

REPUBLIC OF SOUTH AFRICA

**SELECT COMMITTEE AMENDMENTS
TO
WELFARE LAWS AMENDMENT
BILL**

[B 90D—97]

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

[B 90E—97]

REPUBLIEK VAN SUID-AFRIKA

**GEKOSE KOMITEE-AMENDEMENTE
OP
WYSIGINGSWETSONTWERP
OP WELSYNSWETTE**

[W 90D—97]

(Soos goedgekeur deur die Gekose Komitee oor Maatskaplike Dienste (Nasionale Raad van Provinsies))

[W 90E—97]

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AMENDMENTS AGREED TO

WELFARE LAWS AMENDMENT BILL [B 90D—97]

CLAUSES 3 TO 15

Clauses rejected.

NEW CLAUSES

1. That the following be new Clauses to follow Clause 2:

Substitution of sections 1 to 12 of Act 59 of 1992

3. The following sections are hereby substituted for sections 1 to 12 of the Social Assistance Act, 1992:

“Definitions

1. In this Act, unless the context indicates otherwise—
‘aged person’ means any person who has attained the prescribed age;
‘applicant’ means any person who applies for social assistance in terms of this Act;
‘beneficiary’ means any person to whom social assistance is rendered under this Act;
‘care-dependency grant’ means a grant made in terms of section 2(f);
‘care-dependent child’ means a child between the ages of one and eighteen years who requires and receives permanent home care due to his or her severe mental or physical disability;
‘child’ means any person under the age of 18 years;
‘child support grant’ means a grant made in terms of section 2(d);
‘Director-General’ means the Director-General: Welfare;
‘disabled person’ means any person who has attained the prescribed age and is, owing to his or her 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;
‘financial award’ means a financial award contemplated in section 5;
‘foster child’ means any child who has been placed in the custody of a foster parent in terms of Chapter 3 or 6 of the Child Care Act, 1983 (Act No. 74 of 1983), or section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
‘foster child grant’ means a grant made in terms of section 2(e);
‘foster parent’ means any person, except a parent of the child concerned, in whose custody a foster child has been placed under Chapter 3 or 6 of the Child Care Act, 1983, or section 290 of the Criminal Procedure Act, 1977, 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’ means a social grant, a grant-in-aid, a supplementary grant, a child support grant, a foster child grant or a care-dependency grant;

- ‘grant-in-aid’** means a grant made in terms of section 2(b);
- ‘Minister’** means the Minister for Welfare and Population Development;
- ‘parent’** means the legal parent of a child;
- ‘prescribe’** means prescribe by regulation;
- ‘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;
- ‘regulation’** means any regulation made under section 19;
- ‘social assistance’** means a social grant, a supplementary grant, a grant-in-aid, a foster child grant, a child-support grant, a care-dependency grant or a financial award granted under this Act;
- ‘social grant’** means a grant made in terms of section 2(a);
- ‘social relief of distress’** means social relief of distress as defined in section 15 of the Fund-raising Act, 1978 (Act No. 107 of 1978);
- ‘South African citizen’** includes any person who—
- (a) is 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, as assigned by Proclamation R. 7 of 1996; or
 - (b) is a member of a group or category of persons defined by the Minister, with the concurrence of the Minister of Finance, by notice in the *Gazette*;
- ‘supplementary grant’** means a grant made in terms of section 2(c);
- ‘this Act’** includes the regulations;
- ‘war veteran’** means any person who has attained the age of 60 years or who is, owing to any physical or mental disability, unable to provide for his or her maintenance, and—
- (a) who 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 who was a member of the protesting burgher forces during the period September 1914 to February 1915; or
 - (b) who 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; or
 - (c) who, while he or she was not a Union national, performed any naval, military or air force service during such last-mentioned war 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 veteran’s pension; or
 - (d) who, 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;

‘welfare organization’ means—

- (a) a welfare organization registered under section 13(1) of the National Welfare Act, 1978 (Act No. 100 of 1978);
- (b) an organization not so registered and which renders social welfare services for non-profitable purposes.

Payment of grants

2. The Minister shall, subject to the provisions of this Act and with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for that purpose, make—

- (a) social grants to aged persons and disabled persons and to war veterans;
- (b) in addition to a social grant, a grant-in-aid to or on behalf of any person referred to in paragraph (a) who is in such a physical or mental condition that he or she requires regular attendance by any person;
- (c) in addition to social grants and grants-in-aid, supplementary grants to war veterans;
- (d) 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*;
- (e) a foster child grant to a foster parent;
- (f) a care-dependency grant to a parent or foster parent in respect of a care-dependent child.

