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MEMORANDUM

[Confidential]

TO: Mr M.G.E. Hendricks
Member of Parliament: National Assembly

COPY: Mr X. George
Secretary to Parliament

Mr M. Xaso
Acting Deputy Secretary: Core Business

FROM: Adv Z. Adhikarie
Chief Legal Adviser

DATE: 5 August 2022

REFERENCE: P9.2021

SUBJECT: The Maintenance Amendment Bill, 2022



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INTRODUCTION

1. Our Office was requested to provide a compliance certificate in terms of National Assembly Rule 279(4) on the Maintenance Amendment Bill, 2022 ("the Bill") prepared and drafted by Mr M.G.E. Hendricks ("the Member").
2. Our office assisted the Member with the drafting of the final version of the draft Bill, attached hereto as Annexure A.

THE BILL

3. The Bill seeks to amend the Maintenance Act, 1999 (Act No. 98 of 1999) (“Maintenance Act”) to, *inter alia*, provide for the following:
- (a) The deletion of incorrect numbering and obsolete Roman numerals as well as the addition of a definition for “complainant”;
 - (b) aligning the existing text with the proposed definition for “complainant”;
 - (c) making provision for where a complainant or a person who is acting on behalf of a minor complainant, may lodge a complaint relating to maintenance;
 - (d) the powers of maintenance officers when dealing with investigations and enquiries relating to maintenance matters;
 - (d) providing for the complainant being advised of, and entitled to claim allowances for subsistence and travel to and from court; and
 - (e) the option to resolve any maintenance enquiry or investigation - related dispute through mediation or arbitration.

PART A: MOTION OF DESIRABILITY

4. NA Rule 286(4)(i) requires the relevant committee to, after due deliberation, “consider a motion of desirability on the subject matter of the Bill”. In our view, a number of topics could affect the desirability of a Private Member’s Bill. We discuss a few of these below.

Constitutionality

5. Neither the Bill nor any of its clauses go against the spirit, purport or object of the Constitution of the Republic of South Africa, 1996 (“the Constitution”).

6. The Bill contains no provisions that would render it a Money Bill or a Bill envisaged in section 214 of the Constitution. Based on these premises, the Member may introduce this Bill in terms of section 73(2) of the Constitution.

Conflict with existing legislation or legislative processes

7. The following statutes or portions of statutes, and Rules of Court were specifically considered for their relevance to the subject matter and compared with the content of the Bill:

7.1 The Constitution;

7.2 The Maintenance Act; and

7.3 The Rules Regulating the Conduct of the proceedings of the Magistrates' Courts of South Africa.

8. We are of the opinion that the Bill is not in conflict with any of the above statutes. We are further of the opinion that it will not be necessary to amend any other statute in order to implement the provisions of the Bill.

9. We are unaware of any existing legislation in the legislative processes of the National Assembly of the National Council of Provinces that deal with the same subject matter of the Bill.

10. We are further unaware of any similar legislation soon to be introduced by the National executive.

PART B: COMMENTS ON THE CONTENT OF THE BILL

Implementation

11. The Bill, amongst other things, seeks to extend the powers of maintenance officers with regards to investigations and enquiries relating to maintenance matters. The Bill further extends the payments of entitlements and allowance, which are paid to witnesses in terms of the Maintenance Act, to "complainants" as well.

12. This latter proposed amendment appears to have financial implications and would require costing.

PART C: LEGISLATIVE PROCESS

13. The Bill, a memorandum setting out the objects of the Bill as well as prior notice of the introduction of the Bill were published, in terms of NA Rule 276(1) and (5), in *Government Gazette* No 45616 on 10 December 2021.

14. The notice that was published in the *Government Gazette* referred to in paragraph 13 also included an invitation to interested persons and institutions to submit written representations on the draft legislation to the Speaker.

15. If the Member is satisfied that the Bill is ready for introduction, the Member may request the Speaker to introduce the Bill by submitting the relevant *Gazette*, together with the draft Bill, to the Speaker.¹ If the House is in session, and the Member requires that the Bill must be read a first time, the Member must also submit a notice of First Reading of the Bill.²

16. Should the Bill be introduced in the format as submitted to this office, we are of the opinion that a recommendation should be made to the Joint Tagging Mechanism:

16.1 That the Bill should be classified as a section 75 Bill, as it contains no provision to which the procedures prescribed in sections 74, 76 or 77 of the Constitution apply; and

16.2 in terms of Joint Rule 160(5A) (read with the repeal of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) and the replacement of that Act by the Traditional and Khoi-San Leadership Act, 2019 (Act No. 13 of 2019)), the Bill does not directly affect traditional or Khoi-San communities; does not contain any provision pertaining to customary law or

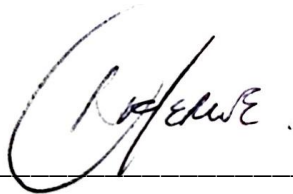
¹ NA Rule 279.

² NA Rule 283(1).

customs of traditional or Khoi-San communities and does not contain any provision pertaining to any matter referred to in section 154(2) of the Constitution in accordance with section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 13 of 2019).

17. Upon request, the content of this opinion related to certification and the desirability of the Bill may be presented to the relevant National Assembly Committee.

Pp

A handwritten signature in dark ink, appearing to read 'Zuraya Adhikarie', is written over a horizontal line.

Adv Zuraya Adhikarie

Chief Parliamentary Legal Adviser