

REPUBLIC OF SOUTH AFRICA

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# WELFARE LAWS AMENDMENT BILL

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*(As amended by the Portfolio Committee on Welfare (National Assembly))*

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(MINISTER FOR WELFARE AND POPULATION DEVELOPMENT)

[B 90D—97]

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REPUBLIEK VAN SUID-AFRIKA

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# WYSIGINGSWETSONTWERP OP WELSYNSWETTE

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*(Soos gewysig deur die Portefeuljekomitee oor Welsyn (Nasionale Vergadering))*

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(MINISTER VIR WELSYN EN BEVOLKINGSONTWIKKELING)

[W 90D—97]

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- and **[maintain]** care for **[him]** that child apart from his or her parents or custodian for a longer period than 14 days, unless such person —
- (i) has applied in terms of section 18 for the adoption of the child; or
  - (ii) has obtained the consent in writing of the commissioner of the district in which the child was residing immediately before he or she was received; or
  - (iii) in the case of a child referred to in paragraph (a), is over the age of 18 years and is —
    - (aa) the grandfather, grandmother, brother, half-brother, sister, half-sister, uncle or aunt of the child; or
    - (bb) a designated relative referred to in subsection (4).”; and
- (b) by the addition of the following subsection:
- “(4) The Minister may determine that a person who is —
- (a) a spouse of a relative of a child referred to in subsection (1)(iii)(aa); or
  - (b) related to a child in the third degree of affinity or consanguinity, is a ‘designated relative’ for the purposes of subsection (1)(iii)(bb).”.

#### Amendment of section 56 of Act 74 of 1983

2. Section 56 of the Child Care Act, 1983, is hereby amended by the deletion of paragraph (a) of subsection (1).

#### Amendment of section 1 of Act 59 of 1992, as amended by section 14 of Act 118 of 1993, section 1 of Act 45 of 1994, paragraph 3 of Part 1 of the Schedule to Proclamation R. 7 of 1996 and section 6 of Act 106 of 1996

3. Section 1 of the Social Assistance Act, 1992, is hereby amended —
- (a) by the deletion of the definition of “capitation grant”;
  - (b) by the insertion after the definition of “child” of the following definition:
 

“ ‘child-support grant’ means a grant made in terms of section 2(h);”;
  - (c) by the substitution for the definition of “Director-General” of the following definition:
 

“ ‘Director-General’ [in so far as a provision of this Act is applied in or with reference to a particular province] means [the officer who is the head of the component which is charged with welfare matters in the provincial administration of that province] the Director-General: Welfare;”;
  - (d) by the substitution for the definition of “grant” of the following definition:
 

“ ‘grant’ means a social grant, a [maintenance] child-support grant, a care-dependency grant, a foster child grant, [a capitation grant] a supplementary grant or a grant-in-aid;”;
  - (e) by the deletion of the definition of “maintenance grant”;
  - (f) by the substitution for the definition of “Minister” of the following definition:
 

“ ‘Minister’ [in so far as a provision of this Act is applied in or with reference to a particular province] means [the competent authority to whom the administration of this Act has under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), been assigned in that province] the Minister for Welfare and Population Development;”;
  - (g) by the deletion of the definition of the “Minister of Finance”;
  - (h) by the insertion after the definition of “prescribe” of the following definition:
 

“ ‘primary care-giver’, in relation to a child, means a person, whether or not related to the child, who takes primary responsibility for meeting the daily care needs of the child, but excludes —

    - (a) a person who receives remuneration, or an institution which receives an award, for taking care of the child; or
    - (b) a person who does not have an implied or express consent of a parent, guardian or custodian of the child;”;

- (i) by the deletion of the definitions of “province” and “provincial administration”;
- (j) by the substitution for the definition of “social assistance” of the following definition:
  - “ ‘social assistance’ means a social grant, **[a capitation grant]** a supplementary grant, a grant-in-aid, **[a maintenance grant]** a foster child grant, a child-support grant, a care-dependency grant or financial award granted under this Act;”;
- (k) by the deletion in paragraph (c) of the definition of “South African citizen” of the word “*Provincial*”; and
- (l) by the deletion of paragraphs (a) and (b) of the definition of “war veteran”.

