the grounds that— 35
 (aa) it does not provide an electronic communications service in respect of the person referred to in the direction; or
 (bb) the requested information is not available in the records of the electronic communications service provider.

(f) After receipt of an application referred to in paragraph (e), the maintenance court shall consider the application, give a decision in respect thereof and inform the electronic communications service provider, in the prescribed manner, of the outcome of the application. 40

(g) The list of electronic communications service providers referred to in section 4(7) of the Protection from Harassment Act, 2011 (Act No. 17 of 2011), may be used by maintenance courts for purposes of this subsection. 45

(h) The tariffs payable to electronic communications service providers for providing information as determined by the Minister in terms of section 4(8) of the Protection from Harassment Act, 2011, apply in the case of information required in terms of this subsection.

(i) If the maintenance officer is of the opinion that the person lodging the complaint referred to in paragraph (a) is unable to pay the costs involved in the furnishing of information referred to in paragraph (b), the maintenance officer may at any time after the maintenance court issues a direction under the said paragraph (b), request the maintenance court to hold an enquiry into— 50

(i) the means of the complainant; and 55
 (ii) any other circumstances which, in the opinion of the maintenance court, should be taken into consideration.

(j) At the conclusion of the enquiry referred to in paragraph (i) the maintenance court may make such order as the court may deem fit relating to the payment of the costs involved in the furnishing of information referred to in paragraph (b), 60

including an order directing the State, subject to section 20, to pay such costs within available resources, in the prescribed manner.

(k) The maintenance court may, if it has ordered the State to pay the costs referred to in paragraph (j), upon the application of the maintenance officer, order the person affected by the order to refund the costs so paid by the State in terms of paragraph (j), in the prescribed manner.

(l) For purposes of this subsection, “electronic communications service provider” means an entity or a person who is licensed or exempted from being licensed in terms of Chapter 3 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), to provide an electronic communications service.”.

Amendment of section 9 of Act 99 of 1998

3. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) A maintenance officer who has instituted an enquiry in a maintenance court may 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—

- (i) to appear before the maintenance court and give evidence; or
- (ii) to produce any book, document or statement.

(b) A book, document or statement referred to in paragraph (a)(ii) includes—

- (i) any book, document or statement relating to the financial position of any person who is affected by the legal liability of a person to maintain any other person or in whose favour a maintenance order has been made; and
- (ii) in the case where such person is in the service of an employer, a statement which gives full particulars of his or her earnings and which is signed by the employer.”.

Amendment of section 10 of Act 99 of 1998 as amended by section 16 of Act 55 of 2003

4. Section 10 of the principal Act is hereby amended by the addition of the following subsection:

“(6) (a) A maintenance court shall conclude maintenance enquiries as speedily as possible and shall ensure that postponements are limited in number and in duration.

(b) A maintenance court may, where a maintenance order has not been made and a postponement of the enquiry is necessary and if the court is satisfied that—

- (i) there are sufficient grounds prior to such postponement indicating that one of the parties is legally liable to maintain a person or persons; and
- (ii) undue hardship may be suffered by the person or persons to be maintained as a result of the postponement,

subject to paragraph (c), make an interim maintenance order which the maintenance court may make under section 16(1)(a).

(c) When the maintenance court subsequently makes any order under section 16, the maintenance court may—

- (i) make an order confirming the interim maintenance order referred to in paragraph (b); or
- (ii) set aside such interim maintenance order or substitute it with any other order which the maintenance court may consider just in the circumstances.”.

Amendment of section 16 of Act 99 of 1998 as amended by section 17 of Act 55 of 2003

5. Section 16 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(2) (a) Any court—

- (i) that has at any time, whether before or after the commencement of this Act made a maintenance order under subsection (1)(a)(i) or (b)(i);
- (ii) that makes such a maintenance order; or
- (iii) that convicts any person of an offence referred to in section 31(1),

shall, subject to paragraph (b)(i), make an order directing any person, including any administrator of a pension fund, who is obliged under any contract to pay any sums of money on a periodical basis to the person against whom the maintenance order in question has been or is made, to make on behalf of the latter person such periodical payments from moneys at present or in future owing or accruing to the latter person as may be required to be made in accordance with that maintenance order if that court is satisfied—

(aa) where applicable, in the case of subparagraph (i), after hearing such evidence, either in writing or orally, as that court may consider necessary;

(bb) where applicable, in the case of subparagraph (ii), after referring to the evidence adduced at the enquiry or the application for an order by default, as the case may be; or

(cc) where applicable, in the case of subparagraph (iii), after referring to the evidence adduced at the trial; and

(dd) where applicable, after hearing such evidence, either in writing or orally, of any person who is obliged under any contract to pay any sums of money on a periodical basis to the person against whom the maintenance order in question has been or is made,

that it is not impracticable in the circumstances of the case: Provided that nothing precludes the court from making an order in terms of this subsection if it is of the opinion that any further postponement of the enquiry in order to obtain the evidence of the person referred to in subparagraph (dd) will give rise to an unreasonable delay in the finalisation of the enquiry, to the detriment of the person or persons to be maintained.”.

