

MAINTENANCE AMENDMENT BILL

EXPLANATORY NOTE:

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

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

BILL

To amend the Maintenance Act, 2003 (Act No. 9 of 2003), so as to amend the definition of “maintenance order” and insert a definition of “marriage”; to clarify the legal duty to maintain; to provide for assistance to minors who are applying for maintenance; to clarify and simplify procedures regarding directives, summons, default maintenance orders and maintenance enquiries; to provide for legal representation in certain instances; to provide for child participation as appropriate; to clarify maintenance costs relevant to persons with disabilities; to clarify the provisions on pregnancy- and birth-related expenses; to broaden the options for the attachment of emoluments; to provide for retrospective reimbursement for excessive maintenance contributions; to improve the procedure on proof of parentage, align this Act with the Child Care and Protection Act, 2015 (Act No. 3 of 2015) in that regard and provide for new offences relating to proof of parentage; to clarify the procedure for transfer of maintenance orders between courts; to correct various errors and to provide for incidental matters.

(Introduced by the Minister of Justice)

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

Amendment of “Arrangement of Sections” of Act No. 9 of 2003

1. The “Arrangement of Sections” in Act No. 9 of 2003 (in this Act referred to as the “principal Act”) is amended, by -

- (a) the substitution in the heading of section 39 of the word “orders” for the word “order”;
- (b) the insertion in the heading of section 42 of the words “publication of” after the phrase “Offences relating to”; and
- (c) the insertion in the heading of section 50 of a comma and the word “amendments” after the word “Repeals”.

Amendment of section 1 of the principal Act

2. Section 1 of Act No. 9 of 2003 (in this Act referred to as the “principal Act”) is amended –

- (a) by the substitution for the word “this” at the beginning of section 1 of the capitalised word “This”;

- (b) by the substitution for the definition of “maintenance order” of the following definition:

“‘maintenance order’ or ‘order’ means any order made in terms of sections 17, 18 or 19 of this Act or any order for the payment of any sum of money towards the maintenance of any person made under any other law by any court in Namibia (including the High Court) and, except for the purposes of sections 39 and 47, includes any sentence suspended on condition that the convicted person make payments of any sum of money towards the maintenance of any other person;”

- (c) by the insertion after for the definition of “maintenance order” of the following definition:

“‘marriage’ means a marriage in terms of any law of Namibia and includes a marriage recognised as such in terms of any tradition, custom or religion of Namibia and any marriage in terms of the law of any country, other than Namibia, where such a marriage is recognised as a marriage under the laws of Namibia and the terms “husband”, “wife” and “spouse” must be interpreted accordingly;”

- (d) by the substitution of a semicolon for the full stop at the end of the definition of “this Act”.

Substitution of section 2 of the principal Act

3. The following section is substituted for section 2 of the principal Act:

“2. This Act -

- (a) applies where a person has a legal duty to maintain another person, regardless of the nature of the relationship which creates the duty to maintain, as that duty extends to other living ancestors, descendants and collateral relatives in terms of the common law as modified by section 106 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015) or any subsequent legislation promulgated to clarify or amend this duty; and
- (b) must not be interpreted so as to derogate from ~~[the]~~ any law, including the common law, relating to the duty of persons to maintain other persons.”.

Amendment of section 3 of the principal Act

4. Section 3 of the principal Act is amended by –

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

“Parental duty to maintain children and reciprocal spousal duties of maintenance”

- (b) the substitution for subsection (2) of the following subsection:

“(2) For the purpose of determining whether or not a person [**who is subject to customary law**] is legally liable to maintain another person, a maintenance court must, notwithstanding anything to the contrary at customary law or in terms of the laws or customs of any religion, have regard to the following principles -

- (a) **[husbands]** husbands and wives are primarily responsible for each other's maintenance;
- (b) subject to subsection (1), the parents of a child are primarily and jointly responsible for the maintenance of that child;
- (c) subject to section 4(2), the legal principle[,] which imposes a legal duty on children to maintain their parents must be applied to children and parents who are subject to customary law.”.

Amendment of section 6 of the principal Act

5. Section 6 of the principal Act is amended by the substitution of the phrase “a regional magistrate’s court” for the phrase “a regional magistrates’ court”, to correct an error.

