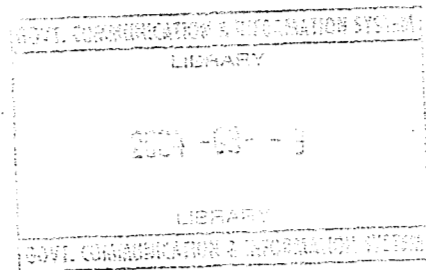


REPUBLIC OF SOUTH AFRICA

SOCIAL ASSISTANCE BILL

(As amended by the Select Committee on Social Services (National Council of Provinces))



[B 57D—2003]

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BILL

To provide for the rendering of social assistance to persons; to provide for the mechanism for the rendering of such assistance; to provide for the establishment of an inspectorate for social assistance; and to provide for matters connected therewith.

PREAMBLE

SINCE the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides that everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance, and obliges the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights;

AND SINCE the effective provision of social assistance requires uniform norms and standards, standardised delivery mechanisms and a national policy for the efficient, economic and effective use of the limited resources available for social assistance and for the promotion of equal access to government services;

THEREFORE in order to prevent the proliferation of laws, policies and approaches to the execution thereof from materially prejudicing the beneficiaries or recipients of social assistance as well as the economic interests of provinces or the Republic as a whole or from impeding the implementation of a national social assistance economic policy;

AND in order to assist in securing the well-being of the people of the Republic and to provide effective, transparent, accountable and coherent government in respect of social assistance for the Republic as a whole,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

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DEFINITIONS, APPLICATION AND OBJECTS OF ACT

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Agency**” means the South African Social Security Agency established by the South African Social Security Agency Act, 2004; 40
 - “**applicant**” means a person who applies for social assistance in respect of himself or herself or on behalf of another person in terms of this Act;
 - “**beneficiary**” means a person who receives social assistance in terms of sections 6, 7, 8, 9, 10, 11, 12 or 13;
 - “**care dependency grant**” means a grant made in terms of section 7; 45
 - “**care-dependent child**” means a child who requires and receives permanent care due to his or her severe mental or physical disability;
 - “**child**” means a person under the age of 18 years;
 - “**child support grant**” means a grant made in terms of section 6;

“ Department ” means the Department of Social Development in the national sphere of government;	
“ dependant ” means a person whom the beneficiary is legally obliged to support financially and is in fact supporting;	
“ Director-General ” means the Director-General: Social Development;	5
“ disability grant ” means a grant made in terms of section 9;	
“ disabled person ” means a person contemplated in section 9(b);	
“ Executive Director ” means the person appointed in terms of section 27(2);	
“ foster child ” means a child who has been placed in the custody of—	
(a) a foster parent in terms of—	10
(i) Chapter 3 or 6 of the Child Care Act, 1983 (Act No. 74 of 1983), or	
(ii) section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or	
(b) a tutor to whom a letter of tutorship has been issued in terms of Chapter IV of the Administration of Estates Act, 1965 (Act No 66 of 1965);	
“ foster child grant ” means a grant made in terms of section 8;	15
“ foster parent ” means a person, except a parent of the child concerned, in whose custody a foster child has been placed in terms of any law, or a tutor to whom a letter of tutorship has been issued in terms of Chapter IV of the Administration of Estates Act, 1965 (Act No. 66 of 1965);	
“ grant-in-aid ” means a grant made in terms of section 12;	20
“ Inspector ” means an employee of the Inspectorate, authorised in terms of section 27(3);	
“ inspectorate ” means the Inspectorate established in terms of section 24;	
“ Minister ” means the Minister of Social Development;	
“ older person ” means a person contemplated in section 10(a) or (b);	25
“ older person’s grant ” means a grant made in terms of section 10;	
“ parent ” means a parent as defined in the Child Care Act, 1983 (Act No. 74 of 1983);	
“ prescribed ” means prescribed by regulation;	
“ primary care giver ” means a person older than 16 years, whether or not related to a child, who takes primary responsibility for meeting the daily care needs of that child;	30
“ procurator ” means a person appointed by a beneficiary or the Agency to receive social assistance on the beneficiary’s behalf;	
“ regulation ” means a regulation made in terms of this Act;	35
“ social assistance ” means a social grant including social relief of distress;	
“ social grant ” means a child support grant, a care dependency grant, a foster child grant, a disability grant, an older person’s grant, a war veteran’s grant and a grant-in-aid;	
“ social relief of distress ” means social relief granted in terms of section 13;	40
“ South African citizen ” means a person who has acquired citizenship in terms of Chapter 2 of the South African Citizenship Act, 1995 (Act No. 88 of 1995), and includes any person who is—	
(a) not a South African citizen and who prior to 1 March 1996 was in receipt of a benefit similar to a grant in terms of any law repealed by section 20 of the Social Assistance Act, 1992 (Act No. 59 of 1992); or	45
(b) a member of a group or category of persons determined by the Minister, with the concurrence of the Minister of Finance, by notice in the <i>Gazette</i> ;	
“ this Act ” includes the regulations.	
“ war veteran ” means a person contemplated in section 11(b);	50