Substitution of section 17 of Act 99 of 1998

6. The following section is hereby substituted for section 17 of the principal Act:

“Orders by consent

17. (1) Any order referred to in section 16(1)(a) or (b) may be made **[against any person not present]** at the enquiry in the absence of one or both of the parties involved in the enquiry, if it is made in accordance with his or her or their consent in writing handed in by the maintenance officer at the enquiry.

(2) A copy of an order made **[against any person not present]** at the enquiry in the absence of one or both of the parties as provided for in subsection (1), shall be delivered or tendered to him or her or them, as the case may be, by any maintenance officer, police officer, sheriff or maintenance investigator, and the return of any such officer, sheriff or investigator showing that such copy was delivered or tendered to the particular person or persons shall be deemed to be sufficient proof of the fact that he or she was or they were aware of the terms of the order in question.”.

Amendment of section 18 of Act 99 of 1998

7. Section 18 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) If a maintenance court is satisfied on the grounds of sufficient proof or otherwise—

(a) that any person against whom an order may be or has been made under section 16(1)(a) or (b) or that any person in whose favour such an order has been made—

(i) has knowledge of a subpoena issued under section 9; or

(ii) has appeared before the court and was warned by the court to appear at a later date, time and place before the court; and

(b) that he or she has failed to appear before the maintenance court on the date and at the time and place—

(i) specified in such subpoena; or

(ii) in accordance with a warning referred to in paragraph (a)(ii), the maintenance court may, on application of the maintenance officer for an order by default, call upon the person who has lodged the complaint to adduce such evidence, either in writing or orally, in support of his or her complaint as the maintenance court may consider necessary.”; 5

(b) by the substitution for subsection (3) of the following subsection:

“(3) A copy of an order made [**against**] in respect of any person not present at the enquiry shall be delivered or tendered, as soon as may be practicable in the circumstances, to him or her by any maintenance officer, police officer, sheriff or maintenance investigator, and the return of any such officer, sheriff or investigator showing that such copy was delivered or tendered to the particular person shall be deemed to be sufficient proof of the fact that he or she was aware of the terms of the order in question.”; and 10 15

(c) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(a) The person [**against**] in respect of whom a maintenance court has made an order by default may apply to the maintenance court for the variation or setting aside of the order.”. 20

Substitution of section 20 of Act 99 of 1998

8. The following section is hereby substituted for section 20 of the principal Act:

“Orders as to costs of service and directions”

20. The maintenance court holding an enquiry may, having regard to the conduct of the persons involved in the enquiry so far as it may be relevant, make such order as the maintenance court may consider just relating to the costs of— 25

(a) the service of process; and

(b) obtaining the information contemplated in section 7(3).”.

Substitution of section 22 of Act 99 of 1998

9. The following section is hereby substituted for section 22 of the principal Act:

“Notice of substitution or discharge of maintenance orders”

22. Whenever a maintenance court—

(a) makes an order under section 16(1)(b) in substitution of a maintenance order; or 35

(b) discharges a maintenance order under section 16(1)(b), the maintenance order shall cease to be of force and effect only insofar as the court expressly, or by necessary implication, replaced that order or part thereof, and the maintenance officer shall forthwith give notice of the decision to the registrar or clerk of the court in the Republic where the maintenance order was issued or where the sentence concerned was imposed, as the case may be, who shall deal with the relevant records or registers in the prescribed manner.”. 40

Amendment of section 23 of Act 99 of 1998

10. Section 23 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 45

“(1) Subject to the directions prescribed in connection with the transfer of maintenance orders, the maintenance officer [**may**] shall, in writing, direct the clerk of the court where a maintenance order was made to transmit the maintenance order, together with the prescribed records, to the clerk of the maintenance court within the area of jurisdiction of which the person in whose favour the maintenance order was made, or the person in whose care that person is, resides, carries on business or is employed.” 50

Amendment of section 26 of Act 99 of 1998, as amended by section 18 of Act 42 of 2001 and section 18 of Act 55 of 2003

11. Section 26 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) On the granting of an application contemplated in subsection (2) by a maintenance court, the maintenance officer or clerk of the court at the request of the maintenance officer, shall, notwithstanding anything to the contrary contained in any law, in the prescribed manner, furnish the particulars of the person against whom a maintenance order has been made and a certified copy of the order of the court contemplated in subsection (2)(a)(i), (ii) or (iii), to any business which has as its object the granting of credit or is involved in the credit rating of persons.”

