

REPUBLIC OF SOUTH AFRICA

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# SOCIAL ASSISTANCE BILL

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*(As introduced in the National Assembly as a section 76 Bill; explanatory summary of  
Bill published in Government Gazette No. 25340 of 8 August 2003)  
(The English text is the official text of the Bill)*

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(MINISTER OF SOCIAL DEVELOPMENT)

[B 57—2003]

ISBN 0 621 33908 3

No. of copies printed ..... 1 800

# 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 security 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,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,  
as follows:—

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### CHAPTER 1

#### DEFINITIONS, APPLICATION AND OBJECTS OF ACT

##### Definitions

1. In this Act, unless the context indicates otherwise—  
 “**administrator**” means a person or institution established by legislation to whom or to which the Minister has delegated the administration of social assistance and includes the Agency; 45

“ <b>Agency</b> ” means the South African Social Security Agency established by the South African Social Security Agency Act, 2003;	
“ <b>applicant</b> ” 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;	
“ <b>beneficiary</b> ” means a person who receives social assistance in terms of sections 6, 7, 8, 9, 10, 11 or 12;	5
“ <b>care dependency grant</b> ” means a grant made in terms of section 7;	
“ <b>care-dependent child</b> ” means a child who requires and receives permanent care due to his or her severe mental or physical disability;	
“ <b>child</b> ” means a person under the age of 18 years;	10
“ <b>Department</b> ” means the Department of Social Development in the national sphere of government;	
“ <b>dependant</b> ” means a person whom the beneficiary is legally obliged to support financially and is in fact supporting;	
“ <b>Executive Director</b> ” means the person appointed in terms of section 27(2);	15
“ <b>foster child</b> ” means a child who has been placed in the custody of—	
(a) a foster parent in terms of—	
(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);	20
“ <b>foster parent</b> ” 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);	25
“ <b>grant</b> ” means income support awarded to an eligible beneficiary;	
“ <b>Inspector</b> ” means an employee of the Inspectorate, authorised in terms of section 28(3);	
“ <b>inspectorate</b> ” means the Inspectorate established in terms of section 25;	
“ <b>Minister</b> ” means the Minister of Social Development in the national sphere of Government;	30
“ <b>parent</b> ” means a parent as defined in the Child Care Act, 1983 (Act No. 74 of 1983);	
“ <b>prescribed</b> ” means prescribed by regulation;	
“ <b>primary care giver</b> ” 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;	35
“ <b>regulation</b> ” means a regulation made in terms of this Act;	
“ <b>social assistance</b> ” means a grant in terms of this Act;	
“ <b>South African citizen</b> ” 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—	40
(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> ;	
“ <b>this Act</b> ” includes the regulations.	
“ <b>Treasury</b> ” means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);	50

### Application and implementation of Act

2. (1) A person who is not a South African citizen has the same rights and obligations in terms of this Act as 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) In order to ensure the efficient and effective management, administration and payment of social assistance, the Minister may, subject to subsection (3), delegate the implementation and execution of this Act, excluding Chapter 4 and section 36, to the Agency or any other administrator. 60

- (3) The delegation contemplated in subsection (2) must—
- (a) be in writing and the Minister must prior to the commencement of that delegation publish a copy thereof by notice in the *Gazette*;
  - (b) specify—
    - (i) in respect of which geographical area the delegation applies; 5
    - (ii) that it applies continuously until the Minister withdraws it in writing;
    - (iii) the conditions, provisos directions or limitations subject to which the Agency or other administrator may exercise the powers and must perform the duties in terms of the delegation; and
    - (iv) the financial arrangements, if any, which apply. 10
- (4) A delegation contemplated in subsection (2) does not prevent the Minister from exercising a power or performing a duty himself or herself and the Minister may at any time withdraw such delegation after publishing the withdrawal of that delegation by notice in the *Gazette*.
- (5) A delegation made in terms of subsection (2) prevails if and to the extent that it conflicts with a delegation made in terms of or under section 33, irrespective of dates upon which the respective delegations were made. 15
- (6) The Minister may from time to time, subject to subsection (3)—
- (a) amend the delegation;
  - (b) issue directives or guidelines to the Agency or other administrator, as the case may be, in order to facilitate or improve the implementation or execution of the delegation. 20

### Objects of Act

3. The objects of this Act are to—
- (a) provide for the financing of social assistance; 25
  - (b) provide for the administration of social assistance and payment of social grants;
  - (c) make provision for social assistance and to determine the qualification requirements in respect thereof;
  - (d) ensure that minimum norms and standards are set for the delivery of social assistance; and 30
  - (e) provide for the establishment of an inspectorate for social security.