Social grants

3. Subject to the provisions of this Act, any person shall be entitled to the appropriate social grant if that person satisfies the Director-General that he or she—

- (a) is an aged person, a disabled person or a war veteran;
- (b) is resident in the Republic at the time of the application for the grant in question;
- (c) is a South African citizen; and
- (d) complies with the prescribed conditions.

Child-support grants

4. 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.

Foster child grants

4A. 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

4B. 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) that 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.

Financial awards to welfare organizations and persons

5. (1) The Minister may, subject to the provisions of this Act and with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for that purpose, make financial awards to—

- (a) any welfare organization which undertakes or takes or co-ordinates organized activities, measures or programmes in the field of developmental social welfare services;
- (b) any organization contemplated in section 1 of the Fund-raising Act, 1978 (Act No. 107 of 1978), which in terms of its constitution has the care of mentally or psychiatrically disabled persons as one of its objects.

(2) The Director-General may, subject to the provisions of this Act, make a financial award to a person if he or she is satisfied that such person is in need of social relief of distress.

Application for social assistance

6. (1) Any person who desires social assistance, shall in the prescribed manner apply to the Director-General for such assistance, furnishing the prescribed information and such information as the Director-General may require.

(2) In considering an application under subsection (1), the Director-General may conduct such investigation as he or she may deem necessary in respect of the applicant concerned.

(3) If the Director-General is of the opinion that the applicant is entitled to the social assistance applied for, he or she may authorize the rendering of the relevant social assistance.

Stopping of payment of grants to persons who are absent from Republic

7. (1) Subject to subsection (2), the payment of a grant to or on behalf of any person who is absent from the Republic for a continuous period of six months or longer shall be stopped as from the first day of the seventh month following upon the month in which he or she last left the Republic.

(2) If the Director-General is, for reasons advanced by such person, of the opinion that it is just that payment of such grant be continued or resumed, the Director-General may permit payment of that grant to be continued or resumed for such period or periods and subject to such conditions as he or she may determine.

Misspending of grants

8. If in the opinion of the Director-General a beneficiary misspends his or her grant or if the Director-General for any other reason deems it expedient, he or she may—

- (a) suspend payment of the grant in question; or
- (b) appoint a person to receive the grant on behalf of the beneficiary and to apply it, subject to the prescribed conditions and such further conditions as the Director-General may determine, for the benefit of that beneficiary.

Repayment of sums overpaid

9. (1) If an amount of money is paid to a person in the belief that he or she is entitled thereto in terms of this Act, or any law repealed by section 20 of the Social Assistance Act, 1992, as assigned by Proclamation R. 7 of 1996, while he or she was in fact not entitled thereto, such amount shall be an amount due to the State by such person or, if he or she is deceased, his or her estate.

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

(3) Unless an amount owing under subsection (1) is remitted in terms of subsection (2), the Director-General may in his or her discretion recover such amount from such person by way of legal proceedings or in such other manner as he or she may deem expedient.

(4) This section shall *mutatis mutandis* apply in respect of a person to whom an amount was paid on behalf of or for the benefit of any other person.

(5) The National Treasury, or any person authorized thereto by that 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 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.

Appeal to Minister

10. (1) If an applicant is aggrieved by a decision of the Director-General in the administration of this Act, such applicant may within 90 days after the date on which he or she was notified of the decision, appeal in writing against such decision to the Minister, who may confirm, vary or set aside that decision.

(2) The Minister may at any time reconsider and vary his or her decision.

Restrictions regarding rights to amounts payable, and disposal of such amounts in case of death or insolvency

11. (1) Any right to an amount payable in terms of this Act shall not be transferred or ceded or pledged, nor shall it be liable to attachment or any form of execution under a judgment or order of a court of law, and if a beneficiary attempts to transfer or cede or pledge such right, payment of the amount in question may by order of the Minister be withheld, suspended or stopped.

(2) If—

(a) the estate of a beneficiary is sequestrated; or

(b) a beneficiary dies,

an amount payable to such beneficiary by virtue of the rendering of social assistance, shall not form part of the insolvent or deceased estate, as the case may be.

