

## Update: Salary negotiations

As previously reported to members, negotiations commenced between the PSA and SASSA. The PSA tabled demands as mandated by its members and the employer responded to each demand and indicated a willingness to negotiate with the PSA. At the last engagement with the employer, the PSA was informed of the employer's intention to implement cost-of-living adjustments in terms of PSCBC Resolution 1/2021. However, the employer further indicated its continued willingness to negotiate on other demands. The employer's position was noted and the PSA indicated that its demand on the salary increase of CPI plus 5% still stands as well as all other demands. The rights of PSA members have been reserved and the PSA remains committed to ensuring that members' interests are achieved. Negotiations are set to continue and should the PSA succeed in its course of obtaining an above-CPI increase as well as improvement of service benefits, the employer will have to pay the difference of salary between what it would have implemented and the shortfall thereof.

### **SASSA Act review**

The PSA has been consulted by the Department of Social Development on the amendment of the *SASSA Act, 2004*. The proposed amendments cover chapters 3, 4, 6 and 8 of the *Act*. One of the significant amendments that has been proposed is to have an exemption of SASSA from the provisions of the *Public Service Act*. This is one of the things that the PSA has been advocating for, noting that section 7(2) of the *SASSA Act* read with section 7(2) of the *Public Service Act, 1994* was invoked by the Ministerial Determination of 2006 by the DPSA Minister to apply to SASSA until further notice. This has been the major obstacle to the autonomy of SASSA when it comes to issues of employees' remuneration and benefits. The PSA views the proposed amendment to the *SASSA Act* as an opportunity to remove this obstacle and assist SASSA to function autonomously and decide on the remuneration and benefits of its employees. This will further reduce the much reliance on PSCBC resolutions, which are often difficult to enforce through CCMA processes. Members are invited to peruse the *attached* presentation and accompanying document and send inputs to the PSA at [joseph.mashigo@psa.co.za](mailto:joseph.mashigo@psa.co.za) on or before **30 September 2021**.

Members will be updated on this matter.

GENERAL MANAGER



**social development**

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Department:  
Social Development  
**REPUBLIC OF SOUTH AFRICA**

# **REVIEW OF THE SOUTH AFRICAN SOCIAL SECURITY AGENCY ACT, 2004 (ACT NO. 9 OF 2004)**

**DRAFT DISCUSSION DOCUMENT**

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# OVERVIEW

The review of the South African Social Security Agency Act, 2004 originates from the apparent governance weaknesses at the South African Social Security Agency (SASSA) identified in reports of the Auditor-General and the Constitutional Court. There is misalignment between the Department and SASSA on corporate governance matters. Good corporate governance will enable improved service delivery in line with Batho Pele principles and SASSA will be better placed to deliver on its mandate as well as other government priorities like poverty alleviation.

Subsequently the Branch: Comprehensive Social Security established a Task Team comprising officials from the Chief Directorates: Social Assistance, Social Insurance and the Inspectorate for Social Assistance to undertake a review of the SASSA Act.

To this end, the DSD Project team reviewed, among others: relevant legislation, reports, guidelines, court judgments, and investigative reports. Key among these included: the Constitution; SASSA Act, 2004; Companies Act, 2008; PFMA, 1993; SASSA Annual Reports; Reports of the Auditor-General, Reports of both the Panel of Experts and Ministerial Task Team; Reports of the Portfolio Committee on Social Development; High Court and Constitutional Court judgments; ISSA Good Governance Guidelines; OECD Principles of Good Governance, as well as the King IV Code.

A number of areas have been identified in the SASSA Act (2004) requiring some amendments. The rationale for certain important amendments have been identified based on the review of the SASSA Act, relevant reports and recommendations as well as international best practices and guidelines. Going forward, the project team will conduct consultations to improve and refine the proposals, develop a policy document and then with Legal Services Unit, facilitate develop amendments for the SASSA Act.

This report is the culmination of their findings and recommendations with a view to overcoming the current challenges the Department of Social Development is encountering with governance, oversight and accountability with SASSA.

**Section 1:** provides a background to the establishment of the South African Social Security Agency, a schedule 3A public entity which was created for the management, administration, and payment of social assistance; the role of the Independent Tribunal for Social Assistance Appeals; the Inspectorate for Social Assistance; and some recent findings by the Auditor-General and the Panel of Experts.

**Section 2:** provides a gap analysis;

**Section 3:** provides an overview of good governance using international benchmarks, the characteristics of good governance and the governance process checklist, international frameworks of good governance in the public sector and the practice of good governance in South Africa, by the PFMA, governance and oversight, and the King 4 Code on good corporate governance.

**Section 4:** discusses corporate governance from a South African perspective and the various types of boards and the composition of boards in Schedule 3A entities.

**Section 5:** discusses corporate governance, boards and their fiduciary duties.

**Section 6:** together with Annexures 1 and 2 proposes recommendations.

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# SECTION 1: BACKGROUND TO THE ESTABLISHMENT OF THE AGENCY

A Public Entity has a mandate to fulfil a specific economic or social responsibility of government. Public Entities are part of government machinery and have an important role to play in ensuring service delivery. They rely on government funding or public money either by means of a transfer from the Revenue Fund or through statutory funds.

SASSA is a Schedule 3 (a) Public Entity (statutory body) in terms of the Public Finance Management Act, 1999 (Act No.1 of 1999) (PFMA), and is responsible for the management, administration and payment of social assistance grants. SASSA was established in terms of section 2(1) of the SASSA Act, 2004 (Act No. 9 of 2004) with the intent of improving service delivery to social assistance beneficiaries by promoting **a uniform and standardised service in line with the Batho Pele principles.**

In an effort to promote service excellence by SASSA, it is imperative that the Department of Social Development (DSD) and the Agency continuously monitor and evaluate compliance to social assistance legislation and the quality of service against the norms and standards.

In order to ensure effective operational oversight, the Department has the legislative responsibility to oversee the operations of SASSA to ensure an effective and efficient service to social assistance beneficiaries. The following key goals are set out in SASSA's mandate:

- Give effect to the provisions of the Social Assistance Act, 2004 by providing social assistance to designated groups.
- Improve the quality of services in accordance with set norms and standards.

- Reduce the cost of service delivery.
- Improve the integrity of the social grants system.

## Contextual Analysis

Section 27 of the Constitution provides for the right of everyone to have access to Social Security and if needed, social assistance. Social Assistance is defined in the Social Assistance Act, 2004 (Act No.13 of 2004) and provides for the following forms of social assistance:

- Older persons grants for those over the age of 60
- Disability grants for persons with permanent or temporary disabilities
- War veteran's grant to persons who fought in World War II or the Korean war
- Care Dependency grants for children with a mental or physical disability
- Child support grants for children under 18 years
- Foster child grants for children placed in foster care
- Grant in Aid to recipients of older persons, disability or war veterans grants who require regular care or attendance by another person
- Social relief of distress which provides temporary income support, food parcels, and other forms of relief to people experiencing undue hardship or affected by a disaster

The administration of social assistance is partly defined in the Social Assistance Act in terms of payment methods, norms and standards, offences, as well as regulations relating to application and payment of grants, grant amounts, eligibility requirements and repayment of overpaid amounts. On the other hand, the South African Social Security Agency Act, 2004 provides for the establishment of SASSA as the sole agent for the delivery of social assistance. Social assistance is currently paid to over 17 million beneficiaries. Any failure of SASSA to deliver these payments will severely compromise millions of people's right to access social security. Even if government has the budget to pay for social assistance, delivery is core to the right to have access.



