

30 November 2016

**Mr. Mpho Ratshishu: Director Legal Services**

Department of Social Development  
Chief Directorate: Legal Services  
Private Bag X901,  
Pretoria 0001

SAABill@dsd.gov.za

Dear Mr. Ratshishu,

**RE: The Black Sash Trust submission on the Call for Comments on Social Assistance  
Amendment Draft Bill, B-2016**

Attached is our submission on the Social Assistance Amendment Draft Bill, B – 2016 published in the government Gazette 40391, GN 1362 dated 1 November 2016. The Black Sash submission has been endorsed by 15 organisations including the Association of Community Advice Offices of South Africa (ACAOSA). See list at the end of the submission.

The Amendments to the Social Assistance Act are critically important. We therefore wish to ask that the deadline for submissions be extended to 30 December 2016. The extra time will afford the Black Sash the opportunity to better consult our civil society partners and make strong and even more robust recommendations that will strengthen the Draft Bill. Our community partners and interested civil society organisations will benefit significantly by a favourable response to the request to extend comment until 30 December 2016.

Furthermore, the Black Sash would like interested parties to make oral submissions for your consideration. We are looking forward to hearing from you.

With much appreciation,

**Lynette Maart**  
National Director

**Trustees:**

Sibongile (Bongi) Mkhabela (Chairperson), Yasmin Turton (Deputy Chairperson), Maria (Mary) Burton, Janeen de Klerk Jennifer De Tolly, Margaret (Dolly) Khumalo, Mieka Krynauw, Mary-Jane Morifi, Diana (Di) Oliver, Hilary Southall, Woineshet Bischoff.

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## 1. Background and rationale for amendments

The Black Sash Trust (Black Sash) commends the Department of Social Development (DSD) for its efforts to address the current gaps in the Social Assistance Act, 13 of 2004 (SAA).

The promulgation of the Regulations relating to the Application for and payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance (Government Gazette 39978, GNR 511 dated 6 May 2016) (May Regulations) was another brave move to stop the unauthorised, fraudulent and unlawful deductions from South African Social Security Agency (SASSA) branded grant beneficiary bank account. The May Regulations went a long way to stop the practices of selling funeral policies to those on the children and temporary (for example disability) grants. An actuarial report produced by an expert and part of the Black Sash's Amicus submission in the Lion of Africa court case, is categorical that funeral policies sold to those on the children's grant do not address the needs of the children and therefore add very little value.<sup>1</sup>

We value the opportunity to comment on the draft amendments to the Social Assistance Act published on 1 November 2016 (Draft Bill) to address a different set of challenges. We particularly note the:-

- provision of additional benefits linked to social assistance especially the funeral cover;
- establishment of the Supplementary Benefits Fund;
- establishment of an Independent Tribunal; and
- establishment of the Inspectorate as a component of DSD;

Our submission is informed by our work with DSD and SASSA, on the Ministerial Task Team to stop unlawful deductions, as well as various court proceedings, education and related community monitoring and advocacy. This work will not be described or repeated in this Submission but has been documented extensively and shared in public. See the section of our website [Hands off our Grants Campaign](#).

Some of our primary concerns with the Draft Bill include:

- That it does not take into account all the challenges related Social Relief of Distress highlighted in the Comprehensive Report on the Review of the White Paper for Social Welfare, 1997;
- That it is not clear on what the additional payments or benefits linked to social assistance and social relief of distress are;
- That is silent on whether the additional benefits and other benefits will be paid from the Supplementary Benefits Fund;

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<sup>1</sup>Da Silva, *Actuarial Report in Respect of the Deduction of Funeral Insurance Premiums from Children's Social Support Grants*, available at [https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/bhr/in-court/BS%20NoM%20and%20Founding%20Affidavit%20re%20Lion%20of%20Africa%20Amicus%20Annexures%206%20April%202016%20FINAL%20\(signed%20and%20redacted\).pdf](https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/bhr/in-court/BS%20NoM%20and%20Founding%20Affidavit%20re%20Lion%20of%20Africa%20Amicus%20Annexures%206%20April%202016%20FINAL%20(signed%20and%20redacted).pdf), page 453.

- Sweeping powers are given to the CEO of SASSA to administer the fund without oversight and accountability;
- The number of panel members on the Independent Tribunal, are too few.

