**PORTFOLIO COMMITTEE ON SOCIAL DEVELOPMENT**

### NEGOTIATING MANDATE

**SOCIAL ASSISTANCE AMENDMENTBILL [B8B-2018]**

**(Section 76)**

 **06 October 2020**

1. **INTRODUCTION**

The Chairperson of the Portfolio Committee on Social Development (“the Committee”),

Hon R Kekana, hereby tables the Committee’s Negotiating Mandate on the Social Assistance Amendment Bill [B8B-2018].

**PROCESS FOLLOWED**

The Speaker of the Gauteng Provincial Legislature, Hon Ntombi Mekgwe referred the Bill to the Portfolio Committee on Social Development on the 09 June 2020 for consideration and reporting in terms of the Gauteng Provincial Legislature Standing Rule 245 (1) read with 246 (1) and 248.

On the 31 August 2020, the Permanent Delegates from the National Council of Provinces (NCOP), HonourableMbulelo Bara together with the officials from the National Department of Social Development briefed the Committee on the purpose of the Bill.

The Gauteng Department of Social Development presented its position on the Social Assistance Amendment Bill [B8B-2018] followed by the Research Analysis on the Social Assistance Amendment Bill [B8B-2018], and the NCOP and Legal Services Unit concluded by presenting the Legal Opinion.

* **The dates of advertisements on Radios and newspapers are as follows:**
* 30 September 2020 on EK FM, Mams FM AND Rainbow .promos
* 01 October 2020 Kasi FM, Westside promos
* 29 October 2020 on Daily Sun

On the 05 October 2020, the Committee held a physical Public Hearing on the Social Assistance Amendment Bill [B8B-2018]. The Committee further conducted a Virtual Public Hearing on the 05 October 2020 to solicit inputs from those Stakeholders who could not join the Physical Public Hearing on Social Assistance Amendment Bill [B8B-2018].

The Committee deliberated and adopted the Negotiating Mandate on the Social Assistance Amendment Bill [B8B-2018] Section 76 on Tuesday, 06 October 2020. The Committee took into consideration the oral and written submissions made during the public hearings in developing its position on the Negotiating Mandate.

**PURPOSE OF THE BILL**

 The Bill seeks to amend the Social Assistance Act 13 of 20043, as to, insert new definitions and among others to provide for , additional payments linked to social grants , payment of benefits to child-headed household , social relief of distress in the event of a disaster, repeal the internal reconsiderations process and matters connected therewith.

1. **CLAUSE BY CLAUSE ANALYSIS OF THE BILL**

**Clause 1**

This clause seeks to insert certain definitions and to substitute a certain definition in the Social Assistance Act 13 of 2004 (in this section referred to as ‘the Principal Act’).

**Clause 2**

Social Relief of Distress [8] This clause seeks to amend section 4 of the Principal Act to make provision for social relief distress.

**Clause 3**

This clause substitutes section 6 of the principal Act to provide payment of a social grant to a child responsible for a child-headed household.

**Clause 4**

This clause seeks to inset a new section 12A into the principal Act to empower the Minister, with the concurrence of the Minister of Finance, to prescribe an additional payment linked to a social grant.

**Clause 5**

This clause seeks to substitute section 13 of the principal Act to provide for persons to be eligible for social relief of distress if the person qualifies as prescribed.

**Clause 6**

This clause seeks to amend section 14 of the principal Act for an improved provision relating to the internal appeals to the Independent Tribunal.

**Clauses 7, 8 and 9: Independent Tribunal**

These clauses seek to substitute provisions in the principal act relating to the matters incidental to the Independent Tribunal, appointment of members to the tribunal by the Minister and make provisions with regard to the powers of the Executive Director of the Independent Tribunal.

**Clause 10**

This clause seeks to amend section 32 of the principal Act, to make provision for the Minister to issue regulations in respect of certain matters to assist the implementation of the principal Act.

**Clause 11**

This clause seeks to make provision for transitional arrange with regard to pending matters once the Bill is promulgated.

**Clause 12**

This clause contains the short title and commencement of the Act.

1. **OVERVIEW OF THE PUBLIC HEARING**

On the 05 October 2020, the Committee conducted a PhysicalPublic Hearing on the Bill at Banquet Hall, in Vereeniging. The Public Hearing was attended by approximately One Hundred and Thirty-Seven (137) Stakeholders from all the Regions of Gauteng.

On the same day of the 05 October 2020, the Committee further conducted Virtual Public Hearing on the Bill on Microsoft Teams. The Public Hearing was attended by approximately by 73 Stakeholders from all the Regions of Gauteng.

The public hearing was well received by the attendees who robustly and interactively engaged on the Social Assistance Amendment Bill.