Thus the governance of such a key institutions needs to be impeccable to ensure effective operation and management of a state entity, especially one charged with delivering a constitutional right.

SASSA was established as a legal entity (juristic person) in the form of a Schedule 3A Public Entity in April 2006, under the control of the executive, to transform social security in South Africa by:

- Consolidating the Social Assistance function from autonomous DSD Provincial departments.
- Ensuring standardization and uniformity of service delivery.
- Ensuring efficiency in Social Assistance delivery.
- Prospectively managing Social Security

Funds of the Agency consist of: appropriations, grants, donations and fees for services rendered. SASSA can also render services on an agency basis and also act as an adviser. Both Minister and staff of the Agency can claim limitation of liability.

The SASSA Act was enacted to consolidate the administration of social grants under one national agency and undo the assignment of social assistance functions to provinces, which had struggled to administer social grants. Previously, all nine (9) provincial governments were responsible for the administration of social grants, but this created serious delivery problems. The Mashavha case challenging the Constitutional validity of the assignment of the Social Assistance Act to provinces observed:

- Disintegrated social security system
- Lack of uniform norms and standards
- Lack of uniform grant administration processes
- Lack of human resource capabilities
- Ineffective IT systems and interfaces
- Poor management of service providers
- Costly grant administration process
- Fraud and corruption

Hence SASSA was established to act as the sole agent that will ensure the efficient and effective management, administration and payment of social assistance, with the possibility of serving a larger role as an agent for the prospective administration and payment of social security.

These administrative functions include:

- Collecting, collating, maintaining and administering information as is necessary for the payment of social security as well as for the central reconciliation and management and payment of transfer funds in a national database of all applicants for and on behalf of beneficiaries of social assistance;
- Providing a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained;
- The management of the Agency is subject to the direction of the Minister. The Minister may override a decision taken by the CEO and the procurement of a service provider to perform the payment function needs the concurrence of
- the Minister.

Both the Inspectorate (which is independent of the Agency, however not yet operationalised) and the Agency are charged with maintaining the integrity of the social assistance function. The Social Assistance Act empowers the Agency to undertake investigations and request additional information and to subpoena any person. The Agency can request any organ of state and financial institution with information pertaining to an applicant/beneficiary.

The Inspectorate must undertake integrity, financial and compliance audits, fraud, corruption, financial and service mismanagement, criminal activity, contraventions of the Act, and investigate any complaint of fraudulent withholding of a grant. Both the Agency and Inspectorate have powers to investigate abuse of social grants.

The Social Assistance Appeals function is a legislative executive function, exercised in terms of section 18 of the Social Assistance Act (Act No. 13 of 2004). The Minister has the executive authority to appoint an Independent Tribunal to consider appeals lodged. This forms part of the constitutional obligation to provide access to social

security (section 27 of the Constitution) and ensure just administrative action (section 33 of the Constitution), in that the appeals service affords an applicant or beneficiary with an opportunity to challenge a dissatisfactory decision of SASSA. To give effect to section 33 of the Constitution and Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (Lawful administrative action), section 14 of the Social Assistance Act determines that if an applicant does not qualify for social assistance, the Agency must, in writing, inform the applicant of the outcome thereof, provide reasons therefore and inform him/her of the right to request reconsideration and his/her right of appeal if still not satisfied with the reconsidered decision. Section 18 of Social Assistance Act provides for an applicant or beneficiary who disagrees with a reconsidered decision made by the Agency (SASSA) (in relation to his/her grant application or review) the right of appeal against that decision with the Independent Tribunal for Social Assistance Appeals.

In terms of the governance structure, the Chief Executive Officer of SASSA reports directly to the Minister who has the powers to override decisions of the CEO. Certain powers of the CEO are also curtailed by the legislative requirements for the Ministers concurrence for such. This is different from other public entities that are generally governed by a board of directors, which provide a degree of separation between the administration and management of the entity and the Executive Authority (Minister). This governance arrangement is probably the root cause of the social grants administration and management challenges facing the Agency, including the so called "grant payment crisis". This was also evident in the Auditor-General's report for 2017. The exercise of power should at all times be in the public interest and the Minister should guard against a flagrant abuse of such power.

During the 2017 financial audit, the AG reported that SASSA, whilst retaining its unqualified opinion on its financial statements, still had material non-compliance findings. During the audit process various findings were identified on compliance to procurement and contract management as a result of policies and procedures not adjusted in time to cater for new prescripts and a lack of review by management to ensure adherence to policies and procedures. Challenges are still experienced in preventing, detecting and reporting on irregular expenditure.

The audit outcome on the annual performance report regressed to a qualified opinion on Programme 2 – Beneficiary administration and support. Furthermore, material adjustments were made. This was mainly due to a lack of standard operating procedures ensuring consistency with regard to planning, reporting and reviewing of performance indicators at regional level (Management Report, AGSA 2017).

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## SECTION 2:

# STRATEGIC GAP ANALYSIS AND THE NEED FOR CHANGE

This section aims to identify the current challenges at SASSA. The framework for analysis will focus on the following high level themes: fraud and corruption, procurement and misuse of funds, policy and legislation, governance, oversight and accountability.

Both the Social Assistance Act, 2004 (Act No. 13 of 2004) and the South African Social Security Agency Act, 2004, (Act No. 9 of 2004) empowers SASSA to administer and manage the social assistance programme and pay social grants in an effective and efficient manner. To date the Agency has made great progress in fulfilling its mandate. However, it has also been confronted with challenges, some of which emanates from the gaps in the empowering legislation.

### **Governance challenges**

The shortcomings of the governance arrangement for SASSA has come to the fore strongly in the recent developments. This includes (i) the main Constitutional Court case, (ii) outcomes of the inquiry into the role of the Minister of Social Development in the social grant crisis and (iii) the case between Corruption Watch and the CEO of SASSA and others.

#### **Constitutional Court Case**

Governance failures at SASSA resulted in the Constitutional Court (the Court) literally playing an oversight role. SASSA was ordered to submit monthly reports to apprise the Court on progress made with regards to handing over the payments of grants from Cash Paymaster Services (CPS) to the South African Post Office (SAPO); and a

special panel of experts<sup>1</sup> was appointed to assist the court with this role. This case has set a legal precedent.

It was the first time in legal history that an inquiry was set up in terms section 38 of the Superior Courts Act No.10 of 2013. The Constitutional Court-mandated inquiry led by the retired Judge Bernard Ngoepe investigated whether the former Minister of Social Development (Ms Bathabile Dlamini) should be held liable for the legal costs incurred in the protracted SASSA debacle. It concluded with the Minister being ordered to pay a portion of the costs in her personal capacity.