Amendment of section 28 of Act 99 of 1998

12. Section 28 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A maintenance court may—

(a) on the application of a person referred to in section 26(2)(a); [or]

(b) when such court suspends the warrant of execution under section 27 (4)(b)[,];

or

(c) when such court suspends the order for the attachment of debt under section 30(1), and

(d) where applicable, after hearing the evidence, either in writing or orally, of the employer of the person in question,

make an order for the attachment of any emoluments at present or in future owing or accruing to the person against whom the maintenance or other order in question was made to the amount necessary to cover the amount which the latter person has failed to pay, together with any interest thereon, as well as the costs of the attachment or execution, which order shall authorise any employer of the latter person to make on behalf of the latter person such payments as may be specified in the order from the emoluments of the latter person until such amount, interest and costs have been paid in full: Provided that nothing precludes the court from making an order in terms of this subsection if it is of the opinion that any further postponement of the enquiry in order to obtain the evidence of the person referred to in paragraph (d) will give rise to an unreasonable delay in the finalisation of the enquiry, to the detriment of the person or persons to be maintained.”

Amendment of section 31 of Act 99 of 1998

13. Section 31 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of subsection (2), any person who fails to make any particular payment in accordance with a maintenance order shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding [one year] three years or to such imprisonment without the option of a fine.”; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) If a person has been convicted of an offence under this section, the maintenance officer [may] shall, notwithstanding anything to the contrary contained in any law, in the prescribed manner, furnish that person’s personal particulars to any business which has its object the granting of credit or is involved in the credit rating of persons.”

Substitution of section 35 of Act 99 of 1998

14. The following section is hereby substituted for section 35 of the principal Act:

“Offences relating to maintenance enquiries

35. Any person who wilfully interrupts the proceedings at a maintenance enquiry or who wilfully hinders or obstructs the maintenance court in the performance of the maintenance court’s functions at the enquiry shall be

guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding [six months] one year or to both [such] a fine and such imprisonment.”.

Substitution of section 38 of Act 99 of 1998

15. The following section is hereby substituted for section 38 of the principal Act: 5

“Offences relating to certain notices

38. Any person who—
 (a) without sufficient cause, refuses or fails to make any payment in accordance with a notice under section 16(3)(a), 29(1) or 30(1); or
 (b) refuses or fails to give notice to a maintenance officer as required by section 16(3)(b) or 29 (2),
 shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding [six months] two years.”.

Substitution of section 39 of Act 99 of 1998

16. The following section is hereby substituted for section 39 of the principal Act: 15

“Offences relating to notice of change of address

39. Any person who refuses or fails to give notice of any change of his or her place of residence or employment as required by section 16(4) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding [six months] one year.”. 20

Insertion of section 39A in Act 99 of 1998

17. The following section is hereby inserted in the principal Act after section 39:

“Offences relating to maintenance investigators

39A. (1) Any person who wilfully hinders or obstructs a maintenance investigator in the exercise of his or her powers or the performance of his or her duties shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year. 25
 (2) Any person, other than a clerk of the court who is requested to assist a maintenance investigator in the performance of his or her functions, who has not been appointed as a maintenance investigator in terms of this Act and who— 30
 (a) performs any function entrusted to a maintenance investigator under any law; or
 (b) pretends to be or makes use of any name, title or addition or description creating the impression that he or she is a maintenance investigator or is recognised by law as such, 35
 shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”.

Substitution of section 41 of Act 99 of 1998

18. The following section is hereby substituted for section 41 of the principal Act: 40

“Conversion of criminal proceedings into maintenance enquiry

41. If during the course of any proceedings in a magistrate’s court in respect of—
 (a) an offence referred to in section 31(1); or
 (b) the enforcement of any sentence suspended on condition that the convicted person make periodical payments of sums of money towards the maintenance of any other person, 45

it appears **[to the court]** on good cause shown that it is desirable that a maintenance enquiry be held, **[or when the public prosecutor so requests, the court shall]** the court may, of its own accord or at the request of the public prosecutor, convert the proceedings into such enquiry.”.