False representations

12. (1) If any person in or in connection with an application for social assistance furnishes information which to his or her knowledge is untrue or misleading in any material respect, or makes a representation which to his or her knowledge is false, in order that he or she or another person—

(a) may obtain or retain social assistance to which he or she is not entitled under this Act; or

(b) may obtain more social assistance than that to which he or she is entitled under this Act,

he or she shall be guilty of an offence.

(2) If any person receives any social assistance knowing that he or she is not entitled thereto, he or she shall be guilty of an offence.”.

Substitution of sections 14 to 22 of, and Schedule to, Act 59 of 1992

4. The following sections and Schedule are hereby substituted for sections 14 to 22 of, and the Schedule to, the Social Assistance Act, 1992:

“Powers of Director-General in respect of investigation

14. (1) The Director-General may, if he or she deems it necessary in the performance of his or her functions, inquire into any matter concerning the rendering of social assistance, and may for such purpose—

- (a) subpoena any person who in his or her opinion may furnish information of material importance concerning the matter under investigation, or who is suspected of having in his or her possession or care or under his or her control a book, document or thing that may have a bearing on the investigation, to appear before him or her;
- (b) administer an oath to or take an affirmation from any person who is present at the investigation and who was or could have been subpoenaed in terms of paragraph (a);
- (c) examine any person referred to in paragraph (b) or require that he or she produce at the investigation any book, document or thing referred to in paragraph (a).

(2) A subpoena to appear before the Director-General shall be in the prescribed form and shall be served on the person by registered post or in the same manner in which it would have been served if it were a subpoena issued by a magistrate's court.

(3) The legal 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, shall apply in respect of the examination of a person or the production of a book, document or thing under subsection (1)(c).

Information to be furnished to Director-General

15. Notwithstanding anything to the contrary in any law contained, the Director-General: Home Affairs, any registrar of deeds or any other officer in the service of the State shall at the request of the Director-General furnish him or her with such information relating to an applicant as may be prescribed or any other information relating to the applicant concerned which the Director-General may require.

Delegation of powers and assignment of duties

16. (1) The Minister may —

- (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.

(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;
- (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 —

(a) delegate to any officer of the provincial administration concerned any power delegated to that member under subsection (2);

(b) authorize that officer to perform any duty imposed which that member is authorized to perform under subsection (2).

(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.

(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 the provincial Director-General)—

(a) delegate to the provincial Director-General any power conferred upon the Director-General by this Act;

(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 perform that duty, as the case may be.

(6) A provincial Director-General may—

(a) delegate to any other officer of the provincial administration 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 a power has been delegated or who has been authorized to perform a duty under this section, shall exercise that power or 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)—

(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)(a) If a power is delegated or the performance of a duty 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 exercised or performed in accordance with this Act.

(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.

Offences relating to functions of Director-General

17. Any person who—

- (a) hinders or obstructs the Director-General in the performance of his or her functions under this Act; or
- (b) refuses or without sufficient cause fails to comply satisfactorily with a requirement or request which the Director-General has in the performance of his or her functions under this Act put to him or her; or
- (c) intentionally furnishes the Director-General with false or misleading information; or
- (d) has been duly subpoenaed under section 14(1)(a) and who fails, without sufficient cause—
 - (i) to appear at the time and place specified in the subpoena; or
 - (ii) to remain in attendance until excused by the Director-General or the person presiding at the inquiry from further attendance; or
- (e) has been called under section 14(1)(b) and who refuses to be sworn or to make an affirmation as a witness, shall be guilty of an offence.

Penalties

18. Except where this Act provides otherwise, any person convicted of any offence in terms of this Act shall be liable to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.

Regulations

19. (1) The Minister may make regulations as to—

- (a) the form of any application, authority, certificate, consent, notice, order, register, process or subpoena in terms of this Act or any other document required in the administration of the provisions of this Act;
- (b) the payment of grants, including—
 - (i) the maximum amount that may be paid;
 - (ii) the determination of the amount to be paid in any particular case;
 - (iii) payment to a person other than the beneficiary; and
 - (iv) the stopping of payment;
- (c) the requirements or conditions, including the age, in addition to those specified elsewhere in this Act, to be complied with by a person in order to be entitled to a grant or financial award, and the circumstances in which a person shall not be so entitled;