**Amendment of section 2 of Act 59 of 1992, as amended by section 15 of Act 118 of 1993, section 3 of Act 180 of 1993, section 2 of Act 45 of 1994 and paragraph 3 of Part 1 of the Schedule to Proclamation R. 7 of 1996**

4. Section 2 of the Social Assistance Act, 1992, is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of the following words:
    - “The Minister shall, subject to the provisions of this Act and with the concurrence of the Minister of Finance, out of moneys appropriated by **[the Provincial Legislature concerned]** Parliament for that purpose, make—”;
  - (b) by the deletion of paragraph (d);
  - (c) by the deletion of paragraph (f); and
  - (d) by the addition of the following paragraph:
    - “(h) a child-support grant to a primary care-giver of a child who is under the age of seven years or such higher age as the Minister may determine by notice in the *Gazette*.”.

**Amendment of section 3 of Act 59 of 1992**

5. Section 3 of the Social Assistance Act, 1992, is hereby amended by the substitution for paragraph (b) of the following paragraph:
- “(b) is resident in the Republic at the time of the application for the grant in question;”.

**Repeal of section 4 of Act 59 of 1992, and savings**

6. (1) Section 4 of the Social Assistance Act, 1992, is hereby repealed.
- (2) Despite—
- (a) the amendment of sections 1 and 2(d) of the Social Assistance Act, 1992, by section 3(d), (e) and (j) and section 4(b) of this Act;
  - (b) the repeal of section 4 of the Social Assistance Act, 1992, by subsection (1) of this section; and
  - (c) the repeal of any law by section 13(1) of this Act,
- any maintenance grant payable immediately before the commencement of such amendment or repeal, as the case may be, is payable until the date immediately before the date determined in terms of section 15(2) of this Act, and from that date it is, subject to subsection (3), payable for a period not exceeding three years.
- (3) The amount of any maintenance grant payable from the date determined in terms of section 15(2) of this Act, as contemplated in subsection (2), must be reduced annually as prescribed by regulation in accordance with section 19(1)(b) of the Social Assistance Act, 1992.

**Insertion of section 4A in Act 59 of 1992**

7. The following section is hereby inserted after section 4 of the Social Assistance Act, 1992:

**“Child-support grant**

**4A.** Subject to the provisions of this Act, any person shall be entitled to a child-support grant if that person satisfies the Director-General that—  
 (a) he or she is the primary care-giver of a child; and  
 (b) he or she and that child—  
     (i) are resident in the Republic at the time of the application for the grant in question;  
     (ii) are South African citizens; and  
     (iii) comply with the prescribed conditions.”.

**Insertion of sections 4B and 4C in Act 59 of 1992**

8. The following sections are hereby inserted before section 5 of the Social Assistance Act, 1992:

**“Foster child grants**

**4B.** Subject to the provisions of this Act, any person shall be entitled to a foster child grant if that person satisfies the Director-General that—  
 (a) he or she is the foster parent of a child; and  
 (b) he or she and that child—  
     (i) are resident in the Republic at the time of the application for the grant in question; and  
     (ii) comply with the prescribed conditions.

**Care-dependency grants**

**4C.** Subject to the provisions of this Act, any person shall be entitled to a care-dependency grant if that person satisfies the Director-General that—  
 (a) he or she is the parent or foster parent of a care-dependent child; and  
 (b) he or she and that child—  
     (i) are resident in the Republic at the time of the application for the grant in question;  
     (ii) in the case of a parent and his or her child, are South African citizens; and  
     (iii) comply with the prescribed conditions.”.