Application and implementation of Act

2. (1) This Act applies to a person who is not a South African citizen, if an agreement, contemplated in section 231(2) of the Constitution, between the Republic and the country of which that person is a citizen makes provision for this Act to apply to a citizen of that country who resides in the Republic. 55
- (2) The Agency is responsible for the administration of social assistance in terms of chapter 3 and in terms of any function delegated to it in terms of section 29.
- (3) The Agency must offer all reasonable assistance to a person, who, due to his or her age, a disability or an inability to read or write, is unable to understand, appreciate or exercise his or her rights, duties or obligations in terms of this Act, in the official language of the Republic which he or she is likely to understand. 60

(4) The Agency must, out of moneys appropriated by Parliament for this purpose or with funds donated for this purpose, publish and distribute to beneficiaries and potential beneficiaries, brochures in all official languages of the Republic setting out in understandable language the rights, duties, obligations, procedures and mechanisms contemplated in this Act, as well as contact details of the Agency or anyone acting on its behalf. 5

Objects of Act

3. The objects of this Act are to—
- (a) provide for the administration of social assistance and payment of social grants; 10
 - (b) make provision for social assistance and to determine the qualification requirements in respect thereof;
 - (c) ensure that minimum norms and standards are prescribed for the delivery of social assistance; and
 - (d) provide for the establishment of an inspectorate for social assistance. 15

CHAPTER 2

SOCIAL ASSISTANCE

Provision of social grants

4. The Minister must, with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for that purpose, make available— 20
- (a) a child support grant;
 - (b) a care dependency grant;
 - (c) a foster child grant;
 - (d) a disability grant;
 - (e) an older person's grant; 25
 - (f) a war veteran's grant; and
 - (g) a grant-in-aid.

Eligibility for social assistance

5. (1) A person is entitled to the appropriate social assistance if he or she —
- (a) is eligible in terms of section 6, 7, 8, 9, 10, 11, 12 or 13; 30
 - (b) subject to section 17, is resident in the Republic;
 - (c) is a South African citizen or is a member of a group or category of persons prescribed by the Minister, with the concurrence of the Minister of Finance, by notice in the *Gazette*;
 - (d) complies with any additional requirements or conditions prescribed in terms of subsection (2); and 35
 - (e) applies for social assistance in accordance with section 14(1).
- (2) The Minister may prescribe additional requirements or conditions in respect of—
- (a) income thresholds;
 - (b) means testing; 40
 - (c) age limits, disabilities and care dependency;
 - (d) proof of and measures to establish or verify identity, gender, age, citizenship, family relationships, care dependency, disabilities, foster child and war veterans' status;
 - (e) forms, procedures and processes for applications and payments; 45
 - (f) measures to prevent fraud and abuse.

?Child support grant

6. A person is, subject to section 5, eligible for a child support grant if he or she is the primary care giver of that child.

Care dependency grant

7. (a) A person is, subject to section 5, eligible for a care dependency grant if he or she is a parent, primary care giver or foster parent of a child who requires and receives permanent care or support services due to his or her physical or mental disability.

(b) A person contemplated in paragraph (a) is not eligible for such a grant if the child is cared for on a 24 hour basis for a period exceeding six months in an institution that is funded by the State. 5

Foster child grant

8. A foster parent is, subject to section 5, eligible for a foster child grant for a child for as long as that child needs such care if— 10

- (a) the foster child is in need of care; and
- (b) he or she satisfies the requirements of the Child Care Act, 1983 (Act No. 74 of 1983).

Disability grant

9. A person is, subject to section 5, eligible for a disability grant, if he or she— 15

- (a) has attained the prescribed age; and
- (b) is, owing to a physical or mental disability, unfit to obtain by virtue of any service, employment or profession the means needed to enable him or her to provide for his or her maintenance.