## CHAPTER 2

### SOCIAL ASSISTANCE

#### Financing of social assistance 35

4. The Minister must with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for that purpose, make available—
- (a) social grants to older and disabled persons, and to war veterans;
  - (b) a grant-in-aid to or on behalf of any person referred to in paragraph (a) whose physical or mental condition is such that he or she requires regular attendance by any person; 40
  - (c) a child support grant to a primary care giver of a child;
  - (d) a foster care grant to a foster parent; and
  - (e) a care dependency grant to a parent, primary care giver or foster parent in respect of a care-dependent child. 45

#### Eligibility for social assistance

5. (1) A person is entitled to the appropriate social assistance grant if he or she —
- (a) is eligible in terms of section 6, 7, 8, 9, 10, 11 or 12;
  - (b) is resident in the Republic at the time of making the application;
  - (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*; and 50
  - (d) complies with any additional requirements or conditions prescribed in terms of subsection (2).

- (2) The Minister may prescribe additional requirements or conditions in respect of—
- (a) income thresholds;
  - (b) means testing;
  - (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; 5
  - (e) forms, procedures and processes for applications and payments;
  - (f) measures to prevent fraud and abuse;
  - (g) criteria for funding in terms of section 13. 10

### **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 person is, subject to section 5, eligible for a care dependency grant if— 15
- (a) 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; and
  - (b) the child is not cared for on a 24 hour basis for a period exceeding six months in an institution that is fully funded by the State. 20

### **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—
- (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). 25

### **Disability grant**

9. A person is, subject to section 5, eligible for a disability grant, if he or she—
- (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. 30

### **Older persons grant**

10. A person is, subject to section 5, eligible for a grant for older persons if—
- (a) in the case of a woman, she has attained the age of 60 years; and 35
  - (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—
- (a) has attained the age of 60 years; and
  - (b) owing to a physical or mental disability, is unable to provide for his or her maintenance, and— 40
    - (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; 45
    - (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; 50

- (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 5
- (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. 10

### **Grant-in-aid**

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

### **Financial awards to welfare organisations and persons**

- 13.** The Minister may with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for that purpose, make financial awards to— 15
- (a) any welfare organisation which undertakes or co-ordinates organised activities, measures or programmes in the field of developmental social welfare services; 20
  - (b) any nonprofit organisation registered in terms of section 13 of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), which in terms of its constitution has the care of mentally or physically disabled persons as one of its objects. 20

## **CHAPTER 3**

### **ADMINISTRATION OF SOCIAL ASSISTANCE 25**

#### **Application for social assistance**

- 14.** (1) Any person who wishes to apply for social assistance contemplated in sections 6 to 12 must do so in the prescribed manner.
- (2) In considering an application made in terms of subsection (1), the administrator may conduct an investigation and request additional information. 30
- (3) If the applicant qualifies for social assistance in terms of this Act, the administrator must authorise the rendering of the relevant social assistance.
- (4) No person may divulge any personal information of an applicant furnished in respect of an application except— 35
- (a) to a person who requires it in order to perform a function in terms of this Act; or
  - (b) when required to do so by law or by an order of court.

#### **Appointment of procurator**

- 15.** (1) A person applying for or receiving social assistance may 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. 40
- (2) In the case of a person with a disability or an older person who is unable to complete a power of attorney, an administrator may nominate an adult to receive the grant on the beneficiary's behalf, if the person so nominated satisfies the prescribed conditions. 45
- (3) 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.

### **Discontinuation of payment to person absent from Republic**

**16.** (1) The administrator must immediately discontinue the payment of a grant if the beneficiary is absent from the Republic for a continuous period exceeding six months.