1. **SUMMARY OF STAKEHOLDERS SUBMISSIONS MADE DURING THE PUBLIC HEARINGS**

The following are the summary of submissions from different Organizations and Communities:

* In terms of the objectives of the Bill, we are in favour of the Child Support Grant being implemented and extended. We are also happy with the regularising the practice of paying additional amounts on the Older Persons Grant. However in the light of our current COVID 19 pandemic and the fact that older persons are identified as having comorbidity ailments and being the one group that is most vulnerable it is requested that the 75 year of age be reconsidered and brought down to 70 years of age. This would go a long way to protecting the health of older persons who at this point in time have become the backbone of the system caring for orphans from the HIV pandemic.
* The idea of an Independent Tribunal separate from SASSA is a wise move. There have been incidents where State hospital medical practitioners have stated that people should receive a disability grant but after a year this has been revised by SASSA medical officials and the grant has been stopped. In spite of review applications being sent to SASSA the beneficiary in fact passed away and her daughter now survives on the CSG and the kindness of neighbours. It might be wise to ensure that the Tribunal should have representatives from the SAHRC section 11 committees to be a part of the team looking at specific reviews such as older persons, disabilities and children section 11 committee members.
* There seems to be a measure of confusion regarding the Inspectorate. Whilst the Department of Social Development presentation stressed that the Tribunal and the Inspectorate are two separate entities the presentation seems to blur the functions of these two entities. In the Memorandum on the Objects of the Social Assistance Bill 2.7 as relating to clause 7 and 2.8 as it relates to clause 8 which deals with an amendment to section 24 there is no clarity regarding the relationship, powers or functions of the two bodies in relation to each other.
* The former Minister of Finance (Mr Pravin Gordhan) once made mention of the scrapping of the Means Test for those applying for the Older Persons Grant. This is not included in the amendment. We humbly request that this omission should be reviewed and included, thus eliminating any need for a further amendment.
* The Department should extend the Social Grant to Children who are above the age of 18.
* The Caregivers and Forster Parents should be trained so that they understand the rights of the Children.
* We welcome and supports the proposed amendments set out in clause 4 of the Bill (insertion of section 12A in Act 13 of 2004) as passed by the National Assembly. We believe that this proposed provision will contribute to the Minister’s formulation of a comprehensive legal solution to the foster care crisis that has been the subject of litigation since 2011; namely a “top-up” to the child support grant to be provided to relatives caring for orphaned children. This will drastically lessen the pressure on the foster care system that is causing the crisis in the system.
* The amount should be high enough to be comparable to the current value of the FCG. We understand the Department is proposing a 50% top-up to the CSG, which would amount to approximately R690 in 2021. We understand this is very much influenced by the prevailing economic climate. We are concerned this is too low in comparison to the FCG of R1040. We would prefer at least R810 to ensure the grant is as attractive as the FCG and is set against the lower bound poverty line, which is published by Stats SA each year. If the amount is set lower than R810, it will be important that the other considerations discussed below are taken seriously to ensure that the net effect for families is progressive and not regressive.
* The CSG Top-Up should include ‘single’ orphans in cases where the other parent has abandoned the child. The CSG Top-Up cannot be restricted to orphans with both parents deceased, because the FCG is currently not restricted in this way. The FCG is currently available to children who are orphaned or abandoned.
* The application process should be as simple as the current CSG to ensure quick access and fast uptake. This will ensure that the new system reaches double the number that the FCG was reaching. The net effect for families will therefore be that they are better off than before, despite the amount being lower, because they will get grants for more children, more quickly, and for longer periods of time.
* Access should be directly to SASSA and should not require prior approval of a social worker or a court. There will need to be a mass education campaign to make the new system known to the public, SASSA officials and social workers.
* SASSA should design an easy transition process for relatives already on the basic CSG to apply for the Top-Up amount without having to do a whole new application.
* Orphaned and abandoned children in the care of relatives who are already in receipt of the FCG should be allowed to remain on the FCG until they ‘age out’ at 18, 19, 20 or 21. To achieve this, we will need a transitional clause in the Children’s Act so that when these cases come before magistrates for ‘extension’, the magistrates do not take the children out of foster care (resulting in them losing the FCG), and rather use s186 (2) of the Act to extend these foster care placements until the child reaches the age of 18 years. Because the FCG mainly goes to older children, this ageing out will happen rapidly, thereby freeing up budget for the CSG Top-Up.
1. **VIEWS OF THE DEPARTMENT OF SOCIAL DEVELOPMENT**

The Gauteng Department of Social Development support the Social Assistance Amendment Bill [B8B-2018]. The Department is of the view that the Bill will benefit those families and beneficiaries who have been previously not receiving enough support.

1. **FINANCIAL IMPLICATIONS**

The implementation of the Bill will come with the required financial resources that are available from the Department.

1. **COMMITTEE’S RECOMMENDATIONS**

The Portfolio Committee on Social Developmentsupports the proposed amendments to theSocial Assistance AmendmentBill [B8B-2020] taking into consideration the concerns raised by the Stakeholders during the Committee’s Public Hearings.

1. **NEGOTIATING POSITION ADOPTED BY THE COMMITTEE**

The proposed Bill conforms to the principles of legislative drafting, and the amendments to the principal Act are in line with the law. The Portfolio Committee on Social Development supports the details of the Social Assistance Amendment Bill [B8B-2018] Section 76.