**Amendment of section 5 of Act 59 of 1992, as substituted by paragraph 3 of Part 1 of the Schedule to Proclamation R. 7 of 1996 and amended by section 7 of Act 106 of 1996**

9. Section 5 of the Social Assistance Act, 1992, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following:

“The Minister may, subject to the provisions of this Act and with the concurrence of the Minister of Finance, out of moneys appropriated by **[the Provincial Legislature concerned]** Parliament for that purpose, make financial awards to—”.

**Amendment of section 9 of Act 59 of 1992, as amended by paragraph 3 of Part 1 of the Schedule to Proclamation R. 7 of 1996**

10. Section 9 of the Social Assistance Act, 1992, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The Treasury **[of the province concerned]** or any person authorized thereto by **[that]** the Treasury, may in its or his or her discretion write off the whole or any

portion of an amount owing to the State in terms of this section, if **[that]** the Treasury or assignee is satisfied that recovery of such amount would be uneconomical or cause undue hardship to the debtor concerned or his or her dependants because they would be deprived of the minimum essential means of livelihood.”.

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# **Substitution of section 16 of Act 59 of 1992**

**11.** The following section is hereby substituted for section 16 of the Social Assistance Act, 1992:

## **“Delegation of powers**

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|---|----|
| <b>16. (1)</b> The Minister may —   | 10 |
| (a) delegate to any officer of the Department of Welfare any power conferred upon the Minister by this Act, except the power to make regulations under section 19;  |    |
| (b) authorize any such officer to perform any duty imposed upon the Minister by this Act.   | 15 |
| (2) The Minister may, with the concurrence of, and shall, if so requested by, the Premier of a province—  |    |
| (a) delegate to the member of the Executive Council responsible for welfare matters in the province any power conferred on the Minister by this Act, except the power to make regulations under section 19; | 20 |
| (b) authorize that member of the Executive Council to perform any duty imposed upon the Minister by this Act:   |    |
| Provided that the province has the necessary administrative capacity to exercise that power or perform that duty, as the case may be.   |    |
| (3) The member of the Executive Council of a province responsible for welfare matters may —   | 25 |
| (a) delegate to any officer of the provincial administration concerned any power delegated to that member under subsection (2);   |    |
| (b) authorize any such officer to perform any duty which that member is authorized to perform under subsection (2).   | 30 |
| (4) The Director-General may —  |    |
| (a) delegate to any other officer of the Department of Welfare any power conferred upon the Director-General by this Act;   |    |
| (b) authorize any such officer to perform any duty imposed upon the Director-General by this Act.   | 35 |
| (5) The Director-General may, with the concurrence of, and shall, if so requested by, the Director-General of a provincial administration (in this section referred to as a ‘provincial Director-General’)— |    |
| (a) delegate to the provincial Director-General any power conferred upon the Director-General by this Act;  | 40 |
| (b) authorize the provincial Director-General to perform any duty imposed upon the Director-General by this Act:  |    |
| Provided that the province has the necessary administrative capacity to exercise that power or to perform that duty, as the case may be.  |    |
| (6) A provincial Director-General may —   | 45 |
| (a) delegate to any other officer of the provincial administration concerned any power delegated to him or her under subsection (5);  |    |
| (b) authorize any such officer to perform any duty he or she is authorized to perform under subsection (5).   |    |
| (7) Any person to whom any power has been delegated or who has been authorized to perform a duty under this section, shall exercise the power or  | 50 |

perform that duty subject to the conditions the person who effected the delegation or granted the authorization considers necessary.

(8) Any delegation of a power or authorization to perform a duty under this section shall be done in writing.