Amendment of section 9 of the principal Act

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

- “(3) (a) A complaint made under subsection (1) may be made by a complainant, beneficiary, defendant or any person who is affected by a maintenance order or any other order, directive or notice issued under this Act.
- (b) Where the complainant is a minor, the clerk of the court or the maintenance officer must assist the minor to complete the application form and complete the application process.”.

Amendment of section 10 of the principal Act

7. Section 10 of the principal Act is amended by the insertion of the following subsections after subsection (2):

“(3) A maintenance officer may

- (a) communicate a written directive to a person to appear before the maintenance officer under subsection (1)(a) in any manner which may be prescribed; and
- (b) if a directive issued under this subsection is not complied with, cause the person in question to be summoned to appear before the maintenance officer,

to give information or produce any book, document, statement or other relevant information in which case the provisions of section 12(1)-(4) apply with the necessary changes.

(4) If the person who is required to appear before a maintenance officer in terms of a directive issues under subsection (1)(a) furnishes the information in question to the satisfaction of the maintenance officer concerned before the day on which he or she is required so to appear, the maintenance officer may discharge him or her from the obligation so to appear.”.

Amendment of section 13 of the principal Act

8. Section 13 of the principal Act is amended by -

- (a) the substitution in subsection (4) of the phrase “a magistrate’s court” for the phrase “a magistrates court”, to correct an error; and
- (b) the substitution for subsection 8 of the following subsection:

(8) Any party to proceedings under this Act has the right to be represented by a legal practitioner or by any person duly authorised by either party.
- (c) the substitution for subsection (10) of the following subsection:

“(10) (a) The proceedings of a maintenance court may be adjourned only on good cause shown, taking into account the best interests of any child who is a proposed beneficiary of a maintenance order, and for a period of not more than 30 days at a time.

(b) A maintenance court may excuse any person from appearing at adjournment proceedings.”
- (d) the insertion after subsection (10) of the following subsection:

“(11) Where a maintenance court considers that it would be in the best interests of the child or children involved, it may direct that a maintenance enquiry be converted into a proceeding to determine who should have custody of the child or children, and section 100 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015) will apply with the necessary changes.”.

Insertion of section 13A into the principal Act

9. The principal Act is amended by the insertion of the following section:

“Legal representation

13A. (1) A person who is a party in a matter before a maintenance court, including a child who is or may be the beneficiary of a maintenance order in place or under consideration, is entitled to appoint a legal practitioner of his or her own choice and at his or her own expense.

(2) The court may, where a child involved in a matter before the court is not represented by a legal practitioner, order that legal representation be provided to the child in the following instances -

- (a) if it is requested by the child, with due regard to the child’s age, level of maturity and stage of development and the reasonableness of the request;
- (b) if any other party besides the child has legal representation; or
- (e) in any other situation where it appears that such legal representation would be in the best interests of the child.

(3) If the court has ordered that legal representation be provided for a child as contemplated in subsection (2), the court may -

- (a) order one or more of the parties to pay the costs of such representation;

(b) despite the provisions of the Legal Aid Act, 1990 (Act No. 29 of 1990), order that legal representation referred to in that Act be provided to that child, if the child's parent, guardian or care-giver is unable to pay the costs of a legal practitioner and if the court is satisfied that substantial injustice would otherwise occur; or

(c) order that the child be assisted by a prosecutor who is acting as a maintenance officer for that court.

(4) The court may order that legal representation referred to in the Legal Aid Act, 1990 (Act No. 29 of 1990), be provided to an adult party in any proceedings under this Act if such party is unable to pay the costs of a legal practitioner and if the court is satisfied that substantial injustice would otherwise occur.

(5) A legal practitioner appointed to represent the child or any other party, or a prosecutor acting on behalf of a child in terms of subsection (3)(c), may adduce any relevant evidence and may cross-examine any witness called by any other party to the proceedings.

(6) The consent or assistance of the child's parent or guardian is not required in respect of legal representation or assistance to the child in terms of this section.