Older persons grant 20

10. A person is, subject to section 5, eligible for an older person's grant if—

- (a) in the case of a woman, she has attained the age of 60 years; and
- (b) in the case of a man, he has attained the age of 65 years.

War veterans' grant

11. A person is, subject to section 5, eligible for a war veteran's grant if he or she— 25

- (a) has attained the age of 60 years; or
- (b) owing to a physical or mental disability, is unable to provide for his or her maintenance, and—
 - (i) performed any naval, military or air force service during the Great War of 1914—1918 as a member of any Union or British Force, or was a member of the protesting burgher forces during the period September 1914 to February 1915; 30
 - (ii) performed any naval, military or air force service during the war which commenced on 6 September 1939 as a member of the Union Defence Forces or, in the case of a Union national, as a member of any British or Dominion Force or any force of a government which was allied to the Government of the Union during that war; 35
 - (iii) while he or she was not a Union national, performed any naval, military or air force service during the war referred to in subparagraphs (i), (ii) or (iv) as a member of any British or Dominion Force and who is a South African citizen on the date on which he or she applies for a war veteran's pension; or 40
 - (iv) while he or she was a member of the Union Defence Forces, signed an undertaking to serve in connection with the hostilities in Korea and who during such hostilities performed any naval, military or air force service on or after the date on which he or she had been detailed for duty in connection therewith. 45

Grant-in-aid

12. A person is, subject to section 5, eligible for a grant-in-aid if, that person is in such a physical or mental condition that he or she requires regular attendance by another person. 50

Social relief of distress

13. The Minister may provide social relief of distress to a person who qualifies for such relief as may be prescribed.

CHAPTER 3

ADMINISTRATION OF SOCIAL ASSISTANCE

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Application for social assistance

14. (1) Any person who wishes to apply for social assistance contemplated in sections 6 to 13 must do so in the prescribed manner.

(2) In considering an application made in terms of subsection (1), the Agency may conduct an investigation and request additional information. 10

(3) (a) If the applicant qualifies for social assistance in terms of this Act, the Agency must render the relevant social assistance.

(b) If the applicant does not qualify for social assistance in terms of this Act, the Agency must in writing at the applicant's address or other point of contact stated in the application, inform the applicant— 15

(i) that he or she does not qualify for social assistance in terms of this Act;

(ii) the reasons why he or she does not qualify; and

(iii) of his or her right of appeal contemplated in section 18 and of the mechanism and procedure to invoke that right.

(4) No person may divulge any personal information of an applicant furnished in respect of an application except— 20

(a) to a person who requires it in order to perform a function in terms of this Act;

(b) when required to do so by law or by an order of court; or

(c) with the consent of the applicant.

(5) If any information supplied by a beneficiary to the Agency in an application for a grant materially changes after that beneficiary has submitted that application, he or she must as soon as is reasonably possible after that change occurs, inform the Agency thereof. 25

Appointment of procurator

15. (1) A person applying for or receiving social assistance may, subject to subsection (4), appoint a procurator, by a power of attorney, to apply or receive social assistance on his or her behalf, in accordance with the prescribed requirements. 30

(2) Nothing in this section prevents a person applying for or receiving social assistance to withdraw a power of attorney made in terms of subsection (1) and to appoint another person as procurator. 35

(3) In the case of a person who is unable to appoint another as his or her procurator, the Agency, subject to subsection (4), may nominate an adult person or welfare organisation to receive the grant on the beneficiary's behalf, if the person so nominated satisfies the prescribed conditions.

(4) Stamp duty is not payable in respect of a power of attorney given by an applicant to any person to apply for social assistance on his or her behalf or in respect of a power of attorney given by a beneficiary to any person to receive payment of any grant on his or her behalf. 40

(5) A procurator who has knowingly failed to inform the Agency of his or her intention to be absent from the Republic for a period exceeding 90 days, as contemplated in section 16(3), is unfit to act as procurator and may not continue to act as procurator or be nominated or appointed as procurator, unless the Agency decides otherwise as provided for in section 16(5). 45

Discontinuation of payments to beneficiaries absent from Republic

16. (1) If a beneficiary intends to be absent from the Republic for a period exceeding 90 days, he or she must inform the Agency thereof before leaving the Republic and the Agency must, subject to subsections (2) and (3), suspend payment of a grant until that beneficiary or procurator, as the case may be, appears in person before the Agency and informs the Agency that the beneficiary has returned permanently to the Republic. 50

(2) Despite subsection (1), the Agency may upon written request by a beneficiary or a procurator, in circumstances prescribed by the Minister by notice in the *Gazette*, continue payment of a grant or a portion thereof to that beneficiary or procurator subject to such conditions and for such a period as the Agency may determine.