(9) Any delegation of a power or authorization to perform a duty under subsection (1), (3), (4) or (6)— 5

(a) shall not prevent the person who effected the delegation or granted the authorization from exercising that power or performing that duty himself or herself;

(b) may at any time be withdrawn in writing by that person. 10

(10)(a) If a power is delegated, or the performance of a duty is authorized, in terms of subsection (2) or (5), the person who effected the delegation or granted the authorization may only perform that power or duty, as the case may be, himself or herself, if the power or duty is not duly exercised or performed in accordance with this Act. 15

(b) Any delegation of a power or authorization to perform a duty in terms of subsection (2) or (5) may only be withdrawn in writing if—

(i) that power or duty, as the case may be, is not duly exercised or performed in accordance with this Act; or

(ii) the province ceases to have the necessary administrative capacity to exercise that power or perform that duty, as the case may be.”. 20

**Amendment of section 19 of Act 59 of 1992, as amended by section 3 of Act 45 of 1994 and paragraph 3 of Part 1 of the Schedule to Proclamation R. 7 of 1996**

12. Section 19 of the Social Assistance Act, 1992, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 25

“The Minister may [after consultation with the Minister for Welfare and Population Development, in the national government] make regulations as to—”; and

(b) by the substitution for subsection (3) of the following subsection: 30

“(3) If a regulation would have the effect that the total amount of grants to which a person at any time has been entitled in terms of this Act is reduced, without his or her income or assets having increased, such regulation shall not be made without the approval, by resolution, of [the Provincial Legislature concerned] Parliament.”. 35

**Repeal of laws and transitional arrangements**

13. (1) Subject to subsection (2)—

(a) the laws referred to in the Schedule are hereby repealed; and

(b) any other law in force in that part of the Republic which constituted the territory of any former entity known as Transkei, Bophuthatswana, Venda, Ciskei, Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa or Qwaqwa is hereby repealed to the extent that such other law is inconsistent with, or deals with any matter dealt with in, the Social Assistance Act, 1992. 40

(2)(a) Anything done or deemed to have been done under—

(i) any provision repealed by subsection (1); or 45

(ii) any provision of the Social Assistance Act, 1992, before its amendment by this Act,

is deemed to have been done under the corresponding provision of the Social Assistance Act, 1992, as amended by this Act.

(b) If the Social Assistance Act, 1992, does not contain such a corresponding provision, it must be finalised as if the provision has not been repealed, unless the Minister determines otherwise. 50

**Extension of application of Act 59 of 1992**

**14.** The Social Assistance Act, 1992, applies throughout the Republic.

**Short title and commencement**

**15.** (1) This Act is called the Welfare Laws Amendment Act, 1997, and takes effect, subject to subsection (2), on the date this Act is first published in the *Gazette* as a law. 5

(2) Section 3(*d*) and (*j*), in so far as it relates to a child-support grant, and sections 3(*b*) and (*h*), 4(*d*) and 7 take effect on a date determined by the President by proclamation in the *Gazette*.



**SCHEDULE**

**LAWS REPEALED BY SECTION 13(1)(a)**

Number and year of law	Short title
Act No. 7 of 1976 (Gazankulu)	Social Pensions Act, 1976
Act No. 9 of 1976 (Ciskei)	Ciskeian Social Pensions Act, 1976
Act No. 3 of 1977 (Gazankulu)	Social Pensions Amendment Act, 1977
Act No. 10 of 1977 (Venda)	Social Pensions Act, 1977
Act No. 4 of 1978 (Transkei)	Social Pensions Act, 1978
Act No. 11 of 1978 (Lebowa)	Social Pensions Act, 1978
Act No. 18 of 1978 (Bophuthatswana)	Social Pensions Act, 1978
Act No. 15 of 1980 (Venda)	National Welfare Act, 1981
Act No. 21 of 1982 (Bophuthatswana)	Social Welfare Development Fund Act, 1982
Act No. 4 of 1984 (Qwaqwa)	Qwaqwa Social Pensions Act, 1984
Act No. 10 of 1985 (Qwaqwa)	Welfare Act, 1985
Act No. 18 of 1985 (Ciskei)	Children's Act, 1985
Act No. 18 of 1987 (Ciskei)	National Welfare Act, 1987
Ordinance No. 4 of 1919 (Cape of Good Hope)	Poor Relief and Charitable Institutions Ordinance, 1919
Ordinance No. 5 of 1924 (Cape of Good Hope)	Poor Relief and Charitable Institutions (Amendment) Ordinance, 1924