The Constitutional Court appointed the Panel of Experts on the Matter of Black Sash v Minister of Social Development and Others Case CCT 48/17 to oversee the effective execution of the Court Order by the Agency. The Panel of Experts mandate included:

- Evaluating the implementation of the payment of social grants during the 12 month period;
- Evaluating the steps envisaged or taken by SASSA for any competitive bidding process or processes at the appointment by SASSA in terms of Section 4(2)(a) of the South African Social Security Agency Act, 2004 (Act No. 9 of 2004) of a new contractor or contractors for the payment of social grants; and  
Evaluating the steps taken by SASSA in preparation for taking over administration and payment of social grants in the future or SASSA itself permitting any part or parts of the administration and payment processes in the future.

### Panel of Experts

In its analysis of SASSA and its advice to the Constitutional Court, the Panel of Experts made numerous findings and recommendations to the Court. Management and leadership at SASSA came under scrutiny. The Panel cited that the repeated interruption of leadership continuity at SASSA contributed to the turmoil witnessed in the administration of social assistance by SASSA. “Many, if not all, of the problems

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<sup>1</sup> The Panel (the Auditor General and the Panel of Experts) was appointed by the Court in term of paragraph 12.4 of the Court Order of 17 March 2017 (the Court Order). The panel produced reports with recommendations to the Court.

are connected with the failure, through the organs established for that purpose, to cooperate with each other and other parties, and effectively manage SASSA and social assistance” (Panel Report 1, par 37)<sup>2</sup>.

The Panel also found leadership deficits within SASSA and stated that “SASSA’s senior leadership, who are responsible for driving this process, does not – with certain individuals being exception to this finding – seem to have the required knowledge, experience or skills, or even the will, to execute the SASSA mandate. This situation is exacerbated by the apparent exclusion of competent employees from decision-making structures within SASSA.” Concerns were raised in terms of the relationship between the work streams, the SASSA ExCo and Minister.

In their examination of the SASSA’s procurement processes to procure SAPO as a preferred service provider, the Panel found that “SASSA is not able to present a cogent reasoning, evaluation or costing of why they had opted for an in-house build, operate and transfer (“BOT”) approach<sup>3</sup>” and even expressed concern that “SASSA, possibly under pressure from political principals, will make a hasty decision”. The Panel also found that “SASSA could not explain to the Panel why it pursued the option in which it had identified SAPO as the preferred service provider, but then awarded SAPO only one portion of the services. SASSA’s decision to change course has been left unexplained. SASSA also failed to explain the extraordinary delays in taking decisions, especially against the background of a very limited timescale to give effect to the Court’s Order”.

By the time of drafting their second report, the panel of experts was already convinced that the **payment crisis** was more than just a procurement mishap, and recommended to the court that National Treasury be instructed “to investigate the conduct of SASSA employees and of officials of the Department of Social Development, in relation to all actions undertaken since 2016 to issue contracts to service providers or to give effect

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<sup>2</sup> First Report to the Constitutional Court by the AG and the Panel of experts in the Matter of Black Sash v Minister of Social Development and Others Case CCT 48/17 (Signed 12 September 2017)

<sup>3</sup> Second Report to the Constitutional Court by the AG and the Panel of experts on the Matter of Black Sash v Minister of Social Development and Others Case CCT 48/17 (signed 16 November 2017)

to the Court's Order on 17 March 2017, in order to determine whether there has been any malpractice or obstruction, and whether any person should be prosecuted in terms of section 81, 83 or section 86 of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999), or any other relevant law.

In an effort to promote effective and efficient implementation of Section 4(2) (a) of the SASSA Act, 2004, the Panel recommended that SASSA must obtain legal assistance for the drafting of contracts and SLAs.

The SASSA Act, 2004 affords the Minister decision-making powers regarding implementation and management of the social assistance programme. The panel recommended that the Minister's role as provided for in the legislation needs to be revisited as it tends to affect the overall management of the Agency.

Recognizing the short comings in SASSA's governance arrangements, the Panel also recommended that the Court "instructs the Department of Planning, Monitoring and Evaluation (DPME) to set out the remedial actions necessary to ensure that there is an end to SASSA being a public entity without proper institutional governance, capacity and oversight (e.g., by way [of] appointment of technical and administrative skilled management and a board of qualified expertise)".

In their third report<sup>4</sup>, the Panel reiterated their recommendation for the "DPME [to] investigate the efficacy of the SASSA Act in respect of strengthening the autonomy of SASSA and SASSA's CEO and the appropriateness of SASSA being a public entity in performing these functions". The DPME reported the following shortcomings and conclusions (amongst others) to the Panel based on their assessment of SASSA:

- "organisational weakness attributable to absence of governance and accountability,
- a lack of effective oversight and consequence management;
- the absence of an Inspectorate contributes to poor governance and lack of oversight by the DSD;

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<sup>4</sup> Third Report to the Constitutional Court by the AG and the Panel of experts on the Matter of Black Sash v Minister of Social Development and Others Case CCT 48/17 (signed 16 November 2017)



- even though SASSA submits quarterly reports to the Minister of Social Development, there is often little or no feedback as these reports are mainly to ensure compliance and do not address governance matters, and
- although the Minister at times conducts surprise visits to SASSA's executive committee meetings, there is no institutionalised reporting process to ensure that there is active feedback from the Minister or the DG of DSD to SASSA".

## DPME

DPME further stated that "On the proposed new system for the payment of social grants, the DPME is of the opinion that a review of SASSA's governance model and the appointment of a governance structure are "not only critical but urgent".

The DPME's submission to the Panel made the following recommendations:

- A reconsideration of the SASSA Act to strengthen the autonomy of the SASSA's CEO;
- The appointment of a permanent CEO;
- Ensuring stability across the organisation by ensuring that posts are filled timeously;
- A governance structure within DSD with expertise that would provide effective oversight, support, risk management and to assist the Agency in management performance; and
- The restructuring of SASSA.

The panel supported these findings of DPME and made the following recommendations to the Court:

- The efficacy of the SASSA Act in respect of strengthening the autonomy of SASSA and of SASSA's CEO;
- The appropriateness of SASSA being a public entity responsible for the payment of social grants;
- The appropriateness of SASSA being a public entity without proper institutional governance, capacity and oversight (e.g., by way of a Board).

In its final report<sup>5</sup>, the Panel recommended that the Court directs the Minister to instruct the DSD to conduct a review of the efficacy of the SASSA Act, and to table a report in Parliament on the outcome of that review. With respect to DPME, the Panel recommended that the Court should instruct the DPME to investigate “and set out the remedial actions necessary to ensure that there is an end to SASSA being a public entity without a proper institutional governance, capacity and oversight (e.g., by way of appointing a technical and administrative management and a board of qualified expertise.” This implies that the revision of the SASSA Act should therefore clearly define the role of the Minister, the DG and the Department to deal with governance, accountability and oversight matters.