(3) If a beneficiary— 5

(a) is absent from the Republic for a period not exceeding 90 days and has not informed the Agency of his or her absence as contemplated in subsection (1); and

(b) due to a medical, safety or family emergency is likely to be absent from the Republic for a period exceeding 90 days, 10

the beneficiary or procurator, as the case may be, or anyone acting on his or her behalf or in his or her interest, must immediately after such emergency has arisen, submit an affidavit or affirmation to the Agency informing it—

(i) of the date when the beneficiary left the Republic, the place where he or she is and any other information the Minister may prescribe by notice in the *Gazette*; 15

(ii) that the beneficiary is, due to an emergency contemplated in this subsection, likely to be absent from the Republic for a period exceeding 90 days;

(iii) of the details of the emergency which prevent the beneficiary's return to the Republic within 90 days of the date referred to in paragraph (a) and verifiable proof thereof; 20

(iv) of the date when the beneficiary intends to return to the Republic; and

(v) of an address where the beneficiary, or the person acting on his or her behalf or in his or her interest, as the case may be, can be readily contacted.

(4) The Agency must, after receipt of the statement and proof referred to in subsection (3)(b)— 25

(a) enter the details of these circumstances on the records of the beneficiary or procurator, as the case may be;

(b) consider the statement and such proof before deciding, subject to subparagraphs (i), (ii) and (iii) whether or not to suspend payment of the relevant grant as contemplated in subsection (1); 30

(c) in writing, in the official language of the Republic in which the application for that grant was made, inform the beneficiary or procurator, or the person acting on his or her behalf or in his or her interest, as the case may be, of the Agency's decision whether or not to suspend payment of that grant and if it has been decided to continue payment, subject to which conditions such payment will be continued, 35

but the Agency may in exceptional circumstances continue payment of the relevant grant subject only to conditions in respect of—

(i) the maximum period in respect of which such payment will be continued; 40

(ii) the frequency with which further statements must be submitted to the Agency, the facts to be addressed in those statements and the nature and level of proof required; and

(iii) any matter relevant to the payment of social assistance which the Minister may prescribe by notice in the *Gazette*. 45

(5) If a beneficiary or procurator fails to inform the Agency as contemplated in subsections (1) or (3), the Agency may—

(a) immediately suspend payment of the relevant grant;

(b) note that failure or refusal and any other information relevant to the absence of that beneficiary or procurator on his or her records; 50

(c) record that the beneficiary's right to social assistance or procurator's right to act as a procurator, as the case may be, has, subject to subsection (6), been suspended;

(d) take the prescribed steps in terms of the Public Finance Management Act, 1999, to recover any payment made to the beneficiary or procurator, as the case may be, the period exceeding 90 days, during which the beneficiary was absent from the Republic; 55

(e) take any further action contemplated in this Act or other law.

(6) If the Agency has taken action contemplated in subsection (5), it must in writing, by registered mail at the last known address in the Republic or by verifiable notification at a point of contact with that beneficiary, inform the beneficiary in the official language of the Republic which he or she is most likely to understand that— 60

- (a) his or her right to social assistance in terms of this Act has been suspended, and the reasons therefor; and
- (b) he or she has the right to inform the Agency within 90 days from the date of postage of the registered mail, of the circumstances or reasons why he or she so failed to inform the Agency of his or her absence, and an alternative address where he or she could have received physical mail.

(7) The Agency must after receipt of information, if any, submitted by a beneficiary or procurator in terms of subsection (6)(b)—

- (a) consider such information and decide, whether or not to re-instate, that beneficiary's or procurator's rights in terms of this Act;
- (b) in writing by registered mail at the last known address of that beneficiary in the Republic or at an alternative address supplied by that beneficiary or procurator, as the case may be, inform him or her in the official language of the Republic in which he or she submitted that information—
 - (i) of the Agency's decision;
 - (ii) the reasons for that decision; and
 - (iii) that he or she has a right of appeal contemplated in section 18 and of the mechanism and procedure to invoke that right.

Recovery of sums overpaid

17. (1) If the Agency pays money to a person in the belief that he or she is entitled thereto in terms of this Act or any law repealed by this Act, but he or she was not entitled thereto, the amount of money so paid is an amount due and payable to the State by such a person or, if he or she is deceased, by his or her estate.