(7) The parent, guardian or other person with physical control of the child may not prevent reasonable private access to the child by a legal practitioner or prosecutor who is representing or assisting the child in terms of this section for purposes of consultation or examination.”.

Insertion of section 13B into the principal Act

10. The principal Act is amended by the insertion of the following section:

“Child participation

13B. (1) Every child that is of an age, maturity and stage of development as to be able to participate in any matter concerning that child in terms of this Act may participate in an appropriate way and the views expressed by the child must be given due consideration, unless the court determines that participation by the child concerned would not be in the child's best interests, in response to a submission by a party or at the court's own initiative.

(2) Every child has the right to choose not to participate in a matter concerning that child in terms of this Act, but must be given all necessary information and advice to enable that child to make a decision on participation which is in his or her best interests.

(3) The following principles must be followed with respect to any child who is able to participate in terms of subsection (1), whether or not that child chooses to exercise his or her right to participate:

(a) the child must be informed of the circumstances under which she or he will be asked to express her or his views, as well as the impact of his or views on the outcome of any decision;

(b) all necessary and reasonable measures must be taken to ensure that the child is not punished or victimised for expressing his or her views;

(c) the child must be informed of any decision concerning the child in terms of this Act;

- (d) the child must be given an opportunity to complain if he or she feels that his or her right to participate is not respected; and
- (e) specific efforts must be made by the court to ensure that the right of child participation is promoted in respect of any child who may experience barriers to participation for any reason, including disability, language or any form of discrimination.”.

Substitution of section 14 of the principal Act

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

“14. (1) Notwithstanding anything to the contrary in this Act or in any law, at a maintenance enquiry, a written statement [**made in the prescribed manner**] by any person, other than the defendant or complainant is, subject to subsection (2), admissible as evidence to the same extent as oral evidence by that person is admissible in a court if neither the defendant or nor the complainant objects to the admission of the written statement after the court has explained to them –

- (a) the possible consequences of this admission; and
- (b) the alternative of requesting a postponement in order to have the court summon the person who has made the written statement to testify to the information in person and be cross-examined.

(2) [A party to a maintenance case who wants to produce the statement referred in subsection (1) as evidence must, in the prescribed manner and at least 14 days before the date on which the statement is to be produced, serve, on the other party, a copy of the statement, together with a copy of every document referred to in the statement.

(3) The statement referred to in subsection (2) must be accompanied by a prescribed notice which requests the other party to, if he or she so wishes, at least seven days before the commencement of the enquiry, object to the statement being produced as evidence at the enquiry.] If a party to a maintenance case objects to the production of a statement as contemplated in subsection (1), that statement must not be produced as evidence at the enquiry but that party may still call the person who made that statement to give oral evidence. ~~;~~ ~~or~~

- ~~(b) — does not object to the production of the statement referred to in subsection (1) or has entered into an agreement contemplated in subsection (5), that statement may be produced and admitted as evidence at the enquiry.~~

~~(5) — A party against whom a statement referred to in subsection (1) is to be produced may, before or during the enquiry, come to an agreement with the maintenance officer or the defendant that any statement referred to in subsection (1), even if the statement was not served as contemplated in subsection (2), be produced and admitted as evidence at an enquiry.]~~

(3) Any document referred to or identified as an exhibit in the statement produced and admitted as evidence under this section must be regarded as an exhibit produced and identified by the person who made the statement.”.

Amendment of section 16 of the principal Act

12. Section 16 of the principal Act is amended by -
- (a) the substitution of paragraph (d) of subsection (4) by the following paragraph:

“(d) the costs of medical and other care incurred by the beneficiary as a result of the disability, which costs may include without being limited to the costs of equipment, medication or services for the beneficiary required as a result of the disability or required to enable the beneficiary to live the fullest possible life in spite of the disability.”
 - (b) the substitution in subsection (5) of the word “substitution” for the word “substitution”, to correct an error.

Amendment of section 17 of the principal Act

13. Section 17 of the principal Act is amended by -
- (a) the insertion after subsection (3) of the following subsection:

“(3A) (a) A claim for a contribution to pregnancy and birth-related expenses in terms of subsection (3) may be made prior to the birth of the child if any of the presumptions referred to in section 95 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015) have been established by the claimant.

