

SOCIAL DEVELOPMENT PORTFOLIO COMMITTEE REPORT ON THE SOCIAL ASSISTANCE AMENDMENT BILL [B8B-2018] IN TERMS OF RULE 242 OF THE STANDING RULES

INTRODUCTION

In terms of section 42(4) of the Constitution, the National Council of Provinces represents provinces to ensure that provincial interests are considered in the national sphere of government by participating in the national legislative process. The Social Assistance Amendment Bill [B8B-2018], which is a section 76 Bill in terms of the Constitution, was referred to the Social Development Portfolio Committee in terms of Rule 241(1). In turn, the Legislature is, in terms of section 118 of the Constitution, compelled to facilitate the public involvement in the legislative process of the legislature and its Committees.

The Bill seeks to amend the Social Assistance Act, 2004, so as to insert new definitions; to provide for additional amounts available to social grants; payments linked to social grants; to provide for payment of benefits to a child-headed household; to provide for social relief of distress in the event of disaster; to repeal the internal reconsideration process; to provide for an Independent Tribunal to consider appeals against decisions of the Agency; to provide for the establishment of the Inspectorate as a government component and to provide for matters connected therewith.

The Bill further seeks to:

- (1) To empower the Minister responsible for social development with the concurrence of the Minister of Finance, to make additional amounts available to social grants;
- (2) To streamline and improve the process of internal appeals against the decisions of the South African Social Security Agency to be made to the Independent Tribunal; and
- (3) To constitute the Inspectorate for Social Assistance as a Government component, instead of a Government Department as currently provided for in the principal Act.

METHOD OF WORK

The Committee subsequently had a briefing from the Department of Social Department in terms of Rule 242(1) on 03 September 2020. The Committee then resolved to hold one public hearing on 15 September 2020 at Umkhanyakude, Jozini Emachibini Hall, considering Covid-19 Level 2 Lockdown Regulations, its busy schedule in the Legislature calendar and the fact that the Negotiating mandate was initially due on the 22nd September 2020.

Upon the Committee being advised that the dates for the negotiating and final mandates were extended, it resolved to hold one more public hearing at Ethekekwini, Durban Exhibition Centre and extend the closing date for written submissions to 2nd October 2020. The public hearings on the Bill were widely advertised in the KwaZulu-Natal Legislature website, the print media on the Witness, Daily News and Ilanga newspapers and the Chairperson had slots on Vuma FM and Radio Boputaland Community Radio Stations to do a public education briefing on the Bill. Copies of the Bill were also distributed to all Municipal Districts and were also made available during the hearings.

A few questions of clarity were addressed during the public hearings, which mainly related to the practicality of applying for foster care grants considering that the Bill is doing away with the court application process to speed up the applications. Over a handful written submissions received by the Committee generally supported the Bill, however, a few comments and questions of policy were raised which were not necessarily part of but relevant to the Bill in particular from the following:

Mr. Mshiywayinkosi William Mbatha(a person with disability, member of Disabled People of South Africa) made the following policy proposals to be considered and included in the Bill:

1. He would like a **“child with a disability”** to be defined as a minor less than 21 years of age who is entitled to receive a social grant provided by the government.

The motivating reason for the above is that he fully knows and understands that other legislations such as the Basic Conditions of Employment Act 75 of 1997 describes a

child as a minor less than 18 years of age, but he does not believe that there is a reasonable person who can expect a child with a disability to have completed his or her tertiary education either at the College or University before the age of 21 years. Therefore, the expectation is that such a child will still be dependent upon his or her parents in many things including making decisions. The social grant as provided by the government would still be fair, reasonable and applicable to such a child.

2. Include “**unemployed employable person with a disability**” in the definitions, which should mean a person with either a physical or mental impairment which substantially limits his or her prospects of entry into, or advancement in employment as a result of widespread ignorance, stereotype and unfounded assumption about his or her ability or capacity to perform the essential functions of the job, and who is entitled to receive a minimum social grant not less than the minimum wage provided by the National Minimum Wage Act No.9 of 2018 (NMWA).
3. He further proposes that the “**SPECIAL SOCIAL ASSISTANCE FUND**” be established in terms of this Bill.

He motivates as follows:

Both private and public sectors who do not comply to the provisions of the Employment Equity Act No. 55 of 1998 (EEA) failing to employ people with disabilities should be penalised in monetary terms. The “**EEA non-compliance Fund/Special Social Assistance Fund**” should be established in terms of this Bill and the money should be confiscated from those employers and deposited into this Fund because—

- (a) The disability grant given to the unemployed employable people with disabilities is not enough, unfair and unreasonable for them to live. The EEA Non-compliance Fund would then be used to add on the disability grant to each unemployed employable person with a disability to cover the amount specified by the NMWA as a living wage. Such a grant would simply be regarded as a “**minimum living social assistance grant**” provided to the unemployed economically active people with disabilities simple as that.
- (b) For instance, each unemployed person with a disability is currently receiving R1 810.00 disability grant per month. R1 700.00 should be taken from the EEA

non-compliance Fund and added to each person with a disability as a minimum social assistance for him to live with his or her family.

- (c) Importantly enough, the cost of living goes higher and higher from time to time. Laws are always amended. The minimum wage of R3 500.00 may not remain forever, but may be increased whenever there are justifiable reasons. For example, as from 1 January 2019 the NMWA provided a minimum wage of R20.00 per hour for employees, R18.00 for farm employees, R15.00 for domestic workers and R11.00 for extended public works employees. As from 1 March 2020, R20.00 has been increased to R20.76, R18.00 increased to R18.68, R15.00 increased to R15.57 and R11.00 increased to R11.42.