## **MEMORANDUM ON THE OBJECTS OF THE WELFARE LAWS AMENDMENT BILL, 1997**

### **PART 1**

#### **OBJECTS AND EXPLANATIONS**

1.1 The main object of the Bill is to introduce a new child-support grant during the current financial year and to phase out the existing maintenance grant in terms of the Social Assistance Act, 1992 (Act No. 59 of 1992), over a period of three years.

1.2 The aim of substituting the existing maintenance grant with the new child-support grant is to redress the imbalance of the past in the poverty alleviation support offered to parents and children in the allocation of the existing maintenance grants. The State is unable to cover all the cost of rearing poor children, but is able to contribute towards the support of some of the children through the child-support grant. The Bill provides for the payment of the new child-support grant to the primary care-giver of the child without undermining parental responsibility.

1.3 The Bill aims to amend section 10 of the Child Care Act, 1983 (Act No. 74 of 1983), so as to exempt members of the extended family of the child from the prohibition against receiving and caring for children younger than seven years, apart from their parents without the prior consent of a commissioner of child welfare. The Bill intends to include this category of persons in the definition of a “primary care-giver” in the Social Assistance Act, 1992, who is to become the beneficiary of the new child-support grant.

1.4 The administration of the Social Assistance Act, 1992, excluding section 13 (exemption from stamp duty), was assigned to the provincial governments by Proclamation R. 7 of 1996 made in terms of section 235(8) of the Interim Constitution. However, the Department of Welfare is of the opinion that the assignment did not remove the function of national government to administer the Act in respect of the matters referred to in section 126(3)(a) to (e) of the Interim Constitution. Therefore, the Bill aims to properly provide for the administration of the Social Assistance Act, 1992.

1.5 The Bill intends to repeal all social pension laws applicable in the former entities known as TBVC states and self-governing territories and extends the application of the Social Assistance Act, 1992, to all areas of the Republic. The said laws contribute to the current undesirable fragmentation of the social security system in the country.

1.6 The provisions for the abolition of maintenance grants and phasing out of existing maintenance grants over three years will, if the Bill is adopted, commence when the Bill is published in the *Gazette*, while the provisions regarding the new child-support grant will take effect on a date determined by the President by proclamation in the *Gazette*. Regulations regarding the annual reduction of the amount of the existing maintenance grants are intended to be published when the enabling provision of the Bill takes effect.

1.7 The Social Assistance Act, 1992, currently does not stipulate the requirements to qualify for a foster child grant and a care-dependency grant. The Bill intends to rectify that omission. The parent of a care-dependent child as well as that child are required to be South African citizens and resident in the Republic at the time of application for a care-dependency grant. A foster parent and his or her foster child, on the other hand, must be resident in the Republic at the time of application for either a foster care grant or a care-dependency grant, but they are both not required to be South African citizens to qualify for either of the two grants. The foster care system is an important instrument through which, not only South African children, but also children from other countries who are in need of care, can be protected, in line with international law on child protection.

1.8 Section 56(1)(a) of the Child Care Act, 1983, currently provides for state contributions towards the maintenance of a foster child by his or her foster parent. The Bill proposes to delete that provision since it is an undesirable duplication of section 2(e)

of the Social Assistance Act, 1992, which also provides for the payment out of state moneys of a foster child grant to a foster parent.

1.9 Section 2(f) of the Social Assistance Act, 1992, provides for the payment of capitation grants to prescribed institutions, including places of safety, for the care of persons admitted to such institutions in terms of an order of court or with the approval of the Director-General. This is an undesirable duplication of the provisions in section 56(1)(b) and (c) of the Child Care Act, 1983, which the Bill seeks to remove. In any event, no regulation has yet been made to implement the applicable provisions of the Social Assistance Act, 1992.