## 2. 30 days insufficient to consult our constituencies

We have worked closely with DSD earlier this year in seeking endorsement, comments and proposed amendments to the May Regulations promulgated by the Minister to address concerns regarding funeral deductions from children's and temporary grants and to outlaw deductions from the SASSA-branded account payment method stipulated in Regulation 21.

Civil Society, led by the Black Sash, made submissions supported by approximately 70 organisations commenting on the May Regulations. In June 2016 Net1, its subsidiaries and a few other commercial companies took the DSD and SASSA to court to request an interpretation from the court of the May Regulations. The implementation of Regulation 21 of the May Regulations has been placed on hold until the Pretoria High Court delivers its judgement and order.

The Amendments to the Social Assistance Act are critically important. We therefore wish to ask that the deadline for submissions be extended to 30 December 2016. The extra time will afford the Black Sash the opportunity to better consult our civil society partners and make strong and more robust recommendations that will further strengthen the Draft Bill.

In this Submission, we deal with each of the sections of the amendments to the SAA.

## 3. New definitions

We appreciate the alignment and synchronisation of terms to principle acts, including the definitions of "disaster", the fact that a person now includes "anyone within the household acting on behalf of someone in need of social relief of distress". We also note that the definition of "social assistance", in terms of the proposed amendment of section 4 of the SAA, is no longer exclusively limited to those receiving social grants.

Social Relief of Distress remains problematic. The Draft Bill does not address the challenges raised in the *Comprehensive Report on the Review of the White Paper for Social Welfare, 1997* released in October 2016. The report states:

*"Social Relief of Distress (SROD) is currently among the most problematic aspect of the social assistance system. ...One example of the problems with SROD<sup>2</sup> is perceptions across all provinces of food parcels being used as a vote-*

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<sup>2</sup>"The Social Relief of Distress (SROD) grant is intended for people "in dire need" who are awaiting payment of an approved social grant; are medically unfit to do remunerated work for a period of less than six months; are not receiving maintenance from a parent, child or spouse; have a breadwinner deceased or admitted to a government-funded institution; are affected by a disaster as defined in the Disaster Management Act or Fundraising Act; and/ or are not receiving assistance from any other organisation. The grant is available for three months, which may be extended for a further three months in exceptional cases."

*catching mechanism at election time. The social relief allocations are also, from the financial side, treated as a residual, in part because unlike the other grants they are not statutorily defined as a constitutional right in the same way. As a result, the amounts available for SROD can be increased when there are “savings” (expenditure less than allocations) on other grants, but SROD payments may also not be provided at all in the final months of a financial year if the budget is exhausted. Another complication with SROD is unclear delimitation of roles and responsibilities between SASSA and provincial DSD. A further challenge is that SROD is not well suited to address disasters as it is targeted at individuals rather than larger groups, such as geographical communities.”<sup>3</sup>*

#### **4. Additional payments or benefits linked to social assistance and SROD**

Section 12A in SAA provides for the prescription of additional payments, funeral benefit, or any other benefit linked to a social grant or social relief of distress, there is a need to urgently define a number of terms in the provision.

For instance, what is considered to be an additional payment in terms of section 12A (1)(a)?

In addition, what is defined as any other benefit, linked to social grant or social relief of distress in section 12A(1)(a)?

For example, would the top up Child Support Grant to those on foster care grant without means be considered as an additional payment or any other benefit? The eligibility criteria for additional payments should be clearly defined. In the absence of the above, too much discretion is accorded to the CEO of SASSA who will administer and have control of the fund.

Section 13(1) to (4) on social relief of distress, indicates that SASSA, subject to certain provisions, and depending on the magnitude of the disaster and availability of resources, will determine the needs of the affected communities and disburse the social relief of distress (SROD) in a disaster setting.

Black Sash submits that:

- 1) Many situations can be interpreted as a disaster so the clarity provided by defining a disaster is useful. For ease of reference, the definition of a disaster in the SAA should be repeated in section 1 (a) namely, as a “progressive or sudden, widespread or localised, natural or human-caused occurrence which – causes or threatens to cause death, injury or disease, damage to property, infrastructure or the environment; or disruption of the life of a community; and is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources”.

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<sup>3</sup>DSD publication, *Comprehensive Report on the Review of the White Paper for Social Welfare, 1997*, page 226.