(2) The Agency must recover the amounts to which a person was not entitled, as contemplated in subsection (1), in accordance with the Public Finance Management Act, 1999.

(3) The Minister shall remit an amount owing by a person in terms of subsection (1) if such a person satisfies the Minister that he or she received the amount without knowing that he or she was not entitled thereto.

(4) The Inspectorate shall investigate all complaints of alleged fraudulent withholding of the full or partial benefit due to a beneficiary, the holding of such an investigation must not affect the right of a beneficiary to receive the full value of the benefit from date of accrual.

Appeal

18. (1) If an applicant disagrees with a decision made by the Agency in respect of a matter regulated by this Act, that person or a person acting on his or her behalf may, within 90 days of his or her gaining knowledge of that decision, lodge a written appeal with the Minister against that decision, setting out the reasons why the Minister should vary or set aside that decision.

(2) The Minister may, after considering the appeal and the Agency's reasons for the decision—

- (a) confirm, vary or set aside that decision; or
- (b) appoint an independent tribunal to consider the appeal in accordance with such conditions as the Minister may prescribe by notice in the *Gazette*, and that tribunal may, after consideration of the matter, confirm, vary or set aside that decision or make any other decision which is just.

Abuse of social grants

19. (1) Where the Agency has reasonable grounds to suspect that a beneficiary, parent, procurator, or a primary care giver is abusing the social grant, the Agency may appoint a person to investigate such suspected abuse.

(2) If such person finds on objective grounds that such abuse has taken place, the Agency must appoint a person to receive the social grant on behalf of the beneficiary and to use it for the benefit of that beneficiary subject to any prescribed conditions.

(3) The Agency may—

- (a) suspend payment of a child support grant, foster child grant or a care dependency grant to a parent, primary care giver, foster parent or procurator, where the parent, primary care giver, foster parent or procurator—

- (i) is convicted of abuse or neglect of the child in respect of whom he or she receives a grant; or
 - (ii) is found by the Agency or the Inspectorate to be incapable of using a grant for the benefit of the child in respect of whom he or she received it; and
- (b) appoint a person to receive the grant in respect of such a beneficiary or child pending the substitution of such parent, primary care giver, foster parent or procurator as the case may be.

5

Restrictions on transfer of rights and payments of social assistance

20. (1) A grant may not be transferred, ceded, pledged or in any other way encumbered or disposed of unless the Minister on good grounds in writing consents thereto. 10

(2) Any act in contravention of subsection (1) is void and if the Minister becomes aware of any such act, he or she may order that payment of the relevant grant be terminated or suspended immediately and the Agency must, in writing by registered mail at the last known address of that beneficiary or procurator, as the case may be, inform him or her in the official language of the Republic in which he or she made the application for the grant— 15

- (a) of the Minister's decision;
- (b) of the reasons for that decision; and
- (c) that he or she has a right of appeal contemplated in section 18 and of the mechanism and procedure to invoke that right. 20

(3) A beneficiary must without limitation or restriction receive the full amount of a grant to which he or she is entitled before any other person may exercise any right or enforce any claim in respect of that amount. 25

(4) Despite subsection (3), the Minister may prescribe circumstances under which deductions may be made directly from social assistance grants: Provided that such deductions are necessary and in the interest of the beneficiary.

(5) An amount that accrues or has accrued to a beneficiary or his or her estate in terms of this Act may not be attached or subjected to any form of execution under a judgment or order of a court or by law, or form part of his or her insolvent estate. 30

(6) Notwithstanding the provisions of subsection (1), in the case of death of a parent, procurator or primary care giver receiving a grant on behalf of or in respect of another person or child as the case may be, the Agency must appoint a person to receive the grant on behalf of or in respect of such person or child, and to use it for his or her benefit without suspending the grant, subject to prescribed conditions. 35

False representations

21. (1) A person is guilty of an offence if such person, when applying for social assistance, furnishes information which he or she knows to be untrue or misleading in a material respect or makes a representation which to his or her knowledge is false, in order that he or she or another person may— 40

- (a) obtain or retain social assistance to which he or she is not entitled in terms of this Act; or
- (b) obtain social assistance in excess of that to which he or she is entitled in terms of this Act. 45

(2) If any person receives social assistance knowing that he or she is not entitled thereto, or is not entitled to the full amount which he or she is receiving, and he or she fails to inform the Agency thereof, he or she is guilty of an offence.

