



TO: THE CHAIRPERSON,
SOCIAL DEVELOPMENT PORTFOLIO COMMITTEE

FROM: NCOP & LEGAL SERVICES UNIT

SUBJECT: LEGAL AND CONSTITUTIONAL IMPLICATIONS OF THE
SOCIAL ASSISTANCE AMENDMENT BILL [B8-2020]

DATE: 19 AUGUST 2020

I. Introduction

[1] This legal opinion seeks to advise the Chairperson of the Portfolio Committee on Social Development on the constitutional and other legal implications of the Social Assistance Amendment Bill [B 8 -2020] (the Bill).

[2] In terms of structure, we have divided the opinion into four parts. Part I contains this introductory section. Part II sets out the purpose of the Bill and its constitutional and legislative framework. We then embark upon a clause by clause analysis of the Bill in Part III and lastly, in Part IV, we make our recommendations and concluding remarks.

II. Constitutional and Legislative Framework

[3] On the 3rd of August 2020, the Speaker of the Gauteng Provincial Legislature formally referred the Social Assistance Amendment Bill [B8 of 2020] to the Portfolio Committee on Social Development for formal consideration in terms of Rules 245(1) read with 246(1), 247 and 248 of the Standing Rule of the Gauteng Provincial Legislature. .

[4] The Bill is a section 76 Bill ¹and it has been passed by the National Assembly and transmitted to the National Council of Provinces for concurrence. Social services and or ‘welfare services’ are matters of national and provincial legislative competency in terms of Part A of Schedule 4 of the Constitution of the Republic of South Africa, 1996².

[5] 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 therewith⁴.

III. Clause by Clause analysis

Clause 1: Definitions

[6] 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’).

[7] We have no proposed amendments to this clause. This clause meets the acceptable legislative drafting standards and norms.

Clause 2: Social Relief Distress

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

¹ Section 76 of the Constitution of the Republic of South Africa, 1996 titled ‘**Ordinary Bills affecting Provinces**’ prescribes a process of which the National Assembly and the National Council of Provinces processes section 76 Bills

² The Constitution uses the word ‘welfare services. It is trite that ‘social assistance’ and ‘welfare services’ are used interchangeably in South Africa. Reference to social assistance in the Bill is read to mean and or include welfare services

³ The primary purpose of the Social Assistance Act 13 of 2004 is amongst others to provide for the rendering of social assistance to persons, for the mechanisms for the rendering of such assistance, for the establishment of an inspectorate for social assistance. See the Long Title.

⁴ See the Long Title

[9] We have no proposed amendments on this clause

Clause 3: Child Support Grant

[10] 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.

[11] We have no proposed amendments on this clause and recommend that it be accepted in its current form.

Clause 4: Additional payments

[12] 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.

[13] We have no proposed amendments on this clause and recommend that it be accepted in its current form.

Clause 5: Social Relief of Distress

[14] 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.

[15] We have no proposed amendments on this clause and recommend that it be accepted in its current form.

Clause 6: Internal Appeals

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

[17] We have no proposed amendments on this clause

Clauses 7, 8 and 9: Independent Tribunal

[18] 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.

[19] We have no proposed amendments on this clause

Clause 10: Regulations

[20] 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.

[21] We have no proposed amendments on this clause

Clause 11 : Transitional Arrangements

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

[23] We have no proposed amendments on this clause

Clause 12: Short Title and Commencement

[24] This clause contains the short title and commencement of the Act.

IV. Conclusions and Recommendations

[25] In light of the afore going discussion, we are of the view that Bill complies with the relevant constitutional and legislative framework and recommend that the Committee adopt the Bill in its current form.

NCOP