(2) If the administrator has discontinued the payment of a grant in terms of subsection (1), he or she may upon proof that the beneficiary has resumed residence in the Republic, resume payment of such a grant, subject to such conditions as he or she may determine. 5

### **Recovery of sums overpaid**

**17.** (1) If 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 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. 10

(2) The Minister may, with the concurrence of the Minister of Finance, write off the whole or any portion of an amount owing to the State in terms of this section, if recovery of such amount would be uneconomical or would cause undue hardship to the debtor concerned or his or her dependants. 15

### **Appeal**

**18.** (1) If an applicant disagrees with a decision made by an administrator 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. 20

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

- (a) vary or set aside that decision; or
- (b) appoint an independent tribunal to consider the appeal in accordance with the prescribed conditions, and that tribunal may, after consideration of the matter, vary or set aside that decision or make any other decision which is just. 25

### **Misuse of social assistance**

**19.** If a beneficiary, procurator, primary care giver or an applicant misuses a grant, an administrator may— 30

- (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 for the benefit of that beneficiary, subject to any condition that the administrator may determine.

### **Restrictions on transfer of rights and payments of social assistance** 35

**20.** (1) A person entitled to receive social assistance in terms of this Act or anyone acting on his or her behalf may not transfer, cede, pledge or in any other way encumber or dispose of such right.

(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 grant in question be withheld, suspended or terminated. 40

(3) A beneficiary must receive the full amount of a grant before an administrator may make deductions in respect of that amount.

(4) An amount that has accrued to a beneficiary 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. 45

### **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— 50



- (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.
- (2) If any person receives social assistance knowing that he or she is not entitled thereto, he or she is guilty of an offence. 5

### **Information to be furnished to administrator**

22. (1) Notwithstanding anything to the contrary in any law, an organ of state must, at the request of the Minister and subject to subsection (3), furnish the Minister with the prescribed information relating to an applicant or beneficiary and with any additional information requested if such information is necessary for a decision on an application. 10

(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 Minister and subject to subsection (3), furnish the Minister with the prescribed 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. 15

(3) A person who furnishes information obtained before the commencement of this Act to the Minister in terms of subsections (1) or (2) must, when doing so, inform the person concerned of that fact in writing. 20

(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 Minister. 25

### **Power of administrator to investigate**

23. (1) An administrator may, 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 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 him or her and to furnish such information or to produce such 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; 35
- (c) cross-examine any person referred to in paragraph (b).

(2) A subpoena to appear before an administrator 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. 40

(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). 45

## **CHAPTER 4**

### **FUNCTIONS OF DIRECTOR-GENERAL OF DEPARTMENT**

#### **Functions of Director-General**

24. (1) The Director-General of the Department must—
- (a) develop, promote and co-ordinate the national policy framework in respect of social assistance grants for approval by the Minister; 50
  - (b) advise the Minister on the implementation of uniform norms and standards for service delivery;

- (c) monitor and assess the implementation of this Act, including the prescribed norms and standards applicable to an administrator, in respect of social assistance service delivery;
- (d) advise the Minister on the making of regulations to ensure the effective administration of the Act; 5
- (e) assist administrators in building capacity for efficient, effective and transparent service delivery; and
- (f) maintain a national data base of all applicants for and beneficiaries of social assistance grants.

## CHAPTER 5

10

### INSPECTORATE FOR SOCIAL ASSISTANCE

#### Inspectorate for Social Assistance

- 25.** (1) An Inspectorate for Social Assistance is hereby established and functions independently of both the Department and the Agency.
- (2) The Inspectorate is established as an organisational component contemplated in Schedule 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994). 15
- (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— 20
- (a) furnish him or her with information or a report with regard to any case, matter or subject dealt with by the Executive Director in the performance of his or her functions; and
  - (b) provide him or her with reasons for any decision taken by the Executive Director or any employee of the Inspectorate in the performance of his or her functions. 25

#### Independence of Inspectorate

- 26.** (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. 30
- (2) A person who contravenes subsection (1) is guilty of an offence.
- (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

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- 27.** (1) The Inspectorate is funded by money appropriated by Parliament for that purpose.
- (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. 40
- (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.
- (5) The terms and conditions of service of the employees of the Inspectorate are determined by the laws governing the public service. 45
- (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 this Act, is *prima facie* proof of those facts.
- (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. 50
- (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. 55

- (9) A person who—
- (a) wilfully discloses information regarding the operations of the Inspectorate, the Department or the Agency; and
  - (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**

- 28.** (1) The Inspectorate must, within the Agency —
- (a) ensure the maintenance of the integrity of the social security systems;
  - (b) execute internal financial audits and audits on compliance with regulations;
  - (c) investigate fraud, corruption and other forms of financial and service mismanagement; and
  - (d) in general, do everything necessary to combat the abuse of social assistance.
- (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 or the Inspectorate of Special Operations established by section 7(1)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998); and
  - (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.
- (3) The Minister may, at the request of and in consultation with the Executive Director, authorise those employees of the Inspectorate identified by the Executive Director to perform the functions contemplated in subsections (1) and (2) and to exercise the powers contemplated in section 29.
- (4) The Minister must, subject to this Act and all other applicable law, prescribe procedures regarding the protection of the identity and integrity of a complainant or other source of information.