(3) A beneficiary who knowingly fails to inform the Agency of any material change of information contemplated in section 14(5), is guilty of an offence. 50

Information to be furnished to Agency by third parties

22. (1) Notwithstanding anything to the contrary in any law, an organ of state must, at the request of the Agency and subject to subsection (3), furnish it with all relevant information relating to an applicant or beneficiary.

(2) A financial institution referred to in the definition of "financial institution" in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), must, notwithstanding anything to the contrary in any law, at the request of the Agency and 55

subject to subsection (3), furnish the Agency with all relevant information relating to the assets and investments of an applicant or beneficiary as may be prescribed and with any additional information requested, if such information is necessary for a decision on an application.

(3) A person who in terms of subsections (1) and (2) furnishes information obtained before the commencement of this Act to the Agency must, when doing so, inform the person concerned of that fact in writing. 5

(4) A person who after the commencement of this Act applies for a grant in terms of this Act is deemed to have agreed, by making such an application, that any other person who holds personal information relevant to that application may, without requesting permission from him or her, make that information available to the Agency. 10

Power of Agency to investigate

23. (1) The Agency may, in the performance of its functions, inquire into any matter concerning the rendering of social assistance, and may for such purpose —

- (a) subpoena any person who can furnish information of material importance concerning the matter under investigation, or who is reasonably assumed to have under his or her control a book, document or thing that may have a bearing on the investigation, to appear within a reasonable period before it and to furnish such information or to produce such book, document or thing, as the case may be; 15 20
- (b) through its representative administer an oath to that person or cause that person to make an affirmation if that person was or could have been subpoenaed in terms of paragraph (a) and he or she is present at the enquiry;
- (c) through its representative cross-examine any person referred to in paragraph (b). 25

(2) A subpoena to appear before the Agency must be in the prescribed form and must be served on the person by registered mail or in the manner in which it would have been served had it been a subpoena issued by the clerk of a magistrate's court.

(3) The rules with regard to privilege, which are applicable in the case of a person who has been subpoenaed to give evidence or to produce a book, document or thing before a court of law, apply in respect of the examination of a person and the production of a book, document or thing contemplated in subsection (1). 30

CHAPTER 4

INSPECTORATE FOR SOCIAL ASSISTANCE

Inspectorate for Social Assistance 35

24. (1) The Inspectorate for Social Assistance is hereby established as an organisational component contemplated in Schedule 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and is headed by a person designated as Executive Director.

(2) The Inspectorate functions independently of both the Department and the Agency. 40

(3) The Public Service Act, 1994, applies to the Inspectorate to the extent that this Act does not provide to the contrary.

(4) The Minister exercises final responsibility over the Inspectorate.

(5) To enable the Minister to exercise his or her final responsibility in terms of subsection (4), the Executive Director must, at the request of the Minister— 45

- (a) furnish him or her with information or a report with regard to any case, matter or subject dealt with by the Executive Director, an inspector or any other employee of the Inspectorate in the performance of his or her functions; and
- (b) provide him or her with reasons for any decision taken by the Executive Director, an inspector or any other employee of the Inspectorate in the performance of his or her functions. 50

Independence of Inspectorate

25. (1) No person may in any way interfere with, hinder or obstruct any member of the Inspectorate in the performance of his or her functions.

(2) A person who contravenes subsection (1) is guilty of an offence. 55

(3) All organs of state must accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Inspectorate in the performance of its functions.

Funding and employees of Inspectorate

26. (1) The Inspectorate is funded by money appropriated by Parliament for that purpose. 5

(2) The Minister must in concurrence with the national Cabinet appoint an Executive Director to head the Inspectorate.

(3) The Executive Director reports and is accountable directly to the Minister.

(4) The Executive Director must, subject to the laws governing the public service, appoint suitable persons as employees of the Inspectorate in accordance with an organisational establishment approved by the Minister, and that establishment must differentiate between employees who are to be appointed as inspectors exercising powers in terms of section 27 and other employees who are to be appointed to perform other functions within the Inspectorate. 10 15

(5) The terms and conditions of service of the employees of the Inspectorate are determined by the laws governing the public service.

(6) A document issued by the Executive Director in the prescribed form, certifying that a person is an employee of the Inspectorate and has been authorised to exercise the powers and perform the duties contemplated in sections 27 and 28, is *prima facie* proof of those facts. 20

(7) The Executive Director may for good reason at any time withdraw a document issued under subsection (6), and a person in possession of such a document must, upon being informed of such withdrawal, return that document to the Executive Director.

