

including budget determination and grant administration.

- **Social insurance:** The agency will become the oversight authority for all social insurance funds operating in South Africa. This will not extend to policy control, as this function will rest with the lead ministers responsible for particular policy areas.
- **Intermediary services:** The important interface between the general public and all areas of the social security system, whether contributory or non-contributory, would become the responsibility of the social security agency. The agency may be developed eventually into an intermediary between the general public and relevant Government departments (e.g. Home Affairs) or social assistance and social insurance institutions (e.g. UIF, COIDA).

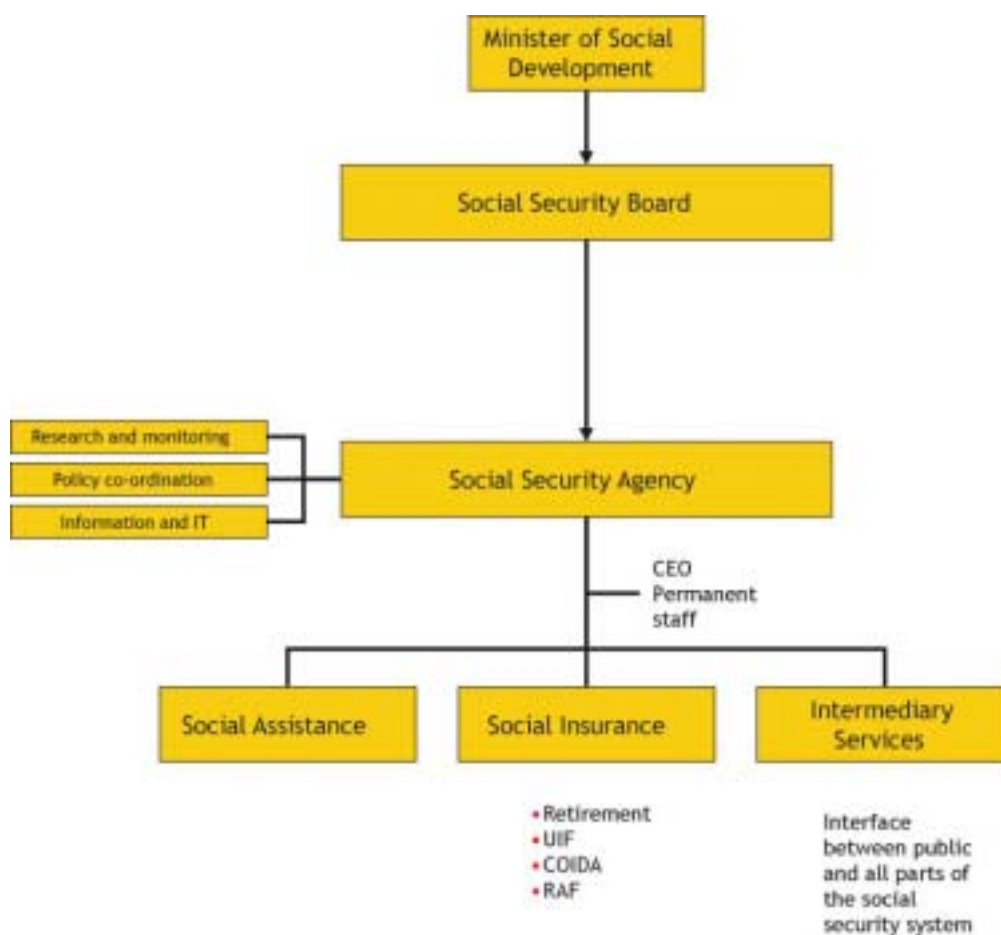
13.3.3 Governance structures for social insurance and related organisations

The existing social insurance funds require a reconsideration of their governance structure to ensure their operational efficiency. It is recommended that new decentralised governance structures be introduced for existing and future social insurance structures. They should ultimately report to the social security board (although policy responsibility for particular funds will remain with designated ministers, e.g. the policy environment for the UIF will be determined by the Minister of Labour).

13.3.4 Social Protection Commission

It is recommended that a standing Social Protection Commission (SPC), representing key stakeholders, be established. The SPC should relate to NEDLAC. The SPC would have a mandate to review all issues relevant to social protection.

Figure 18
Proposed structure of a social security board and agency.



This reporting structure is required to preserve its independence in any research, monitoring and investigation it carried out.

In addition to its broad mandate, it is recommended that the SPC be given specific terms of reference to monitor and review public and private sector social security institutions and regulatory structures. The specific requirement would be to monitor the extent to which social security objectives are either achieved or undermined. Another key area is to develop and monitor employment policy.

13.3.5 Private sector regulation

Apart from the regulation of medical schemes, there is very little recognition within Government at present of the need to achieve key social objective through the regulation of private markets as exist in other nations. There is also the constant risk of regulatory capture, which requires that Government introduce measures to guarantee the ongoing independence of regulatory authorities. It is therefore recommended that the SPC develop specialised capability and have funding to monitor and evaluate the performance of regulatory authorities. To preserve the independence of the regulatory authorities, it is important that this monitoring and evaluation process focus specifically on the achievement of social protection policy and consumer protection.

13.3.6 Social security adjudication mechanism

The present system providing for complaints and appeals against decisions taken by social security providers has many shortcomings:

- There is little consistency as different bodies or officials are called upon to hear complaints and appeals in respect of different parts of the social security system
- Undue delays are the order of the day
- The powers of the courts to deal with these matters are unsatisfactory
- The normal courts of the country are apparently not specialised enough to deal effectively with social security matters
- Access to the courts is limited, in particular as far as the indigent are concerned
- Cases are often dealt with on a purely

technical and legalistic basis, with little regard to broader fairness considerations

- Court proceedings tend to be prohibitively expensive.

One of the guiding principles in devising an appropriate social security adjudication system is the need to ensure that an institutional separation exists between administrative accountability, review and revision, and a wholly independent, substantive system of adjudication.

The Committee recommends that a uniform adjudication system be established to deal conclusively with all social security claims. It should, in the first instance, involve an independent internal review or appeal institution.

It should, in the second place, involve a court (which could be a specialised court) which has the power to finally adjudicate all social security matters, and that this court has the power to determine cases on the basis of law and fairness.

The jurisdiction of this court should cover all social security claims, whether under the new UIA, the RAFA, the COIDA and all the other benefits (including the Social Assistance Act) emanating from the social security system (including claims falling under the jurisdiction of the Pension Funds Adjudicator).