Mr Mbatha supports the Bill but strongly motivates that it should go further to accommodate unemployed employable persons with disabilities.

The Children's Institute's (a University Research and Advocacy Unit-UCT) inputs were as follows in summary:

1. Amend section 150(1)(a) of Children's Act, 2005 to change the eligibility criteria for Foster Care Grant (FCG).
2. The Department's proposal of a 50% Top-Up to Child Care Grants (CSG) which would amount to approximately R690 in 2021 is too low in comparison to FCG of R1 040. The Institute proposes that at least R810 be paid to CSG beneficiaries to ensure that CSG is attractive as the FCG and is set against the lower bound poverty line, which is published by StatsSA each year.
3. The CSG Top-Up should include "single" orphans in cases where the other parent has abandoned the child as applicable to FCG. FCG is currently available to children who are orphaned or abandoned.
4. The application process for FCG should be as simple as the current CSG to ensure quick access for the beneficiaries.
 - (i) Access should be directly to SASSA and should not require prior approval of a social worker or a court.
 - (ii) SASSA will need to 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.

The Institute supports the CSG Top-Up as an essential part of the comprehensive legal solution.

The Committee also noted the following arising from the Social Assistance Act, 2004:

Section 8(b) providing for “**foster child care**” must be substituted to be in line with the Children’s Act No. 38 of 2005 since the Child Care Act No.74 of 1983 was repealed.

Section 10 providing for “**older persons grant**”, delete section 10(b) and amend section 10 to regularise the section to be in line with the Constitution as follows:

“10. A person is, subject to section 5, eligible for an older person’s grant if he or she has attained the age of 60 years.”

Section 26(1) providing for “**funding and staff of the Inspectorate**”, since the Inspectorate for Social Assistance is going to be a component of the Department of Social Development, there is no need for the funding to be appropriated by Parliament for its establishment.

New Grant Proposal

Notwithstanding that this Bill provides for additional amounts available to social grants which are existing currently, it is strongly proposed that the Hon. Minister of Social Development in concurrence with the Minister of Finance consider introducing a new grant, i.e. “**a widow’s support grant**” in terms of section 4 of the Act, within a prescribed Means Test. Widows are deemed as one of the vulnerable groups once their husbands are deceased, the Means Test will be an appropriate mechanism to determine the needs of the succeeding spouses if they qualify for this special grant.

Committee concerns around the proposed extended Child Support Grant (CSG) Policy

The Committee noting that

1. the Foster Care Grant (FCG) and the Foster Care System was originally designed for children in need of “care and support”.

2. This Bill seeks to, in effect bypass the social worker and court processes due to the high numbers of orphans in the country which is clogging up the system for processing foster child benefits which has administrative challenges.
3. The process will still be the same as the current CSG as contemplated in the Social Assistance Act and Regulations.
4. This would not require court process nor the social worker process for placement.
5. Funding has been allocated in the MTEF for implementation

The Committee proposes that since we have the Children's Courts, one day in a week or fortnight or month (depending on the number of cases coming before a particular court) be set aside only to hear foster care cases. This will not require additional funding or resources but will need to be discussed by the Departments of Justice and Social Development.

Motivation:

There are concerns with regard to children being placed with families without going through the court processes and having a legal placement document which will give protection to the child and give legal rights to the "parent/s". There should be legal protection for the child which will be lacking under what is contemplated in the Bill.

What would prevent the "parent" from abandoning the child after collecting the increased CSG after a few years?

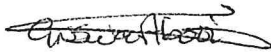
Will there be any legal protection for the "parent" should the child commit a crime?

In the absence of a legal court order, what will prevent a social worker from colluding with a potential family to place children with them and collect a kick back every month?

The CSG should not become a cash cow for either potential placement families or social workers. By increasing the CSG and doing away with the court processes, government will be throwing money at the problem of congested courts and sacrificing the best interests of our children.

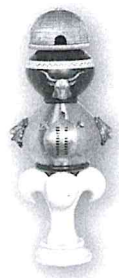
CONCLUSION

The Committee having considered the above concerns agreed that they are valid and need to be considered as proposed amendments at the Select Committee. The Committee met on 06 October 2020 and unanimously agreed to support the Bill subject to the proposed amendments stated above being seriously considered by the Department of Social Development prior to the final and voting mandate being conferred by the House. The negotiating mandate is attached herein as **Annexure "A"** of the report.



HON. N SWAARTBOOI

CHAIRPERSON: SOCIAL DEVELOPMENT PORTFOLIO COMMITTEE



KWAZULU-NATAL LEGISLATURE

AN ACTIVIST PEOPLE-CENTRED LEGISLATURE

NEGOTIATING MANDATE

TO: HON MN GILLION, MP
CHAIRPERSON OF THE SELECT COMMITTEE ON
HEALTH AND SOCIAL SERVICES

NAME OF BILL: SOCIAL ASSISTANCE AMENDMENT BILL

NUMBER OF BILL: B8B – 2018

DATE OF DELIBERATION: 6 OCTOBER 2020

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Social Development met today Tuesday, 6th October 2020 and agreed to mandate the KwaZulu-Natal delegation to **support** the **Social Assistance Amendment Bill [B8B- 2018]** with the following **proposed amendments** as outlined in the Committee Report, attached hereto.

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HON GN SWARTBOOI, MPL
CHAIRPERSON: PORTFOLIO COMMITTEE
ON SOCIAL DEVELOPMENT

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DATE

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