(b) If it is proved by means of a scientific test performed after the birth of the child that the defendant was not in fact the child’s parent, the defendant may claim reimbursement from the complainant of any amounts paid in respect of an order for a contribution of pregnancy and birth-related expenses in connection with that child by applying for a discharge of the order along with proof of the amounts paid in terms of that order.

(c) The provisions of this Act and the regulations on discharge of a maintenance order shall apply to an application for discharge and reimbursement of an order for a contribution to pregnancy and birth-related expenses under paragraph (b) with the necessary changes, and an order for reimbursement of payments made in terms of an order for a contribution to pregnancy and birth-related expenses may be enforced in the same way as a maintenance order.”
 - (b) the insertion after subsection (4) of the following subsections:

“(4A) (a) A maintenance order may order the attachment of any emoluments in future owing or accruing to the defendant, which order shall authorise any employer of the defendant, or any person who in terms of a contract is obliged to make periodical payments to the defendant, to deduct from the defendant’s emoluments and to make on his or her behalf such payments as specified in the order.

(b) An order for the attachment of emoluments in respect of future payments may be made at the request of the complainant or the defendant or on the court’s own initiative, after the defendant has been given a chance to object to such an order if it was not requested by the defendant.

- (c) If the maintenance order includes an order for the attachment of emoluments, section 31 shall apply in respect of notice to the employer concerned or the person who is obliged to make periodical payments to the defendant.
- (d) Section 30(2), (3) and-(4) shall apply to an order for the attachment of emoluments made in terms of this subsection.
- (4B) (a) Where the beneficiary of the maintenance order is a child, the maintenance order may include an order that the defendant reimburse the complainant for excess contributions towards a child's maintenance from the date of the child's birth to the date of the maintenance order, in terms of the common law principle of joint liability, if the court is satisfied that sufficient evidence of the respective means and expenditures of the respondent and the defendant has been placed before the court to support an order for such reimbursement.
- (b) An order for reimbursement in terms of paragraph (a) may provide that the reimbursement is to be made in monthly instalments of specified amounts.
- (4C) (a) A maintenance order may direct that the monthly amount of maintenance payable in cash shall increase or decrease automatically each year, with effect from the date in each year which is the same date that the maintenance order became effective, in the same percentage as the most recent rate of inflation or deflation determined by the government agency responsible for producing national statistics.
- (b) The clerk of the maintenance court shall cause written notice of the revised amount to be communicated to the complainant and the defendant in the prescribed manner at least 30 days before the date on which the revised amount takes effect.
- (c) A party who objects to the revised amount may make application for substitution of the maintenance order in the normal manner provided for applications for substitution in this Act.”.

Amendment of section 19 of the principal Act

14. Section 19 of the principal Act is amended by -
- (a) the substitution for subsection (6) of the following subsection:
- “(6) Upon receipt of an application made in terms of subsection (4), the clerk of the maintenance court must determine a date on which the application is to be heard and notify the complainant and the defendant of this date at least 14 days before the day on which the application is to be heard.”
- (b) the substitution for subsection (7) of the following subsection:
- “(7) Section 12, with the necessary changes, applies to a proceeding to consider an application made in terms of subsection (4), with respect to notification to the complainant, the defendant and any witnesses to attend the proceeding.”.

Substitution of section 21 of the principal Act

15. The principal Act is amended by the substitution for section 21 of the following section:

“Proof of parentage

21. (1) If a maintenance officer reasonably believes, at any time during a maintenance enquiry, but before the maintenance court makes any order, that the parentage of any child is in doubt or dispute, the maintenance officer may request the court to hold an enquiry for the purpose of establishing the child’s parentage and sections 93, 94 and-95C of the Child Care and Protection Act, 2015 (Act No. 3 of 2015) will apply with the necessary changes.

(2) If the presiding officer in a maintenance enquiry reasonably believes, at any stage before a decision is made on an application for a maintenance order, that the parentage of any child is in doubt or dispute, the court may hold an enquiry for the purpose of establishing the child’s parentage and sections 93, 94 and-95C of the Child Care and Protection Act, 2015 (Act No. 3 of 2015) will apply with the necessary changes.