The Panel reiterated that in its previous reports, it referred to the unsatisfactory governance and management arrangements and structures in place at SASSA. The Panel argued that, “in an unusual decision, Parliament in the SASSA Act did not provide for a proper governance structure (e.g., by providing for a board of directors, as is usually found in a public entity), but rather gave the responsible Minister of State special powers to guide and direct the entity. With hindsight, this was a mistake which should be corrected. In principle, casting SASSA as a public entity does not in itself create problems, but viewed from an implementation perspective the transformation of SASSA into a government component should be considered, especially as it now seems that SASSA will never itself effect payments, but will instead always rely on a service provider to do so, virtually having been locked in a permanent relationship with SAPO.”

The Panel recommended that the Minister, National Treasury and DPME should urgently investigate and report to Parliament on the efficacy of the SASSA Act and its oversight structures.

Lastly, the Panel recommended that the Court directs the Minister of Social Development to instruct the DSD together with the DPME to conduct a review of the efficacy of the SASSA Act, 2004, and in particular the lacunae in respect of oversight and governance structures and mechanisms and within six months of the Court’s

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<sup>5</sup> 10th Report to the Constitutional Court by the AG and the Panel of Experts in the matter of Black Sash Trust v Minister of Social Development and Others Case CCT 48/17

issuing its Directive table a report in Parliament on the outcome of that review, together with the recommendations on proposed amendments to the SASSA Act, 2004 to address its current deficiencies and limitations.

## Procurement and the Misuse of funds

Another case which highlights the dire state of governance at SASSA is the matter of Corruption Watch (NPC) v Chief Executive Officer of the South African Social Security Agency and Others (2018) ZAGPPHC 11. It was in this matter that CPS was ordered to refund SASSA a payment of R316 447 361.41. The incurrence of irregular expenditure by SASSA is staggering. It rose from R8.8m in 2007 to R47.4m in 2012-2013 and by 2016-17 stood at R1.4bn during the tenure of the former CEO (Ms V. Petersen). This represents an increase in excess of 15 000% over the 6 year period. Furthermore, Net1 lodged a claim for approximately R1.3bn that it had not pursued after having secured the 2012 tender for the payment of social grants.<sup>6</sup> (**How one word can change the game: Case Study of State Capture and the South African Social Security Agency, July 2018**). This case also indicates the collapse of governance at SASSA and point towards the urgent need to urgently revitalize governance structures at SASSA and to completely overhaul the SASSA Act.

## Fraud and corruption cases

Scrutiny of the number of fraud and corruption cases over the last three years at the Agency indicates an entrenched endeavour by people inside and outside the entity to defraud the grants system. In trying to arrest the situation, the Agency has scaled-up the work of the Fraud Management and Compliance Unit to cover the gap left by non-operationalization of the Inspectorate, as per the Social Assistance Act, Chapter 4, which established the Inspectorate with particular anticipated functions. (Refer to Annexure C for an Overview of past institutional arrangements in combating fraud and corruption)

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<sup>6</sup> Stellenbosch University, 2018. (How one word can change the game: Case study on state capture and the South African Social Security Agency).

## Ministerial Task Team (MTT) on unauthorised and unlawful deductions

As a result of ambiguity of Sections 20 (3) of the Social Assistance Act, 2004 which provides that “A beneficiary must without limitation or restriction receive the full amount of a grant to which he or she is entitled before any other person may exercise any right or enforce any claim in respect of that amount; as well as failure by the Agency to effectively and efficiently implement Sections 4 (3) (c) and 16 of the SASSA Act, 2004 which provides for the protection of confidential information held by the Agency other than as is contemplated in section 16; and security of confidential information held by the Agency respectively and Regulation 26 (A) of the Regulations to the Social Assistance Act”, it resulted in an enormous challenge of unauthorised and unlawful deductions from individual beneficiaries social grants. This affected social grant beneficiaries negatively as they battled to have the deductions reversed.

To address this issue, the Ministerial Task Team (MTT) on deductions was established in 2014 and tasked with:

- Stopping all deductions from the grant payments due to SASSA beneficiaries; facilitating the development and implementation of an appropriate recourse mechanism for beneficiaries affected by unethical and unlawful deductions by payment service providers and third party institutions;
- Exploring legislative, policy, regulatory and contractual remedies to cease the debit deductions from the accounts of grant beneficiaries;
- Monitor the framework and process by which SASSA in-sources the current payment of social assistance grants based on a clear plan with key milestones, deadlines and resource allocations; and
- Monitor the process by which the Inspectorate is established based on a clear plan with key milestones, deadlines and resource allocations.

The following were some of the recommendations of the MTT:

- SASSA in-source the payment of social grants with protected bank accounts and beneficiaries’ personal data;

- DSD seeks a Declaratory Order on the interpretation of the Social Assistance Act (Section 20) and the SASSA Act (confidential information). DSD and SASSA seek an interdict to stop the unlawful, fraudulent and/or immoral debit deductions, subject to the outcome of the declaratory order;
- Legislative amendments: Social grants not to be used as collateral for loans, criminalise reckless lending, align legislation within other departments that confuse, dilute or compete with DSD and SASSA's social assistance legislation, ensure that the Social Assistance Act and SASSA Act are taking the lead as social security mandate carriers, and ensure and affirm Constitutional integrity; and implementation of a SASSA-owned and controlled recourse system to deal with unlawful and fraudulent deductions back dated to 2012 and facilitate refunds to grant beneficiaries to include interest and bank charges.

The Department's efforts to tighten legislation to protect beneficiaries from unlawful and unauthorised deductions through the amendment of Regulations 21 and 26(A) have proven to be unsuccessful with financial services providers legally challenging amendments and implementation of Regulations 21 (Net1, its subsidiaries including Moneyline, Manje Mobile and Smart life and two other commercial companies, whilst Information Technology and Finbond Mutual Bank launched four court cases against DSD, SASSA and others).

# SECTION 3: GOVERNANCE – AN INTERNATIONAL PERSPECTIVE

## INTERNATIONAL FRAMEWORK ON GOOD GOVERNANCE IN THE PUBLIC SECTOR

The International Federation of Accountants as well as the Chartered Institute of Public Finance and Accountancy propagate the following principles for governments and government entities throughout the world, as follows:

- Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law;
- Ensuring openness and comprehensive stakeholder engagement;
- Defining outcomes in terms of sustainable economic, social, and environmental benefits;
- Determining the interventions necessary to optimize the achievement of the intended outcomes;
- Developing the entity's capacity, including the capacity of leadership and individuals within it;
- Managing risk and performance through robust internal control and strong public financial management;
- Implementing good practices in transparency, reporting and audit to deliver effective accountability;
  - Managing risk and performance through robust internal control and strong public financial management; and'
  - Implementing good practices in transparency, reporting and audit to deliver effective accountability

## PRINCIPLES OF GOOD GOVERNANCE

The definition of good governance often depends on the goals to be pursued, the entities involved, and the socio-political environment within which these goals are to be achieved. Many definitions of governance focus on processes, structures and arrangement that pertain to the administration of an entity or unit of organization.

The International Social Security Association (ISSA) defines good governance as the manner in which the vested authority uses its powers to achieve the institution's objectives, including its powers to design, implement and transform the organization's policies, rules, systems and processes, and to engage and involve its stakeholders.