### **Power of Inspectorate to request information and to subpoena**

- 29.** (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.
- (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, furnish the Executive Director 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.
- (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.
- (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 28(1) and (2)(a)—
- (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;
  - (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).

(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). 5

### **General power of Inspectorate to enter, search and seize**

**30.** (1) An inspector must carry out an entry, search and seizure under section 31 or section 32— 10

(a) with strict regard to decency and order, including the protection of a person's right to dignity, to freedom and security and to privacy; and

(b) by day unless it is necessary for its success that it be carried out at night.

(2) An inspector seizing a document or thing under section 31 or section 32 must do so by removing it from the premises concerned or, if that removal is not reasonably practicable, by sealing or otherwise safeguarding it on or in the premises. 15

(3) An inspector who enters or searches premises under section 31 or section 32—

(a) must, immediately before the entry, identify himself or herself and audibly in an official language of the Republic demand admission to the premises and make known the purpose of the entry and search, unless there are reasonable grounds for believing that to do so would result in a document or thing which is the subject matter of the search being destroyed, disposed of or tampered with; 20

(b) may use the force that is reasonably necessary to overcome resistance to the entry or search or the seizure of a document or thing; 25

(c) may utilise or request the assistance of any person to identify any document or thing which has a bearing on the alleged offence or to otherwise conduct the entry or search or the seizure of any document or thing.

(4) A person from whose possession or control a document has been removed under section 31 or section 32 may, at his or her own expense and under the supervision of an inspector, make copies thereof or excerpts therefrom. 30

(5) An inspector who removes a document or thing from any premises under section 31 or section 32 must issue a written receipt to the owner or person in control thereof or, if that person is not present, affix it to a prominent place on the premises.

(6) If an inspector removes a document or thing from any premises under section 31 or section 32, he or she must— 35

(a) forthwith place that document or thing in a place of safekeeping specifically designated for that purpose and to which access is restricted;

(b) attach an identifying label or mark to it; and

(c) enter the relevant details thereof in a register specifically kept by the Inspectorate for this purpose. 40

(7) Subject to subsections (8) and (9), any document or thing seized under section 31 or section 32 must be disposed of in accordance with the applicable provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as if it had been seized in terms of that Act. 45

(8) If criminal proceedings are not instituted in connection with a document or thing seized under section 31 or section 32 within a reasonable time after the seizure or, if it appears that the document or thing is not required in criminal proceedings for the purposes of evidence or an order of court, it must —

(a) be returned to the person from whom it was seized or, if that person may not lawfully possess it, to the person who may lawfully possess it or dispose of it; 50  
or

(b) be released from the safeguarding on or in the relevant premises, as the case may be.

(9) In criminal proceedings in connection with a document or thing seized under section 31 or section 32, the court concerned may, without limiting any other powers of the court, order that— 55

(a) if the document or thing is the subject of an offence in terms of this Act, it be destroyed; or