Short title and commencement

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19. This Act is called the Maintenance Amendment Act, 2015, and sections 2, 11 and 13(b) come into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM OF OBJECTS ON THE MAINTENANCE AMENDMENT BILL, 2014

1. INTRODUCTION

The aim of the Maintenance Amendment Bill, 2014 (the “Bill”), is to amend the Maintenance Act, 1998 (Act No. 99 of 1998) (the “Act”), in order to improve the maintenance system pending the finalisation by the South African Law Reform Commission of the review of the Act. The Bill seek to—

- (a) further regulate the lodging of complaints relating to maintenance and the jurisdiction of maintenance courts;
- (b) further regulate the investigation of maintenance complaints;
- (c) further regulate the securing of witnesses for purposes of a maintenance enquiry;
- (d) further regulate maintenance enquiries in order to make provision for the granting of interim maintenance orders;
- (e) further regulate the making of maintenance orders;
- (f) further regulate the making of maintenance orders by consent;
- (g) further regulate the circumstances in which maintenance orders may be granted by default;
- (h) further regulate the granting of cost orders;
- (i) regulate the effect a maintenance order made by a maintenance court has on a maintenance order made by another court;
- (j) further regulate the transfer of maintenance orders;
- (k) regulate the reporting of a maintenance defaulter to any business which has as its object the granting of credit or is involved in the credit rating of persons;
- (l) further regulate the attachment of emoluments;
- (m) increase the penalties for certain offences;
- (n) create certain new offences;
- (o) further regulate the conversion of criminal proceedings into maintenance enquiries; and
- (p) provide for matters connected therewith.

2. DISCUSSION

2.1 **Clause 1** of the Bill seeks to amend section 6 of the Act in order to oblige a maintenance officer to investigate a matter with the view to instituting a maintenance enquiry where good cause exists for the substitution or discharge of a maintenance obligation in the case of a verbal or written agreement in respect of which there is no existing maintenance order. This clause also aims to expand the jurisdiction of maintenance courts by allowing a maintenance court to also deal with maintenance proceedings if the maintenance beneficiary works or carries on business in the area of jurisdiction of that court and not only if the beneficiary lives in the area of jurisdiction of the court.

2.2 **Clause 2** aims to amend section 7 of the Act which deals with the investigation of maintenance complaints, by empowering a maintenance court to issue a direction directing one or more electronic communications service providers to furnish the court with the prescribed contact information of a person who may be affected by an order of a maintenance court if that person is in fact a customer of the service provider. The direction may only be issued if the court is satisfied that all reasonable efforts to locate the person in question have failed. The provision of this information to the maintenance court has cost implications, which are to be borne by the State if the maintenance court so orders, after determining that the complainant cannot afford to pay. The court may also order the person affected by the maintenance order to refund the State the costs of providing the court with the contact information of that person, if the State has paid such costs. However, the court may in terms of **clause 8**, taking into account the conduct of the parties to the enquiry, in so far as this may be relevant, make an order that it may consider just with regard to the costs of obtaining the information.

- 2.3 Section 9 of the Act empowers a maintenance officer to cause any person, including a person legally liable to maintain any other person to be subpoenaed to appear before the maintenance court to give evidence, or produce documents. **Clause 3** seeks to amend this section by granting a maintenance officer the power to subpoena the beneficiary of a maintenance order as well, for example where the respondent is applying for the reduction or discharge of the maintenance order. This is intended to create certainty that a maintenance beneficiary may also be subpoenaed and it is not only the respondent who can be subpoenaed.
- 2.4 Enquiries by a maintenance court are provided for in **section 10** of the Act. **Clause 4** aims to place a duty on a maintenance court to conclude maintenance enquiries speedily but also gives the court a discretion to postpone an enquiry and make an interim order for maintenance pending the finalisation of the matter.
- 2.5 In terms of section 16 of the Act, a maintenance court may make maintenance and ancillary orders. In **S v Nkoele SACR 2000(2) 420** the court held that a magistrate contemplating an order in terms of section 16 of the Act should also afford the employer of a person with a maintenance liability an opportunity to comment on the feasibility of the order. **Clause 5** seeks to amend section 16(2)(a) of the Act in order to bring it into line with this judgement. This provision will ensure that a court hears the views of the person, including a juristic person, who is obliged to make payments on behalf of the person who has a maintenance liability before making such an order. However, the court may make an order if the continued postponement of the enquiry in order to obtain the evidence on the feasibility of the order unreasonably delays the finalisation of the enquiry.
- 2.6 Section 17(1) of the Act provides that a maintenance order may be made against any person not present at the enquiry if it is made with his or her consent in writing and is handed in by the maintenance officer at the enquiry. The effect of this is that the parties must be present at the enquiry, even if the respondent consents to the order, or the beneficiary consents to the reduction or discharge of the order. **Clause 6** aims to amend this section in order to empower a maintenance court to make an order in the absence of the respondent or beneficiary, or both parties, if the order is consistent with the written consent handed in by the maintenance officer at the enquiry. A copy of the order made must then be served on the party that was absent.
- 2.7 Section 18 of the Act deals with orders by default and provides that a maintenance court may only grant a maintenance order by default if the court is satisfied that the respondent has ignored a subpoena. **Clause 7** aims to amend this section in order to empower a maintenance court to grant an order by default if the court is satisfied that a person, including the person in whose favour a maintenance order has been made, failed to appear after having been duly warned by the court to so appear and after calling upon the person who lodged the complaint to adduce evidence orally or in writing in support of the complaint.
- 2.8 Section 20 of the Act is amended to provide for orders of costs of service and directions. **Clause 8** aims to amend this section by providing for the costs of obtaining information in terms of section 7(3) of the Act.
- 2.9 In terms of section 22 of the Act, the maintenance court may make an order substituting another order or may discharge a maintenance order. In the case of **Cohen v Cohen 2003(3) SA 337 (SCA)**, the court held that the existing Supreme Court of Appeal or High Court order ceases to be of force and effect, but only insofar as the order of the maintenance court expressly or by necessary implication replaces such an earlier order. **Clause 9** aims to amend section 22 of the Act in order to bring it in line with the **Cohen** judgement.