Good governance is supported by the following five principles: accountability, transparency, predictability, participation and dynamism.

- **Accountability**

Accountability is the ability to hold the officials who are in charge of the institution legally responsible for their actions while performing their assigned duties in the institution. Social security trustees and administrators are responsible and hence accountable, for managing the programs prudently, efficiently and equitably.

- **Transparency**

Refers to the availability and accessibility of accurate, essential and timely information to ensure that stakeholders are well informed of the true state of the social security programmes and how it is being managed. Information, which is a basic right to members and their beneficiaries and all other key stakeholders should be provided timely, and be reliable, relevant, accurate and verifiable.

- **Predictability**

Refers to the consistent application of the law and its supporting policies, rules and regulations. In social security programmes, the rights and duties of members and beneficiaries must be well defined, protected and consistently enforced.

- **Participation**

Refers to the active education, engagement and effective involvement of stakeholders to ensure the protection of their interests and support for the social security objectives.

- **Dynamism**

Dynamism defines the positive elements that bring change in governance of the social security programmes, i.e. the changing and improving status of the programmes by doing things more efficiently and equitably, responding to the evolving needs of members and beneficiaries, thus creating new rules.

In supporting these principles, ISSA has developed a governance framework that includes guidelines on the application of these principles and includes the responsibilities of board members and those of the management team in the administration of the social security institutions.

The guidelines on the principles of good governance are divided into two parts; part one provides guidelines for **the board and the managements** of the social security institution, and part two provides guidelines for **specific areas** in social security administration.

## BOARDS AND MANAGEMENT

The **Board**, according to ISSA, is the group of persons, who under the legislation establishing the entity, is given the responsibility to govern the social security programme and to exercise oversight on its administration.

**Management** on the other hand, is the group of persons who, is given, by law, the responsibility to administer daily the operations of the social security programmes.

## PRINCIPLES AND GUIDELINES FOR THE BOARD

The principles and guidelines for the board support all the five principles of good governance applied to social security institutions. The guidelines are developed and influenced by the following principles of good governance:

- **Accountability**



- Transparency
- Participation

#### *PRINCIPLES AND GUIDELINES FOR MANAGEMENT*

As described above, management in a social security organisation is the group of persons who, is given, by law, the responsibility to administer daily the operations of the social security programmes.

The principle of **accountability**, when applied to management includes guidelines, amongst others, for management powers and responsibilities, independence from political interference, participation by stakeholders, leadership and innovation in the institutions, encouragement of staff involvement, strategic planning, risk management, code of conduct, policy and disclosure, as well as all the functions and responsibilities of management in a social security organizations.

#### *GUIDELINES FOR SPECIFIC AREAS IN SOCIAL SECURITY ADMINISTRATION*

The guidelines supporting the principles of good governance identifies nine specific areas for social security administration:

1. Strategic planning
2. Operational risk management
3. Internal audit of operations
4. Actuarial soundness
5. Enforcing the prudent person principle in investment management
6. Preventing and control of corruption and fraud in contributions and benefits
7. Service standards for members and beneficiaries
8. Human resource policies: development, retention and succession planning
9. Investments in information and communication technologies infrastructure.

## **CHARACTERISTICS OF GOOD GOVERNANCE**

Good governance has eight major characteristics, which endeavours to guarantee that corruption is minimized, the view of minorities are taken into account, and the views

of the most vulnerable in the society are heard in the decision making processes<sup>7</sup>. The best interests of all stakeholders are taken into account. The characteristics of good governance are as follows:

**1. Rule of Law**

Good governance requires fair legal frameworks that are enforced by an impartial regulatory body, for the full protection of stakeholders.

**2. Transparency**

Transparency means that information should be provided in easily understandable forms and media' that it should be freely available and directly accessible to those who will be affected by governance policies and practices, as well as the outcomes resulting therefrom' and that any decisions taken and their enforcement are in compliance with established rules and regulations.

**3. Responsiveness**

Good governance requires that organizations and their processes are designed to serve the best interests of stakeholders within a reasonable timeframe.

**4. Consensus Oriented**

Good governance requires consultation to understand the different interests of stakeholders in order to reach a broad consensus of what is in the best interest of the entire stakeholder group and how this can be achieved in a sustainable and prudent manner.

**5. Equity and Inclusiveness**

The organization that provides the opportunity for its stakeholders to maintain, enhance, or generally improve their well-being provides the most compelling message regarding its reason for existence and value to society.

**6. Effectiveness and Efficiency**

Good governance means that the processes implemented by the organization to produce favourable results meet the needs of its stakeholders, while making the best use of resources – human, technological, financial, natural and environmental – at its disposal.

**7. Accountability**

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<sup>7</sup> What is Good Governance, Mr. Yap Kioe Sheng, Chief Poverty Reduction Section, UNESCAP,

In general, an organization is accountable to those who will be affected by its decisions or actions as well as the applicable rules of law. Decision makers in both the public and private institutions are accountable to the general public and the institutional stakeholders.

## 8. Participation

Participation by both men and women, either directly or through legitimate representatives, is a key cornerstone of good governance. Participation needs to be informed and organized, including freedom of expression and assiduous concern for the best interests of the organization and society in general.

The UNDP also include a **Strategic Vision** as an additional characteristic of good governance. This refers to the long term perspective that leaders and the public has on good governance and human development, along with the sense of what is needed for development. There is also an understanding of the historical, cultural and social complexities in that perspective is grounded.<sup>8</sup>

According to the OECD (2004)<sup>9</sup>, the principles are non-binding and do not aim at detailed prescriptions for national legislation. Rather, they seek to identify objectives and suggest various means for achieving them. Their purpose is to serve as a reference point. They can be used by policy makers as they examine and develop the legal and regulatory frameworks for corporate governance that reflect their own economic, social, legal and cultural circumstances, and by market participants as they develop their own practices.

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<sup>8</sup> Towards Good Governance, by the UNDP

<sup>9</sup> OECD Principle of Good Corporate Governance, 2004

## SECTION 4:

# GOVERNANCE- A SOUTH AFRICAN PERSPECTIVE

Corporate governance can be viewed as a process that defines expectations, allocation of authority and verification of performance. Corporate governance forms an integral part of the management processes. Governance is an important element of social security and any failure may result in failing to achieve targets, financial losses, fraud, corruption, and progress failures. Hence the monitoring of management and the provision of strategic guidance is essential. The best way to establish an optimum government accountability structure for SASSA requires a careful selection of an appropriate structure and reporting mechanisms that are appropriate and effective.

Good corporate governance has its foundation in effective and ethical leadership. Effective leadership is about directing performance and it is results-driven. It is about achieving purpose and strategic goals. Ethical leadership is exemplified by responsibility, accountability, fairness and transparency. Ethical leadership and effective leadership should reinforce each other. King IV Code posits that leadership starts with each person charged with governance duties, but in addition, the governing body as a collective must set the ethical example and tone.