(3) If a court makes an order for costs in terms of section 95B of the Child Care and Protection Act, 2015 (Act No. 3 of 2015), in respect of scientific tests conducted for the purpose of proving the parentage of a child in connection with a maintenance enquiry, the court may make this order a provisional one and may, at the conclusion of the maintenance enquiry -

(a) make an order confirming the provisional order; or

(b) set aside any provisional order; or

(c) substitute therefore any order which the court considers just relating to the payment of the costs incurred in the carrying out of the scientific tests in question.”.

Amendment of section 24 of the principal Act

16. Section 24 of the principal Act is amended by -

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

“(1) Where a complainant in whose favour a maintenance order or any other order under this Act was made or given changes his or her place of residence he or she must, within the prescribed period and in the prescribed manner, notify the clerk of the court [**maintenance officer**] of the maintenance court which made the order [**has jurisdiction in the area where the complainant now resides**].”

(b) the substitution for subsection (2) of the following subsection:

“(2) If the change of address has the result that the complainant now resides in a different magisterial district, the clerk of the court who received the notice in subsection (1) must transfer the maintenance order to the maintenance court which has jurisdiction in the area where the complainant now resides.”

(c) the substitution for subsection (2) of the following subsection:

“(3) On receipt of the order transferred [**requested for**] under subsection (2), the clerk of the court of the maintenance court where the complainant resides must register that order in the prescribed manner after which he or she must, in the prescribed manner, notify the defendant and any person who, in terms of a maintenance order or direction or a writ of the court, is required to pay or deliver any money or other property to the complainant.”

Amendment of section 26 of the principal Act

17. Section 26 of the principal Act is amended by –

(a) the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) subject to subsection (2), the child attains the age of 18 years, unless -

(i) **[but if]** the child is attending an educational institution for the purpose of acquiring a course which would enable him or her to maintain himself or herself, in which case the maintenance order does not terminate until the child ~~[attains the age of 21 years]~~ completes the relevant course of study or otherwise becomes self-supporting;

(ii) the child is because of chronic illness or disability or some other reason not in a position to be self-supporting, in which case the maintenance order may be extended on application beyond the time when the child attains the age of 18, to remain in place indefinitely or for any period appropriate in the circumstances.”

(b) the substitution for subsection (5) of the following subsection:

“(5) A maintenance order made in respect of a parent remains in force for as long as the parent is alive and -

(a) the parent is unable to maintain himself or herself; and

(b) no other person has become liable to maintain the parent; and

(c) the child is able to support the parent.”.

Amendment of section 29 of the principal Act

18. Section 29 of the principal Act is amended by –

(a) the substitution for subsection (6) of the following subsection:

“(6) An application made under subsection (5) must [-

(a)]state the grounds on which the warrant of execution should be set aside.];
and

(b) **be served by the defendant on the complainant at least 14 days before the date on which the application is to be heard.]”**

(b) the insertion after subsection (6) of the following subsections:

“(6A) Upon receipt of an application made in terms of subsection (5), the clerk of the maintenance court must determine a date on which the application is to be heard and notify the complainant and the defendant of this date at least 7 days before the day on which the application is to be heard.

(6B) Section 12, with the necessary changes, applies to a proceeding to consider an application made in terms of subsection (5), with respect to notification to the complainant, the defendant and any witnesses to attend the proceeding.”

(c) the substitution for subsection (9) of the following subsection:

“(9) An application made under subsection (8) must [-

(a)] state the grounds on which the warrant is sought to be substituted or suspended. ~~]; and~~

~~(b) be served by the defendant on the complainant at least 14 days before the date on which the application is to be heard].”~~

(d) the insertion after subsection (9) of the following subsections:

“(9A) Upon receipt of an application made in terms of subsection (8), the clerk of the maintenance court must determine a date on which the application is to be heard and notify the complainant and the defendant of this date at least 7 days before the day on which the application is to be heard.

(9B) Section 12, with the necessary changes, applies to a proceeding to consider an application made in terms of subsection (8), with respect to notification to the complainant, the defendant and any witnesses to attend the proceeding.”.

