



26 May 2017

Your ref: 8/6/Man/2

Via e-mail: [alvanderwalt@justice.gov.za](mailto:alvanderwalt@justice.gov.za)

**ATTENTION: MS A VAN DER WALT**

State Law Advisor: Legislative Development  
The Department of Justice and Constitutional Development  
Private Bag X81  
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Dear Ms van der Walt

**MAINTENANCE ACT, 1998 (ACT NO. 99 OF 1998): AMENDMENT OF REGULATIONS RELATING TO MAINTENANCE PURSUANT TO THE MAINTENANCE AMENDMENT ACT, 2015 (ACT NO. 9 OF 2015)**

We refer to your request for comment dated 19 April 2017 and respond as follows:-

Section 7(3)(e) of the Maintenance Act, 1998 currently allows for the maintenance court to:

1. Consider, on paper, an application by the electronic communications service provider, which has been made in the prescribed manner (on limited grounds); and
2. Determine the outcome of the application on paper - without the opportunity of a hearing.

Section 7(3)(e) does not make provision for the electronic communications service provider to address the Court Act and, in the LSSA's view, falls short of the audi alteram partem principle. The Constitutional Court confirmed that: "The most important component of procedural fairness is the one expressed by the audi alteram partem principle (the audi principle) which requires that parties to be affected by an administrative decision be given a hearing before the decision is taken. What gives rise to the right to be heard is the negative impact of the decision on the rights or legitimate expectations of the person claiming to have been entitled to a hearing

The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.

before the decision was taken.” Walele v City of Cape Town and Others (CCT 64/07) [2008] ZACC 11.

**Proposed Amendment:**

The LSSA is of the view that section 7(3)(e) of the Maintenance Act, 1998 should be amended to allow the electronic communications service provider to:

1. Object to a direction issued by the maintenance court pursuant to section 7(3)(b) of Act beyond the limited grounds currently listed; and
2. Make provision for an opportunity to address the maintenance court through a hearing.

The Regulations should, in accordance with the proposed amendment, allow for an amended FORM T.

Yours faithfully



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