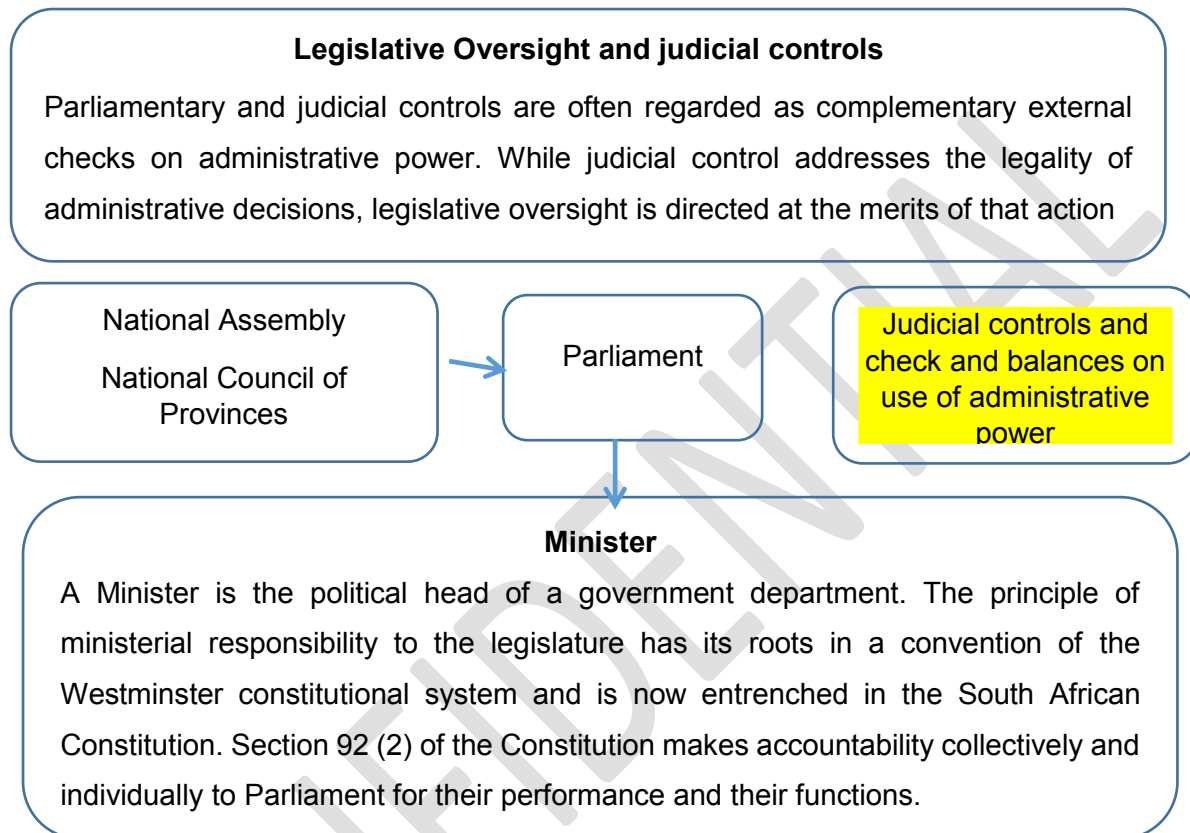
The governing body needs to be unified on matters such as the core purpose of the organisation, its culture, drivers of value, its key stakeholder groupings and their legitimate and reasonable needs, interests and expectations.

## CONSTITUTIONAL PROVISIONS ON OVERSIGHT

Section 55 (2) of the Constitution of the Republic of South Africa outlines the oversight powers of the National Assembly by requiring that the National Assembly provides

mechanisms to ensure that all the executive organs of state are accountable to it, including the implementation of legislation.

**Figure 1: Legislative oversight and judicial controls**



## **PUBLIC FINANCE MANAGEMENT ACT, 1999 (PFMA) ON GOVERNANCE AND OVERSIGHT**

Section 55 of the PFMA and Chapter 28 of TR (28.2) sets out the requirements for a Public Entity's Annual Reports. Performance information covers indicators and targets. Public Entities report to the Executive and directly to Parliament. TR 29.2 makes provision for a shareholder compact (M.O.A.) Chapter 7 of the PFMA, Section 63(2) provides for the Minister to exercise control over SASSA. TR 30.1 requires the Accounting Authority (CEO) to submit the Strategic Plan to the Minister for approval, TR 30.2.1 provides for quarterly reporting and Section 5(2) (12) provides for the rendering of progress reports to the Executive Authority.

Section 63(2) of the PFMA requires the Minister to exercise ownership control powers to ensure that public entities (PE) reporting to their respective portfolios comply with the PFMA and financial policies of that executive. The Accounting Officer is, in terms of Treasury Regulation (TR) 8.4.1 required to maintain appropriate measures to ensure that transfers and subsidies to public entities are applied for their intended purposes. Such measures may include regular reporting procedures, regular monitoring procedures and other control measures deemed necessary. Thus Minister has an intrinsic oversight role in ensuring that SASSA executes its mandate and has the requisite resources to do so.

## CONFORMITY WITH GOVERNANCE PRINCIPLES IN STATE ENTITIES

The King Reports (or the Codes) and State Owned Enterprises (SOE) Protocol buttress the bases for corporate governance and oversight in corporations or public sector entities.

### PRINCIPLES OF GOVERNANCE AS PER KING 4 CODE AND SOE PROTOCOL

- The Accounting Authority should lead ethically and effectively;
- The Accounting Authority should govern the ethics of the SOE in a way that supports the establishment of an ethical culture;
- The Accounting Authority should ensure that the SOE is and is seen to be a responsible corporate citizen;
- The Accounting Authority should appreciate that the SOE's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process;
- The Accounting Authority should ensure that reports issued by the SOE enable stakeholders to make informed assessments of the SOE's performance and its short, medium and long term prospects;
- The Accounting Authority should serve as the focal point and custodian of corporate governance in the SOE;
- The Accounting Authority should comprise the appropriate balance of knowledge, skills, experience' diversity and independence of it to discharge its governance role and responsibilities objectively and effectively;

- The Accounting Authority should ensure that its arrangements for delegation within its own structures promote independent judgement and assists with balance of power and the effective discharge of its duties;
- The Accounting Authority should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members support continued improvement in its performance and effectiveness
- The Accounting Authority should ensure that the appointment of, and delegation to management contribute to role clarity and the effective exercise of authority and responsibilities;
- The Accounting Authority should govern risk in a way that supports the SOE in setting and achieving its strategic objectives;
- The Accounting Authority should govern technology and information in a way that supports the SOE setting and achieving its strategic objectives;
- The Accounting Authority should govern compliance with applicable laws and adopted, non-binding rules;
- The Accounting Authority should ensure that the SOE remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long-term;
- The Accounting Authority should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the SOE's external reports; and,
- In the execution of its governance role and responsibilities, the accounting authority should adopt a stakeholder – inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the SOE over time.

# SECTION 5:

## CORPORATE GOVERNANCE, BOARDS AND THEIR FUDICIARY DUTIES

In essence, good corporate governance ensures that the organisation achieves what it is mandated to do. Governance is the system of rules, practices and processes by which an organisation is directed and controlled. This refers to the way in which organizations' are governed and to what purpose. It identifies who has power and accountability, and who makes decisions. Essentially, it is a toolkit that enables management and the board to deal more effectively with the challenges of running the organisation.