- (d) applications for grants, including the particulars and information to be furnished by applicants or any category of applicants;
- (e) applications for financial awards, including the particulars and information to be furnished by applicants, and the method of payment of financial awards;
- (f) the consideration, granting or refusal of any application for a grant;
- (g) the income and assets of an applicant to be taken into account in determining the amount of a grant;
- (h) the circumstances in which grants may be paid to persons maintained or receiving treatment in State or State-aided institutions;
- (i) the date of accrual of any grant;
- (j) the method of payment of grants;
- (k) the cancellation, lapsing or suspension of any grant or financial award or the variation of the amount thereof;
- (l) the procedure of any inquiry under section 14;
- (m) the exercise of control over the payment of grants and financial awards;
- (n) information which may from time to time be required of any beneficiary;
- (o) the repayment of sums overpaid;
- (p) information to be furnished in terms of section 15;
- (q) any matter which shall or may be prescribed by regulation in terms of this Act; and
- (r) in general, any matter which the Minister may deem necessary or expedient to prescribe for achieving the objects of this Act, and the generality of this paragraph shall not be limited by the preceding paragraphs.

(2) The Minister shall not make any regulation under subsection (1), except a regulation referred to in paragraphs (a), (d), (f), (i), (j), (k), (l), (n), (p), (q) and (r) of the said subsection, without the concurrence of the Minister of Finance.

(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 Parliament.

(4) A regulation made under subsection (1) may for a contravention thereof or a failure to comply therewith prescribe a penalty of a fine or imprisonment for a period not exceeding two years.

(5) Regulations made under subsection (1) may —

- (a) differentiate between different categories of persons; and
- (b) be made with retrospective effect.

Application of Act

20. (1) This Act shall apply throughout the Republic.

(2) Subject to section 21, no social assistance shall be paid to any person in terms of any provision of —

- (a) the Social Assistance Act, 1992, as assigned by Proclamation R. 7 of 1996;

- (b) any law referred to in the Schedule;
- (c) 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, other than the social assistance provided for in this Act, except on the authority of an Act of Parliament.

(3) Subject to subsection (4), anything done or deemed to have been done under any provision contemplated in subsection (2)(a), (b) or (c) and which may be done under any provision of this Act, shall be deemed to have been done under the last-mentioned provision, and any matter which has commenced under the first-mentioned provision, shall be disposed of in terms of the first-mentioned provision, unless the Minister determines otherwise.

Abolition, and phasing out, of maintenance grants

21. (1) Subject to subsection (2), any maintenance grant or similar grant payable in terms of—

- (a) section 4 of the Social Assistance Act, 1992, as assigned by Proclamation R. 7 of 1996;
- (b) any law referred to in the Schedule; or
- (c) 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 abolished.

(2) Notwithstanding the abolition of a maintenance grant or similar grant in terms of subsection (1), any such grant payable immediately before the date on which the Welfare Laws Amendment Act, 1997, is first published in the *Gazette* as law, is payable until the date immediately before the date of commencement of sections 2(d) and 4, and from that date it is, subject to subsection (3), payable during such period as the beneficiary concerned qualifies for such grant in terms of the provisions governing that grant or for a period of three years, whichever period is the shortest.

(3) The amount of any maintenance grant or similar grant payable from the date of commencement of sections 2(d) and 4 must be reduced annually as prescribed by regulation in accordance with section 19(1)(b).

Short title

22. This Act shall be called the Social Assistance Act, 1992.

SCHEDULE

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”.

Limitation of liability

5. This Act shall not be construed as conferring any liability on the Minister for Welfare and Population Development, the Director-General: Welfare or any official of the Department of Welfare in consequence of any unauthorized act or omission by a member of the Executive Council of a province or any other official of a provincial administration before the date determined in terms of section 6(1) of this Act.

Short title and commencement

6. (1) This Act is called the Welfare Laws Amendment Act, 1997, and takes effect, subject to subsections (2) and (3), on a date determined by the President by proclamation in the *Gazette*.

(2) Section 3, in so far as it relates to a child-support grant, takes effect on a date determined by the President by proclamation in the *Gazette*.

(3) Section 4, in so far as it relates to—

(a) section 19 of the Social Assistance Act, 1992, is deemed to have taken effect on 1 March 1996;

(b) section 21 of that Act, takes effect on the date this Act is first published in the *Gazette* as a law.

LONG TITLE

1. On page 2, from the sixth line, to omit all the words after “to” and to substitute:

provide for uniformity of, equality of access to, and effective regulation, of social assistance throughout the Republic; to introduce the child-support grant; to do away with capitation

grants; to abolish maintenance grants subject to the phasing out of existing maintenance grants over a period not exceeding three years; to provide for the delegation of certain powers; and to extend the application of the provisions of the Act to all areas in the Republic; and to provide for matters connected therewith.