- 2.10 **Clause 10** seeks to amend section 23(1) of the Act in order to establish a uniform manner in which maintenance orders and files are transferred from one maintenance court to another by imposing a duty on the maintenance officer to direct the clerk of the court, where the order was made, to transmit it together with the prescribed records to the clerk of the relevant court.
- 2.11 Section 26 of the Act provides for the enforcement of maintenance and other orders. While the failure to pay maintenance is comparable with a default judgment in a civil case, the same mechanisms that are designed to prevent the defaulter from continuing to obtain credit, while owing maintenance, are not extended to maintenance defaulters. **Clause 11** proposes to insert a new provision in section 26 of the Act so that when a court grants an application referred to in section 26(2) of the Act, because a person has defaulted on his or her maintenance obligations, his or her personal details must be submitted to a business which has as its object the granting of credit or is involved in the credit rating of persons. This will prevent maintenance defaulters from continuing to receive credit while they owe maintenance.
- 2.12 Section 28 of the Act, which provides for the attachment of emoluments, only makes provision for the attachment of emoluments when a person has failed to pay maintenance or when a court suspends the warrant of execution under section 27(4)(b). **Clause 12** aims to amend section 28 in order to expand the instances where a court may order the attachment of emoluments by including instances where a court orders the attachment of a debt under **section 30** and after hearing the employer of the defaulter. A provision of this nature will be effective in making a person against whom a maintenance order has been made, pay maintenance arrears.
- 2.13 Clauses **13, 14, 15** and **16** propose to amend sections 31, 35, 38 and 39 of the Act. The sections in question deal with penalties applicable to offences under the Act. The proposed amendments aim to increase the prescribed penalties.
- 2.14 **Clause 17** proposes to create a new offence to deal with persons who obstruct or hinder a maintenance investigator from exercising his or her powers or who impersonate a maintenance investigator.
- 2.15 Section 41 of the Act provides for the conversion of criminal proceedings into a maintenance enquiry in certain circumstances. In the case of **S v Magagula 2001 (2) SACR 1123(T)**, the court held that the question whether or not a court should convert a criminal trial into a maintenance enquiry should be in the form of a discretion and should not be peremptory, as is currently the case. **Clause 18** aims to amend section 41 in order to make provision for the trial court, at its own discretion, to order that criminal proceedings be converted into a maintenance enquiry.

3. BODIES, DEPARTMENTS AND PARTIES CONSULTED

A consultative workshop to discuss the Bill was held with internal roleplayers. It was also distributed to numerous external stakeholders, including the electronic communications service providers and the Credit Bureau Association.

4. FINANCIAL IMPLICATIONS

Clause 2 will have financial implications for the State. Clause 2, among others, requires the State to pay the electronic communications service providers the costs for providing the contact information of persons who have maintenance obligations, as set out in paragraph 2.2 above. It is not possible to quantify the number of matters in which the State will have to bear these costs. Clause 2 does, however, contain a provision in terms of which the maintenance court can make an order, directing the respondent, when he or she is before court, to refund the State for the costs so incurred.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution apply.
- 5.2 The State Law Advisers are also of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.

