



MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA

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Dear Mr Mthimunye

LEGAL AID SOUTH AFRICA ACT, 2014: DRAFT REGULATIONS

The Legal Aid South Africa Act, 2014 (Act No. 39 of 2014) (the Act) came into operation with effect from 1 March 2015. The first regulations in terms of the Act were published in Government Notice No. R. 745 of 26 July 2017 (the Regulations).

Section 23(1) and (2) of the Act provides as follows:

- “(1) The Minister must, after receipt of recommendations of the Board of Directors (the Board), make regulations relating to—
- (a) the types of matters, both civil and criminal, in respect of which Legal Aid South Africa—
 - (i) provides legal aid;
 - (ii) does not provide legal aid; and
 - (iii) provides limited legal aid and the circumstances in which it does so;



- (b) the requirements or criteria that an applicant must comply with in order to qualify for legal aid, as well as the terms and conditions on which such legal aid is made available to the applicant;
 - (c) the policy relating to the approval or refusal of legal aid, the termination of legal aid and appeals against such refusal or termination of legal aid; and
 - (d) any matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.
- (2) Any regulations made under subsection (1) must, before publication thereof in the *Gazette*, be tabled in Parliament by the Minister for approval.”.

I wish to promote amendments to regulation 27 of the Regulations in order to increase the amounts for purposes of the means test applied by Legal Aid South Africa when determining who can receive legal aid.

I intend to submit to Parliament the Regulations as required by section 23(2) of the Act. However, Parliament may only approve the Regulations but not amend them, which means that if Parliament wishes to amend the Regulations I will have to withdraw them and resubmit an amended version thereof.

It would be appreciated if the Committee could consider the Regulations on an informal basis, before I formally submit them to Parliament for approval. This will avoid a lengthy amendment process. I attach the proposed amendments, as well as the current regulation 27 of the Regulations.

Your co-operation is appreciated.

With kind regards

A handwritten signature in black ink, appearing to read 'T M Masutha'.

T M MASUTHA, MP (Adv)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Date: ... 16/02/2018

GOVERNMENT NOTICE
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R.

2018

LEGAL AID SOUTH AFRICA ACT, 2014:
AMENDMENT OF REGULATIONS

The Minister of Justice and Correctional Services has, under section 23(1) of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014), after receipt of recommendations of the Board of Directors, made the regulations in the Schedule.

SCHEDULE

Definitions

1. In this Schedule "the Regulations" means the regulations published by Government Notice No. R. 745 of 26 July 2017.

Amendment of regulation 27 of the Regulations

2. Regulation 27(2) of the Regulations is hereby amended by the substitution for the expression "R5 500" of the expression "R7 400".

3. Regulation 27(3) of the Regulations is hereby amended by the substitution for the expression "R5 500" of the expression "R7 400".

4. Regulation 27(4) of the Regulations is hereby amended by the substitution for the expression "R6 000" of the expression "R8 000".

5. Regulation 27(5) of the Regulations is hereby amended by the substitution for the expression "R100 000" of the expression "R128 000".

6. Regulation 27(6) of the Regulations is hereby amended by the substitution for the expression "R500 000" of the expression "R640 000".

Qualifying for legal aid and means test

27. (1) In order to qualify for legal aid in either civil or criminal cases, the legal aid applicant's gross monthly income less tax and net assets must fall within the parameters set by the means test contemplated in subregulations (2), (3), (4), (5) and (6) before legal aid may be granted.

(2) An applicant who applies for legal aid for a criminal case and has a net monthly income, after deduction of income tax, of R5 500 a month, or less, may qualify for legal aid in that criminal case irrespective of whether the applicant has a spouse or is a member of a household.

(3) An applicant who applies for legal aid for a civil case and who does not have a spouse or is not a member of a household and has a net monthly income, after deduction of income tax, of R5 500 a month, or less, may qualify for legal aid for that civil matter.

(4) An applicant who applies for legal aid for a civil case and who has a spouse or the applicant is a member of a household and whose household has a monthly income, after deduction of income tax, of R6 000 a month or less, may qualify for legal aid for that civil matter.

(5) A legal aid applicant or an applicant who is a member of a household who does not own immovable property and has net movable assets of less than R100 000 in value may qualify for legal aid for a civil or criminal matter.

(6) A legal aid applicant or an applicant who is a member of a household who owns immovable property and has net immovable assets and movable assets in value of up to R500 000, may qualify for legal aid for a civil or criminal matter: Provided that the legal aid applicant or the member of a household must physically reside in the immovable property or in at least one of the immovable properties, where there is more than one, unless Legal Aid South Africa decides to the contrary.