- 2) The inclusion of provisions for disaster management in section 1(a) and (c) is commendable. Furthermore, the extension of SROD (if sufficiently funded, managed and administered) to cover for victims of disasters is a positive and welcoming development. The type of support for natural disasters by SASSA must be specified for example food parcels, building material (because poorer people can't afford insurance on houses built 30 – 50 years ago).
- 3) Furthermore, disaster relief is already provided by both provincial and municipal government. How is the SROD offered by SASSA different from that provided by the province and municipalities? Coordination is essential to ensure that efforts are not duplicated, have little or no impact, or that resources are wasted. Furthermore, the current definition of disaster does not address the issues raised in the *Comprehensive Report on the Review of the White Paper for Social Welfare, 1997* cited above.

## 5. Section 13A: Establishment of Supplementary Benefit Fund

Many sources are listed in section 13 A including moneys appropriated by Parliament. Have funds for the Supplementary Benefits Fund been secured? Financial resources over the Medium Term Expenditure Framework for 2016-2018 period, is limited<sup>4</sup>.

## 6. Section 13B: Use of the Fund

We understand section 13B to mean that moneys in the Supplementary Benefits Fund may be used only to pay for a funeral benefit (Section 12A (1)(b)). However, section 12A(3) states that “A Benefit contemplated in subsection (1)(b) and (c) must also be made available out of the Supplementary Benefits Fund”. Is the Supplementary Benefit Fund only to cover “a funeral benefit” or will “other benefits” still to be defined also be paid from the Supplementary Benefits Fund? If the response is the latter, then the Use of the Fund should state this clearly and explicitly.

The Supplementary Benefits Fund should not be used to fund Social Relief of Distress interventions including disaster. Social Relief of Distress is already a budget line item and needs further regulation and proper administration to deal with the current deficiencies, and *ad hoc* interventions and the perception that it used to catch votes.

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<sup>4</sup> As stated in the Medium Term Budget Policy Statement, National Treasury (2016). Furthermore, Michael Sachs, DDG of the Budget Office, National Treasury indicated that in terms of the budget, there is no additional money for this Fund – 16 Nov 2016 (SAHRC-SPII Roundtable on Budget Analysis for Socio-Economic Rights).

## **7. Section 13C: Administration and control of the fund**

We would prefer the automatic non contributory funeral benefit to be effected as outlined in Option 1 below and the Fund be scrapped, if its sole purpose is to facilitate the payment of a funeral benefit. If the Fund serves other purposes, then these should be outlined more clearly and the governance of the fund should be improved as outlined in Option 2.

### **Option1: provide a direct funeral benefit to the SOAP or permanent disability grant**

We want to see in the Act an automatic non contributory funeral benefit to those on the State Old Age Pension (SOAP) and the permanent disability grants equivalent to the value of 12 months of social grant payments. This formula will ensure that the funeral benefit increases annually and automatically.

The non taxable lump sum funeral benefit must be payable within 48 hours on the production of a death certificate and all relevant and related documentation. The pensioner or disabled person will nominate the beneficiary via a SASSA mandate form (perhaps accompanied by biometric verification) that will be updated periodically. The funeral benefit will be paid to a nominated beneficiary to undertake the funeral arrangements.

Therefore, this lump sum pay-out, which is minimal and not an expensive benefit will completely remove any funeral deductions from the social grant directly which would require the repeal of regulation 26A of the Social Assistance Regulation read with the May Regulations.

With the mechanism outlined above, in which the funeral benefit would take the form of a once off lump sum payment , it may not be necessary to create a Supplementary Benefits Fund for the sole purpose of financing a funeral benefit.

### **Option2: Governance required if indeed a fund is justifiable**

As indicated above, our first option is not to have a special fund established and we provided the reason for this preference.

Our greatest concern is sections 13C gives the CEO of SASSA sweeping powers without defining “an additional payment or any other benefit, nor proper public oversight or accountability. Such powers include: to control the Fund, and furthermore is able, if any “moneys in the Fund” are not required for immediate use, may be invested with the Public Investment Corporation Limited (PIC), a government entity, or with a financial institution approved by the Minister.”

The CEO of SASSA will have discretion over a large sum for “an additional payment, a funeral benefit, or any other benefit”, and with far too much discretionary power. We are deeply concerned about the institutional arrangements, governance principles and transparency

and accountability mechanisms that are proposed or absent in the current version of the Draft Bill.