(b) the document or thing be released to a specified person. 60

### **Powers of Inspectorate to enter, search and seize with warrant**

- 31.** (1) A magistrate or judge of a High Court must issue a warrant to an inspector if it appears from information on oath or affirmation that there are reasonable grounds for believing that a document or thing that has a bearing on an alleged offence or any matter contemplated in section 28(1) or (2)(a)— 5
- (a) is or will be under the control of any person or on or in any premises within the area of jurisdiction of that magistrate or judge; and
  - (b) cannot reasonably be obtained otherwise.
- (2) The warrant contemplated in subsection (1) must specify which of the acts contemplated in subsection (4)(a) to (f) the inspector may perform. 10
- (3) The warrant may be issued on any day and at any time and is and remains of force until—
- (a) it is executed;
  - (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; 15
  - (c) the expiry of three months from the day of its issue; or
  - (d) the purpose for which the warrant was issued no longer exists,
- whichever occurs first.
- (4) If an inspector suspects that an alleged offence may have been committed, he or she may, on the authority of a warrant issued under subsection (1) and subject to subsection (5)— 20
- (a) enter and search the premises or search the person referred to in the warrant or the owner or person in control of the premises, and make the enquiries he or she considers necessary;
  - (b) examine any document or thing found on or in the premises, and make copies of or make extracts from that document; 25
  - (c) request the owner or person in control of the premises or any person in whose possession or control that document or thing is, or who may reasonably be expected to have the necessary information, to furnish information regarding that document or thing; 30
  - (d) seize for further examination or safe custody any document or thing on or in the premises which has a bearing on the alleged offence;
  - (e) seal or otherwise safeguard any premises on or in which any document or thing which has a bearing on an alleged offence is found;
  - (f) take the steps that he or she considers necessary to terminate or prevent the commission of an alleged offence. 35
- (5) An inspector must, immediately before commencing the execution of a warrant—
- (a) identify himself or herself to the person referred to in the warrant or the owner or person in control of the premises, if such person is present;
  - (b) hand to such person a copy of the warrant or, if the person is not present, affix that copy to a prominent place on the premises; 40
  - (c) supply such person at his or her request with relevant particulars regarding his or her authority to execute the warrant.
- (6) Any person affected by a warrant referred to in subsection (1) may apply to a competent court to have that warrant set aside. 45

### **Powers of Inspectorate to enter, search and seize without warrant**

- 32.** (1) An inspector may, subject to subsection (2), without a warrant—
- (a) enter any premises, if the person who is competent to do so consents to that entry, and to the inspector performing any act contemplated in section 31(4)(a) to (f); or 50
  - (b) enter any premises other than a private dwelling and perform any of the acts contemplated in section 31(4)(a) to (f), except the search of any person, if there are reasonable grounds for believing that—
    - (i) a warrant would be issued to the inspector under section 31(1) if the inspector were to apply for that warrant; and 55
    - (ii) the delay in obtaining that warrant would defeat the purpose of the entry.
- (2) An inspector must, immediately before entering premises in accordance with subsection (1), audibly identify himself or herself in an official language of the Republic.

## CHAPTER 6

### GENERAL PROVISIONS

#### Delegation

- 33.** (1) The Minister may in writing—
- (a) delegate to the Director-General: of the Department, an administrator, 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; 5
  - (b) authorise the Director-General of the Department, an administrator, a staff member of the Inspectorate or an officer of the Department to perform any duty imposed upon the Minister by this Act. 10
- (2) The Director-General of the Department 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);
  - (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). 15
- (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.
- (4) Any delegation of a power or authorisation to perform a duty under subsection (1)— 20
- (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;
  - (b) may at any time be withdrawn in writing by the person who effected the delegation or granted the authorisation. 25

#### Offences

- 34.** A person is guilty of an offence if he or she—
- (a) hinders or obstructs the Director-General of the Department, an employee of the Department or an administrator in the performance of his or her functions in terms of this Act; 30
  - (b) refuses or fails to comply with a requirement or request which the administrator or an employee of the Inspectorate has lawfully set or made in the performance of his or her functions in terms of this Act;
  - (c) intentionally furnishes the administrator or an employee of the Inspectorate with false or misleading information; 35
  - (d) has been subpoenaed under section 22 or 29 and fails or refuses, without sufficient cause, to—
    - (i) appear at the time and place specified in the subpoena;
    - (ii) remain in attendance until excused by the administrator or the person presiding at the enquiry from further attendance; or 40
    - (iii) take an oath or to make an affirmation as a witness.

#### Penalties

- 35.** 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 10 years, or to both a fine and such imprisonment. 45

#### Regulations

- 36.** (1) The Minister may subject to subsection (2) make regulations regarding—
- (a) any matter that must or 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; 50
  - (c) uniform norms and standards for service delivery;
  - (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;
- (b) requirements or conditions in respect of eligibility for grants; 5
- (c) the repayment of amounts overpaid in respect of grants.

### **Repeal of legislation**

**37.** (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.

(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. 10

### **Short title and commencement**

**38.** This Act is called the Social Assistance Act, 2003, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 15

## **MEMORANDUM ON THE OBJECTS OF THE SOCIAL ASSISTANCE BILL, 2003**

### **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”.