Corporate governance ensures that businesses have appropriate decision-making processes and controls in place so that the interests of all stakeholders (shareholders, employees, suppliers, customers and the community) are balanced.

The mandate of a board is to ensure good corporate governance and hold the executives accountable for the implementation of the mandate of the company.

### **BOARD OF DIRECTORS**

The mandate of a board is to ensure good corporate governance and to hold the executives accountable for the implementation of the mandate of the company.

A board is a group of individuals appointed to represent the shareholder. Their key functions are to:

- Establish the vision, mission and organisational values



- Develop strategy and the structure
- Oversee and delegate to management
- Exercise accountability to shareholders

## FIDUCIARY DUTIES

**Common Law** principles dictate that directors must act in good faith and in the best interests of the organisation, avoid conflict of interest and not exceed the organization's powers and mandate or to use it for personal gain. These duties have since been codified in section 76 of the Companies Act, 2008.

In addition to fiduciary duties, common law further imposes a duty on directors of "Care and Skill". Section 77(2) (b) of the Companies Act states a director may be held liable for any losses/damages a company may incur due to a breach of duty of care and skill in terms of section 76(3) (c), section 77 and losses due to contravention of any provisions of the Memorandum of Incorporation (MOI).

### **Section 76 duties include:**

- not to use the position of director, or any information obtained while acting in the capacity of a director;
- not to gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or not to knowingly cause harm to the company or a subsidiary of the company;
- to communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director reasonably believes that the information is—
  - immaterial to the company; or
  - generally available to the public, known to the other directors; or
  - is not bound to disclose that information by a legal or ethical obligation of confidentiality
- A director of a company, when acting in that capacity, must exercise the powers and perform the functions of director—
  - in good faith and for a proper purpose;

- in the best interests of the company; and
- with the degree of care, skill and diligence that may reasonably be expected of a person.

## TYPES OF BOARDS

The following types of boards exist:

- Supervisory Boards
- Management Boards/Executive Boards
- Advisory Boards
- Working Boards

### *SUPERVISORY BOARDS*

Supervisory boards lead the organization using the authority to direct and control the organisation provided by the shareholder either through a shareholder compact and/or legislation. They typically set the organization's direction and are governed by a set of fiduciary duties. They function at an "arm's length" from the operations of an organisation and mainly focus on the success of an entity. Previously their duties were only in common law but have since been codified by the Companies Act, 2008.

### *MANAGEMENT/EXECUTIVE BOARD*

An executive or management board are a group of people who actually manage the operations as a collective group (instead of a single CEO). They are constituted by the Executive members of the organization (ExCo), and are responsible for making the day to day decisions of what gets done as well as the long term decisions about how to organise operations to achieve the organisation's purpose.

### *ADVISORY BOARD*

Advisory boards are voluntary and have no fiduciary responsibilities. They are not substitutes for statutory boards of directors and do not have authority over the governance of an organisation. An advisory board can support the board by providing expert insight or contacts, but it must be clear where ultimate decision-making authority and collective responsibility lie.

### *WORKING BOARD*

These boards lead the organization but also do double duty as the staff. They are more common in very small organizations and community based organizations' that do not have the resources to hire employees.

### *FUNDRAISING BOARD*

This is a board in name only. Its real purpose is to use its members' connections and influence to solicit resources for the organisation.

## EXAMPLES OF BOARD COMPOSITION IN SCHEDULE 3A ENTITIES

### *NATIONAL EMPOWERMENT FUND*

- It is run as a trust and overseen by trustees who have same fiduciary duties as directors
- It must have no less than 7 and no more than 11 trustees
- The President appoints trustees on the advice of the Minister

### *COMPANIES AND INTELLECTUAL PROPERTY COMMISSION*

- No Board,
- Run by a Commissioner and his/her Deputy.
- Minister appoints both Commissioner and Deputy.
- Appointment is for a period of five years but renewable

### *SOUTH AFRICAN NATIONAL ROADS AGENCY*

- Companies Act applies if not in conflict with SANRAL Act
- Governed and controlled by a Board of Directors
- Minister appoints 7 members and the eighth is the CEO
- One person must be a representative of the Department of Finance

#### *COUNCIL FOR MEDICAL SCHEMES*

- Run by a Council of 15 members appointed by the Minister
- Minister may appoint any member on a fulltime basis and also appoints the chairperson
- Members appoint the Deputy from amongst themselves
- Have the same fiduciary duties as a Board of Directors

#### *NATIONAL STUDENT FINANCIAL AID SCHEME*

- Managed, governed and administered by a Board
- 13 members appointed by the Minister and one represents the Department
- Nominations are done openly

#### *ROAD ACCIDENT FUND*

- Has a Board and of which a member must be from the Department of Transport – Director-General or any senior person designated by him/her
- Consists of 8 and not more than 12 members appointed by the Minister
- Fiduciary responsibilities are applicable

#### *SOUTH AFRICAN CIVIL AVIATION AUTHORITY*

- Board consist of a Director (CEO like) and seven members appointed by the Minister
- Has a representative from the Department.
- Members serve part-time and occupy office for 3 years but may be reappointed
- Only the Director is full-time
- Board may appoint committees

*SOUTH AFRICAN QUALIFICATIONS AUTHORITY*

- Controlled by the Authority
- Minister appoints the chairperson
- Members appoint the Executive Officer with the approval of the Minister
- DG nominates a member to serve on the Authority

CONFIDENTIAL

# SECTION 6:

## RECOMMENDATIONS

The Task Team reviewed the SASSA Act, 2004 challenges relating to the Agency's operations, and made a number of proposals contained in Annexures A and B. The main recommendations however are:

- To improve the governance structure of the Agency by way of introducing a competent and qualified Board and management. It remains crucial that the Minister maintains an impartial stance in her interactions with the Board. The independence of the Board can only be secured by the Executive not exerting any undue influence. In the eventuality the Board acts contrary to its mandate, the Minister should intervene but not in any way try to usurp the responsibilities accorded to the Board. Any such intervention must be in the public interest. The Minister needs to make sure the Agency can function efficiently without any undue influence and that it is not unlawfully inhibited from executing its mandate;
- SASSA's core-mandate to be redefined from social security to social assistance; and
- Review of SASSA's organisational form.

### ESTABLISHMENT OF A BOARD

#### Rationale for the Board

Corporate governance is defined as an exercise of ethical and effective leadership by a governing body (board of directors) towards the achievement of governance outcomes such as an developing an ethical culture, good organisational performance and effective control.

The governing body ensures the achievement of strategic objectives and value creation as it discharges its responsibilities and duties. Governing body operations

include setting strategy, operational policy, oversight and management of disclosures and they will ensure that the Agency is managed with integrity, competence and accountability in a fair and transparent manner. Currently these functions are performed solely by an executive authority, which given the size of SASSA, it is not possible or humanly feasible for a single person to be able to provide such.

The Department has received a qualified audit for governance failures at SASSA. Various authorities have advised that a board is required at SASSA to correct some of the governance shortcomings. These pronouncements therefore require that a careful consideration of the most suitable board for the embattled entity must be made.