Amendment of section 30 of the principal Act

19. Section 30 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) A maintenance court may -

(a) on receipt of an application made under section 28; or

(b) when the court suspends the warrant of execution under section 29(10),

make an order for the attachment of any emoluments at present or in future owing or accruing to the defendant to the amount needed to cover the amount which the defendant has failed to pay, together with any interest thereon, as well as the prescribed costs of the attachment or execution, which order authorises any employer of the defendant, or any person who[,] in terms of a contract is obliged to make periodical payments to the defendant, **[notwithstanding section 37(g)(i) of the Labour Act, 1992 (Act No. 6 of 1992),]** to deduct from the defendant’s emoluments and to make on his or her behalf such payments as specified in the order until such amount, interest and costs have been paid in full.”

Amendment of section 32 of the principal Act

20. Section 32 of the principal Act is amended by –

(a) the renumbering of the last two subsections as subsections (4) and (5), respectively, to correct a numbering error; and

(b) the substitution in subsection (5), as renumbered herein, of the word “magistrate’s” for the word “magistrates””, to correct an error.

Amendment of section 33 of the principal Act

21. Section 33 of the principal Act is amended by –

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

“(1) Where a magistrate’s court has convicted a defendant of an offence under section 39(1) the court may, at the request [on the application] of the public prosecutor or the complainant or the beneficiary of the maintenance order concerned, or on the court’s own initiative, in addition to the penalty which the court may impose in respect of that offence, make [grant] an order for the recovery from the defendant of any amount he or she has failed to pay in accordance with the maintenance order, together with any interest thereon, and the order so granted has the effect of a civil judgment of that court and that order may, subject to subsection (2), be executed in the same way as a maintenance order made under this Act may be executed.”

(b) the insertion after subsection (4) of the following subsection:

“(5) Any person who is in arrears with a maintenance order, whether or not there has a criminal conviction in respect of such arrears under section 39(1), is not eligible to obtain any other business licence, including a liquor licence in terms of the Liquor Act, 1998 (Act No. 6 of 1998), and is not eligible for the award of any government contract or tender, and any such licence, contract or tender already in place at the time of the non-compliance with the maintenance order must be suspended until such time as any outstanding arrear maintenance has been paid.”

Amendment of section 39 of the principal Act

22. Section 39 of the principal Act is amended by –

(a) the substitution for subsection (2) of the following subsection:

“(2) Proof that any failure which is the subject of a charge under subsection (1) was due to lack of means and that such lack of means was not due to unwillingness to work or misconduct on the part of the person charged, shall be a good defence to any such charge.”

(b) the insertion after subsection (3) of the following subsection:

“(3A) The court may stay criminal proceedings in terms of this section if the defendant and the complainant enter into a consent order for the payment of arrears which is made into an order of court, but the stay may be lifted if the defendant fails to comply with that order.”

Amendment of section 40 of the principal Act

23. Section 40 of the principal Act is amended by the insertion of subsection (2) as follows, with the existing text becoming subsection (1):

“(2) A court which convicts a person of an offence in terms of subsection (1) may, if it deems it necessary –

- (a) substitute the maintenance order in question with immediate effect to provide that the maintenance will be received by some other person, who may be a social worker, on behalf of the intended beneficiary.
- (b) order that a proceeding be held in terms of section 100 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015), with the necessary changes, to determine who should have custody of the child or children who are the beneficiaries of the maintenance order in question; or
- (c) order that the child or children who are the beneficiaries of the maintenance order in question be treated as a child or children who may be in need of protective services in terms of Chapter 10 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015), and that a social worker investigation in terms of section 139 of that Act should commence forthwith.”.

Amendment of section 45 of the principal Act

24. Section 45 of the principal Act is amended by the deletion of the words “notice of” in the heading.

Insertion of section 45A into the principal Act

25. The principal Act is amended by the insertion of the following section at the beginning of PART IX:

“Enforcement of temporary maintenance orders made in terms of the Combating of Domestic Violence Act, 2003

45A. Sections 28, 29, 30, 31, 32, -33, 39 and 40 of this Act apply with the necessary changes to a provision in a protection order ordering the payment of temporary maintenance in terms of section 14(2)(h) of the Combating of Domestic Violence, 2003 (Act 4 of 2003).”.