## **PART 2**

### **CLAUSE-BY-CLAUSE ANALYSIS**

2.1 Clause 1 proposes to amend section 10 of the Child Care Act, 1983, so as to make it possible for certain relatives of a child under the age of 7 years to receive and care for the child apart from his or her parents without the prior consent of a commissioner of child welfare. The existing distinction between children born in a marriage and those born out of wedlock in the said section, which appears to be unconstitutional, is also removed.

2.2 Clause 2 envisages to amend section 56 of the Child Care Act, 1983, by deleting paragraph (a) of subsection (1) which provides for the payment of foster care grants, so as to eliminate the duplication with a similar provision in section 2(e) of the Social Assistance Act, 1992.

2.3 Clause 3 proposes to amend certain definitions and to insert a definition of “primary care-giver” in section 1 of the Social Assistance Act, 1992.

2.4 Clause 4 seeks to amend section 2 of the Social Assistance Act, 1992, which contains general provisions regarding the payment of grants in terms of that Act.

2.5 Clause 5 proposes to effect a textual correction to section 3(b) of the Social Assistance Act, 1992.

2.6 Clause 6 envisages to—

- (a) repeal section 4 of the Social Assistance Act, 1992, which provides for maintenance grants; and
- (b) provide for the continuation of current maintenance grants for a period of three years and for the annual reduction of the amount thereof.

2.7 Clause 7 seeks to introduce a child-support grant and to set out the requirements to qualify for such a grant by inserting a new section in the Social Assistance Act, 1992.

2.8 Clause 8 proposes to set out the requirements to qualify for a foster child grant and a care-dependency grant by inserting two new sections in the Social Assistance Act, 1992.

2.9 Clauses 9, 10 and 12 aim to amend sections 5(1), 9(5) and 19 of the Social Assistance Act, 1992, respectively in order to provide for the proper administration of those sections.

2.10 Clause 11 envisages to amend section 16 of the Social Assistance Act, 1992, so as to enable the relevant Minister and Director-General to delegate the exercise of the powers conferred, and to authorise the performance of duties imposed, on them by that Act.

2.11 Clause 13 proposes to repeal all the pension laws and certain other welfare-related laws of the former entities known as TBVC states and self-governing territories and also includes transitional arrangements.

2.12 Clause 14 seeks to extend the application of the Social Assistance Act, 1992, to all areas of the Republic.

2.13 Clause 15 contains the short title and provides for the commencement of the provisions of the Bill.

**PART 3****CONSULTATION**

3.1 The consultation to reform the maintenance grant system was embarked upon in 1995 as part of the process to develop the White Paper on Social Welfare. This process involved the participation of a wide range of stakeholders both in government and civil society. The new child support system was proposed by the Lund Committee, which was appointed by the Minister for Welfare and Population Development. The Committee consisted of technical experts and stakeholder representatives. The Committee presented a report in November 1996 which was widely distributed for comment. On the basis of that report and comments the Department of Welfare developed policy and draft legislation in this regard which was approved by the provincial administrations and MINMEC. Public hearings were conducted on that policy by the Portfolio Committee on Welfare (National Assembly).

3.2 The following bodies were consulted:

- \* Departments of Finance, State Expenditure, Home Affairs, Communications, Health, Justice, the welfare departments of the provincial administrations and the State Attorney
- \* National organisations in civil society
- \* Financial and Fiscal Commission
- \* World Bank
- \* Portfolio Committee on Welfare (National Assembly)

**PART 4****PARLIAMENTARY PROCEDURE**

In the opinion of the Department of Welfare and the State Law Advisers the Bill must be dealt in accordance with the procedure prescribed by section 76 of the Constitution, 1996.