#### Proposed Board established principles and mandate

- If it is necessary to create a fund then the mandate of such as fund must be clearly defined. We want to see the appointment of an Executive Board for the Fund comprising with a number of specialists, who have been vetted, of at least five, who will exercise oversight over the fund and to which the CEO of SASSA accounts.
- Legislation must specify how this board is to be constituted, in order that it can work very quickly and routinely to define its strategies and priorities. This Board must be incorruptible and incapable of capture and independently be able to establish how funds to be allocated. The establishment of the Board must be linked to, and depends on an accountability framework.
- Good governance must come first and is paramount. The Board's functions, powers, roles and responsibilities must be administered in the public interest, and it must have executive powers.
- Board members must be selected and be required to attend a specified number/minimum number of meetings per year. Representative categories of people should serve on this Board, with a socially representative grouping and others with some expertise, and be independently selected. This Board must be free of political capture and interference. For example, the Board could be appointed by consensus by the Parliamentary Committee.
- As a principle, it should not be manipulated by party, agency or person, and that no one structure should be able to select the majority. This will help ensure proper oversight. Typically, the Board could be comprised of 10-12 persons.
- Representatives of the Board could be social partners including representatives from labour, business and civil society, selected and vetted through a transparent process.

## **8. Appeals against the Agency (Independent Tribunal)**

We welcome the amendment of section 14 and the substitution of section 18 which paves the way for the establishment of an Independent Tribunal to adjudicate appeals.

We are, however, concerned that the number of panelists may be insufficient and that the criteria for appointing the panel is not spelled out explicitly. Given Black Sash's previous experience in serving on the Unemployment Insurance Fund (UIF) Appeals Committees at both a national and provincial level, we would argue that the Minister should consider increasing the number of panellists to at least 7 persons from different sectors including disability, organisations working with persons affected by HIV & AIDS, medical, labour,

children, older persons etc. As the nature of the cases is multifaceted, due consideration must be given to panellists with knowledge, skills and different backgrounds.

We welcome the recommendation in Section 18 (5) that the number of days has been reduced from 90 to 60 days<sup>5</sup> from the time of lodging the case with the tribunal to decision making. However, will the Tribunal have the necessary administrative capacity to expedite quality decision making?

Models for the Independent Appeals Tribunal, in our view must have the equivalent of an Ombud which can still be appealed. A good model could be the Council of Medical Schemes of South Africa. A principle should be that the Ombud must be completely independent of the organisation complained against and then a further structure to appeal be made possible. This will prevent exclusion of appeal cases that often goes to the High Court. This way, there will be an increase in access to justice, and any person must be able to go to this structure. This will also promote the realisation of Sustainable Development Goal 16 (SDG16) – viz. “the promotion of peaceful and inclusive societies for sustainable development, provision of access to justice for all and the building of effective, accountable and inclusive institutions at all levels.”<sup>6</sup>

Useful lessons can also be gleaned from the governance structures of, for example the Competition Commission, the Competition Tribunal and then the Competition Appeal Board, all of which are independent of each other. It is critical to look at the powers accorded to these to develop an appropriate appeal mechanism.

## **9. Amendment of section 24 of Act 13 of 2004, as amended by section 43 of Act 30 of 2007:**

We whole heartedly support changes to ensure that the Inspectorate is a unit within DSD and are given all the powers to function effectively. Furthermore, the Inspectorate must have the powers to deal with the unauthorised, fraudulent and unlawful deductions even in the banking space by working cooperatively with other agencies such as the Financial Intelligence Centre and the South African Reserve Bank. It must also have powers to deal with the theft of SASSA’s beneficiary confidential information and the theft of such information is punishable by following criminal procedures.

## **10. Conclusion:**

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<sup>5</sup> In her statement: <http://www.gov.za/speeches/amendment-social-assistance-act-media-briefing-1-nov-2016-0000> the minister cite the delay of up to more than 18 months to finalise the matters as a result of poor exchange of documents between SASSA and the Tribunal.

<sup>6</sup> <https://sustainabledevelopment.un.org/sdg16>

We sincerely hope that the recommendations contained in our submission will be considered seriously. We hope that our request for more time until 30 December 2016 will be granted and that we will be afforded the opportunity to make oral presentations. This Black Sash submission is endorsed by the 16 organisations on the list detailed below – thus far.