Amendment of section 47 of the principal Act

26. Section 47 of the principal Act is amended by the substitution in subsection (4) of the year “1990” for the year “1977” in the expression “High Court Act, 1977”.

Amendment of section 49 of the principal Act

27. Section 49 of the principal Act is amended by the substitution in subsection (2) of the word “finance” for the word “Finance” in the expression “Minister responsible for Finance”.

Amendment of section 50 of the principal Act

28. Section 50 of the principal Act is amended by -

- (a) the insertion in subsection (2) of closing quotation marks after the expression “Maintenance Act, 2003 (Act No. 9 of 2003)”; and
- (b) in paragraph (d) of subsection (3), underlining the expression “section 39 of the said Act” in the substituted section 7 contained in that paragraph.

Insertion of section 51A into the principal Act

30. The principal Act is amended by the insertion of the following section:

“Amendments to the Child Care and Protection Act, 2015 (Act No. 3 of 2015)

51A. The Child Care and Protection Act, 2015, is amended by –

(a) the insertion after section 95 of the following sections:

“Institutions competent to conduct scientific tests for purposes of proof of parentage

95A. (1) Results of any scientific test aimed at proving parentage will be admissible as evidence in a proceeding held in terms of this Part only if the health care practitioner or the institution involved in collecting the samples for the test and conducting the test have been approved for this purpose by the ministry responsible for health.

(2) The ministry responsible for health must from time to time issue a list of health care practitioners and institutions approved for this purpose.

Costs incurred in connection with scientific tests for purposes of proof of parentage

95B. At any proceeding held to determine parentage, a children’s court may enquire into the means of a parent and putative parent of a child and into any other circumstances which the court reasonably believes should be taken into consideration, and may -

- (a) order a parent to pay part or all of the costs of the scientific tests;
- (b) order a putative parent to pay part or all of the costs of the scientific tests;
- (c) direct the State to pay the whole or any part of the costs of the scientific tests; or
- (d) make no order concerning costs of the scientific tests.

Offences relating to parentage tests and court’s power to order re-testing

95C. (1) Any person who carries out any action aimed at producing a false result or report in respect of a scientific test conducted in terms of this Part, including but not limited to-

- (a) tampering with or falsifying test results;
- (b) causing or assisting someone to impersonate the person supposed to be tested;
- (c) impersonating the person supposed to be tested;
- (d) altering or swapping a sample of any biological material to be tested;
- (e) falsifying the test results or a report on the test results; or

(f) assisting with any attempt at such falsification whether or not it was successful,

commits an offence and is liable to a fine which does not exceed N\$50 000 or to a period of imprisonment which does not exceed 5 years.

(2) Where a person who commits an offence in terms of subsection (1) is a registered health practitioner, the criminal penalty for that offence is additional to any disciplinary proceedings which may be conducted against that health practitioner by the relevant health professions council.

(3) If a court reasonably believes that any action has taken place which was aimed at producing a false result in a scientific test conducted in terms of this Part, whether or not any person has been convicted of an offence under this section, the court may order that another scientific test be taken in conjunction with any reasonable steps necessary to ensure the correct identification of the person being tested, the security of any biological sample or the integrity of the test results.”

(b) the insertion in section 254 of the following subsection after subsection (2):

“(3) (a) Where a person is convicted by a court of an offence in terms of subsection (2), the court in question may order that an amount to compensate for maintenance not provided in respect of that child be paid to that child, to someone who can administer the compensation on behalf of that child, or to a parent who has contributed more than his or her fair share towards that child’s past maintenance, and may for the purposes of determining the amount of the compensation refer to the evidence and the proceedings at the trial or hear further evidence either upon affidavit or orally.

(b) An order for compensation may be made in terms of this subsection on the basis of the breach of the legal liability to maintain the child in question and is not dependent on the existence of any maintenance order of which that child is a beneficiary.

(c) An order for compensation made in terms of this subsection has the effect of a civil judgment of the court which made the order, and may not exceed the amount of that court’s maximum civil jurisdiction.”.