(8) A person who fails or refuses to comply with subsection (7) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment. 25

(9) A person who—

(a) wilfully discloses information regarding the operations of the Inspectorate; and 30

(b) knows or could reasonably be expected to know that the disclosure would prejudicially affect any of those operations,

is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

Functions of Inspectorate

27. (1) The Inspectorate must— 35

(a) conduct investigations to ensure the maintenance of the integrity of the social assistance frameworks and systems;

(b) execute internal financial audits and audits on compliance by the Agency with regulatory and policy measures and instruments; 40

(c) investigate fraud, corruption and other forms of financial and service mismanagement and criminal activity, within the Agency and in connection with its functions, duties and operations;

(d) establish a complaints mechanism; and

(e) in general, do everything necessary to combat the abuse of social assistance. 45

(2) The Inspectorate may—

(a) of its own accord or upon receipt of a complaint, investigate any alleged contravention of this Act by any person, and may, where appropriate, refer such investigation to the South African Police Service, the Agency or the Inspectorate of Special Operations established by section 7(1)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), or any other organ of state established by law which has the appropriate powers to investigate and act on any alleged contravention of this Act; and 50

(b) investigate any matter in respect of social assistance referred to the it by the Minister, the Director-General of the Department or the Chief Executive Officer of the Agency. 55

(3) The Minister must, in consultation with the Executive Director, in writing, authorise those employees of the Inspectorate appointed as inspectors to perform the functions contemplated in subsections (1) and (2) and to exercise the powers contemplated in section 28.

(4) The Minister must, subject to this Act and all other applicable law by notice in the *Gazette*, prescribe procedures regarding the protection of the identity and integrity of a complainant or other source of information. 5

Power of Inspectorate to request information and to subpoena

28. (1) An organ of state must at the request of the Executive Director furnish the Executive Director with the prescribed information relating to an applicant or beneficiary and with any additional information requested, if such information is necessary for an investigation in terms of this Act. 10

(2) A financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), must at the request of the Executive Director or an inspector, furnish him or her with the prescribed information relating to the assets and investments of an applicant or beneficiary, and with any additional information requested if such information is necessary for an investigation in terms of this Act. 15

(3) Any person who, in terms of subsection (1) or (2), furnishes information obtained by that person before the commencement of this Act must, when doing so, inform the person about whom such information is furnished of that fact in writing. 20

(4) Any person who applies for a grant in terms of this Act is deemed to have agreed, by making such an application, that any other person who holds personal information relevant to that application may, without requesting permission from him or her, make that information available to the Executive Director.

(5) An inspector may for the purposes of performing the functions contemplated in section 27(1) and (2)(a)— 25

(a) subpoena a person who can furnish information of material importance concerning a matter under investigation, or who is reasonably assumed to have under his or her control a book, document or thing that may have a bearing on the investigation, to appear before him or her within a reasonable period and to produce that book, document or thing, as the case may be; 30

(b) administer an oath to that person or cause that person to make an affirmation if that person was or could have been subpoenaed in terms of paragraph (a) and he or she is present at the enquiry;

(c) cross-examine any person referred to in paragraph (b). 35

(6) A subpoena to appear before an inspector must be in the prescribed form and must be served on the person by registered mail or in the same manner in which it would have been served if it had been a subpoena issued by the clerk of a magistrate's court.

(7) The rules with regard to privilege which are applicable in the case of a person who has been subpoenaed to give evidence or to produce a book, document or thing before a court of law apply in respect of the examination of a person and the production of a book, document or thing contemplated in subsection (5). 40

CHAPTER 5

GENERAL PROVISIONS

Delegation 45

29. (1) The Minister may in writing—

(a) delegate to the Member of the Executive Council responsible for social development in a province, the Director-General, the Agency, a staff member of the Inspectorate or an officer of the Department any power conferred upon the Minister by this Act, except the power to make regulations; 50

(b) authorise the Director-General, the Agency, a staff member of the Inspectorate or an officer of the Department to perform any duty imposed upon the Minister by this Act.

(2) The Director-General may in writing—

(a) delegate to a staff member of the Inspectorate or any officer of the Department any power delegated to him or her in terms of subsection (1)(a); 55

(b) authorise that staff member or officer to perform any duty which he or she has been authorised to perform in terms of subsection (1)(b).

