

MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION

PROJECT 100: ISSUE PAPER: REVIEW OF THE MAINTENANCE ACT 99 OF 1998

The South African Law Reform Commission (the Commission) has approved the publication of an issue paper towards a review of the Maintenance Act 99 of 1998, for public comment.

The issue paper draws attention to matters for possible law reform in the maintenance legislation under review. It presents issues that have been referred to the Commission by the Department of Justice and Constitutional Development (the Department) for review, and additional areas that the Commission has identified as requiring law reform. All the identified issues will form the basis for further investigation and consultation by the Commission.

An issue paper does not present clearly defined recommendations for law reform. The views and recommendations presented in the issue paper are therefore not to be regarded as the Commission's final views. Submissions received in response to an issue paper, and the results of further research, form the basis for a discussion paper. The discussion paper is to be published at a later stage and will contain the results of comparative studies, the Commission's preliminary recommendations for law reform, and possibly draft legislation. The issue paper is intended to facilitate focused debate on the relevant issues and to provide all role players with the chance to identify related matters for investigation.

The current Maintenance Act was promulgated in 1998. Users of the Act have identified certain challenges in the Act, which have resulted in the Act not fully benefiting the beneficiaries of the maintenance system. The Commission has decided to take the opportunity granted by the current investigation to conduct a broad assessment of all maintenance issues that require review, with the aim of ensuring a comprehensive maintenance system for South Africa. The Commission invites all role players to bring to its attention any related issues that might inadvertently have been left out of the issue paper.

Questions and topics which the issue paper raises for consideration and input relate to the following points.

Issues identified by the Commission:

- whether mediation should be introduced for dealing with maintenance inquiries;
- whether a system should be developed to determine maintenance awards;
- whether additional forms of maintenance payment should be allowed; and
- possible broadening of the consequences for defaulting on maintenance obligations.

Issues raised by the Department:

- whether the Act should provide for an application for future maintenance;
- whether child beneficiaries should have *locus standi* in maintenance cases;
- how the appointment of maintenance investigators should be streamlined;
- whether the Act should provide for investigating officers to have powers of arrest;
- in dealing with civil execution and other procedural matters;

- on execution of movable property–
 - whether the Act should provide for the identification of movable property that is susceptible to execution;
- in matters dealing with holding a financial inquiry–
 - whether the Act should specifically provide for holding of a financial inquiry;
- on rules governing the execution process–
 - whether the Act should provide for the promulgation of rules regulating the execution process;
- whether the Act should regulate trusts, especially trusts established to evade maintenance obligations;
- whether the Act should provide for awarding of costs in maintenance matters; and
- how the Act should deal with remedies available to beneficiaries of maintenance.

The project leader for the investigation is Mr Irvin Lawrence, a commissioner and an attorney based in Durban. The Commission researcher is Ms Jennifer Joni. The issue paper is available at <http://salawreform.justice.gov.za/> it can be obtained from Mr Jacob Kabini (tel 012 622 6327).

Submissions and comments are invited from any interested person or organisation. The closing date for comment is **3 November 2014** and all comments and representations must be made in writing. Submissions should be sent to one of the following addresses:

The Secretary
SA Law Reform Commission
Private Bag X 668
PRETORIA, 0001

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Fax: 086 266 1935
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Contact person for enquiries about the issue paper and media statement:
Ms Jennifer Joni (tel 012 622 6336).

ISSUED BY THE SECRETARY, SA LAW REFORM COMMISSION

DATE:

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