(3) Any person to whom a power has been delegated or who has been authorised to perform a duty in terms of subsections (1) or (2), must exercise that power or perform that duty subject to the conditions determined by the person who effected the delegation or granted the authorisation. 5

(4) Any delegation of a power or authorisation to perform a duty under subsection (1)—

- (a) does not prevent the person who effected the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; 10
- (b) may at any time be amended or withdrawn in writing by the person who effected the delegation or granted the authorisation.

Offences

30. A person is guilty of an offence if he or she— 15

- (a) hinders or obstructs the Director-General or an employee of the Department or the Agency in the performance of his or her functions in terms of this Act;
- (b) refuses or fails to comply with a requirement or request which the Agency or an employee of the Inspectorate has lawfully set or made in the performance of his or her functions in terms of this Act; 20
- (c) intentionally furnishes the Agency or an employee of the Inspectorate with false or misleading information;
- (d) has been subpoenaed under section 23 or 28 and fails or refuses, without sufficient cause, to—
 - (i) appear at the time and place specified in the subpoena; 25
 - (ii) remain in attendance until excused by the person presiding at the enquiry from further attendance; or
 - (iii) take an oath or to make an affirmation as a witness.

Penalties

31. A person convicted of an offence in terms of this Act is liable, unless different provision is specifically made, to a fine or imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment. 30

Regulations

32. (1) The Minister must make regulations regarding any matter that must be prescribed in terms of this Act and may subject to subsection (2) make regulations regarding— 35

- (a) any matter that may be prescribed in terms of this Act;
- (b) offences relating to anything that must or may be done or is prohibited in terms of any regulation made under this section;
- (c) uniform norms and standards for service delivery; 40
- (d) any other matter which it is necessary to prescribe for the proper administration or implementation of this Act.

(2) The Minister must make regulations with the concurrence of the Minister of Finance if the regulations apply to—

- (a) the application for and payment of grants, including maximum amounts of such grants; 45
- (b) requirements or conditions in respect of eligibility for grants;
- (c) the repayment of amounts overpaid in respect of grants.

Repeal of laws and transitional arrangements

33. (1) The Social Assistance Act, 1992 (Act No. 59 of 1992), is hereby repealed insofar as it has not been assigned to another sphere of government. 50

(2) Any regulation or notice issued, any appointment made, any grant awarded, any moneys paid or anything else done by the national sphere of government under the Social Assistance Act, 1992, is deemed to have been issued, made, granted, paid or done under the corresponding provisions of this Act. 55

(3) Any regulation or notice issued, any appointment made, any grant awarded, any moneys paid, or anything else done by a provincial sphere of government under the Social Assistance Act, 1992, insofar as it has been assigned to that sphere of government, is deemed to have been issued, made, granted, paid or done under the corresponding provisions of this Act in the event that a provincial legislature repeals the Social Assistance Act, 1992, insofar as it has been assigned to that sphere of government, or amends the Act in such a way that it conflicts with this Act. 5

Short title and commencement

34. This Act is called the Social Assistance Act, 2004, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 10

MEMORANDUM ON THE OBJECTS OF THE SOCIAL ASSISTANCE BILL

1. GENERAL

This Bill is designed to consolidate legal requirements and provisions for social assistance in the Republic, and to create uniform norms and standards which can apply countrywide.

2. PRINCIPAL OBJECTS OF BILL

The objects of this Bill are to—

- provide for financing of social assistance;
- provide for the administration and payment of social grants;
- make provision for social assistance and determine the qualification requirements therefor;
- provide for the administration of social assistance and payment of social grants;
- ensure that minimum norms and standards are set for the delivery of social assistance; and
- provide for the establishment of an Inspectorate for Social Security.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Department of Public Service and Administration, Financial and Fiscal Commission, National Treasury, MEC's of provinces and Heads of provincial departments were consulted.

4. IMPLICATIONS FOR PROVINCES

“Welfare services” is listed as a functional area of concurrent competence in Schedule 4 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996). Insofar as social assistance can be regarded as being included in “welfare services”, this Bill deals with a subject matter in respect of which the provisions of provincial legislation are also competent.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill in respect of the provision of social assistance does not have any additional financial implications for the State. The creation of the Inspectorate for Social Assistance requires funding of R 20 million, R 30 million and R 40 million in respect of year one, year two and year three of operation, respectively.

6. PARLIAMENTARY PROCEDURE

The Department of Social Development and the State Law Advisers are of the opinion that the procedure contemplated in section 76 of the Constitution should be followed, since the Bill falls within the functional area listed in Schedule 4 to the Constitution, namely “Welfare Services”.