#### Preferred Board for SASSA

Given the level of governance challenges and the size and nature of SASSA, it is recommended that a Supervisory Board be appointed for the following reasons:

- They have full authority over the governance of the entity;
- They will play an active role in the selection and oversight of management, monitoring of performance, approval of strategy, and assessment of risks.
- They have legal responsibilities and legislated fiduciary duties,

Other board forms have many shortcomings which will be similar to adding a new level of governance, but maintaining the status quo.

#### Composition of the Board

A board is the accounting authority of and organisation. It is proposed that SASSA should have a **SUPERVISORY BOARD** consisting of nine (9) **non-executive members**, of which one should be a shareholder representative, including an independent chairperson who is not part of the management team of the organisation.

The board will be an independent structure made up of members with no vested interest in the business of the Agency. It will operate at an “arm’s length” from the operations of the Agency with its main focus on the success of an entity.

The non-executive board members must be nominated through a transparent process that is open to public scrutiny, in a manner that ensures the following:

- Participation of the public in the nomination process;
- Nomination process must be transparent and open; and
- A list of shortlisted candidates should be published for public scrutiny.

People appointed to serve on the board must be viewed to have the following competencies, individually and/or collectively;

- Be persons who by virtue of their qualifications, expertise and experiences in the fields of finance, social security, risk and audit, HR strategy and performance, ICT, and banking amongst others;
- Be fit and proper;
- Be person's committed to fairness, openness and accountability on the part of those holding public office;
- Represent a broad-section of the population of the Republic.

Board members should be appointed through a Cabinet process, and would hold office for three (3) years, and can only be re-appointed for one (1) additional term. Every appointment of a member of the Board must be published in the Government Gazette.

The Board will be led by a Chairperson and may have various committees to which it delegates some of its powers to assist it to perform its function of directing and monitoring the activities of the entity. The committee's will include functions on audit, risk and compliance, ICT, procurement, nominations, and remuneration to name but a few. The Board will delegate to any committee any of the authority of the board, specify the criteria for persons to serve in the committees, and such person may not be ineligible or disqualified to be a director in terms of any law. Any person with delegated powers in a board committee may not vote on matters to be decided by the committee. Delegated powers do not exonerate board members from their responsibilities.



The number of committees and their objectives will depend on activities that need to be undertaken in pursuance of the strategic objective of the entity. The Minister may by regulation prescribe that the Agency must have a social and ethics committee, if it is desirable in the public interest to have such committee.

Remuneration of board members will be in line with and guided by National Treasury prescripts.

#### Disclosure for conflict of interest

Before any person is appointed to the board, the necessary disclosures should be made that such person:

1. Has no direct or indirect interest in the business of the organisation, include their spouses or family members,
2. Their spouses or family members does not hold any executive or managerial position in the organisation,
3. Has interest in any private company or service provider that is in business with the company in which the member is a board member.

#### Disqualification of Board members

The following circumstances would disqualify a person to be a board member:

- A person who does not meet the stipulated minimum qualifications to be met by directors of that company.
- A person who is not fit and proper, and has been removed from an office of trust, on the grounds of misconduct involving dishonesty;
- Is a juristic person;
- Is a rehabilitated insolvent;
- Is prohibited in terms of any public service regulations to be a director of the company;
- Has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence, involving fraud, misrepresentation or dishonesty.
- Is an un-emancipated minor, or is under a similar legal disability; or

- A court has prohibited that person to be a director, or declared the person to be delinquent.

## Board Evaluation

The concept of Board Evaluation was institutionalised by the provisions of Principle 2.22 of the King III Report. The said principle states that “The evaluation of the Board, its committees and individual directors should be performed every year”

King III requires Boards to consider whether the evaluation of performance should be done by the chairman or independently by a professional service provider. There is absolutely nothing that prevents an organisation from making a provision in its Board Charter that both self-assessment and independent assessment would be applicable.

An effective evaluation exercise helps the Board, committees and individual directors perform to their optimum capabilities and have the following advantages.

- Improves leadership performance culture,
- Clarifies differing directors’ roles,
- Improves Board communication,
- Facilitates Board teamwork,
- Improves decision making processes,
- Instils accountability in members, and
- Improves efficiency of members.

Hence it is recommended an external evaluation be undertaken simply because of its independence and also to eliminate the referee/player situations and conflicts of interest scenarios.

## Termination of Board membership

Board membership will be terminated upon expiry of the prescribed term of office (3 years). Furthermore, board members may be removed from their positions when they become ineligible or are disqualified by any court of law. This also includes people who are incapacitated to the extent that they are unable to perform their functions as directors and are unlikely to regain their capacity within a reasonable time.

Furthermore, board membership will be terminated if it is found that board members have neglected or been derelict in the performance of their duties as board members. A board member may also be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in that meeting.

### Duties of the board

The envisaged board will be responsible to:

- Steer and set strategic direction with regards to both the Agency's strategy and the way in which specific governance areas are to be approached, addressed and conducted;
- Approve policy and planning that gives effect to the Agency's strategy and the set direction;
- Ensure accountability for the Agency performance through reporting and disclosure; and
- Oversee and monitor implementation and execution by management.

### Meetings

The board will hold a minimum of four and a maximum of six meetings annually in which the quorum will be 50+1.

# PROPOSED AMENDMENTS TO THE SOUTH AFRICAN SOCIAL SECURITY AGENCY ACT, 2004 (ACT NO. 9 OF 2004).

It is important to highlight that there is an alignment between observations and recommendations of the MTT, Panel of Experts, Court cases brought against the Agency highlighted in this Chapter and the in-depth analysis of the SASSA Act by the Review Task Team.

Having reviewed the current challenges, this chapter contains recommendations for amendments to be made the SASSA Act (and other legislation where necessary).

Annexure A outlines the relevant sections with proposed amendments and the rationale for such. Annexure B contains the proposed changes to Chapter 6 of the SASSA Act.

## ANNEXURE A: PROPOSED AMENDMENTS TO THE SASSA ACT

The following amendments to the SASSA Act are envisaged:

Section	Content	Proposed changes
<p><b>Preamble</b></p>	<p><b>WHEREAS</b> 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 the right to social assistance, if they are unable to support themselves and their dependants;</p> <p><b>AND WHEREAS</b> the Constitution obliges the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights;</p>	<p>The entire preamble needs to be reviewed to be aligned to the work of the Agency (Management, Administration and payment of Social Assistance benefits).</p>

**AND WHEREAS** the effective provision of social security services requires uniform norms and standards, standardised delivery mechanisms and a national policy for the efficient, economic and effective use of the limited resources available to the State

for social security;

**AND WHEREAS** a national social security economic policy is required to prevent the proliferation of laws and policies relating to social security from prejudicing the beneficiaries of social security, prejudicing the economic interests of the Republic or its provinces or impeding the implementation of such national social security economic policy;

**AND** in order to assist in securing the well-being of the people of the Republic and to provide effective,

	<p>transparent, accountable and coherent governance in respect of social security for the Republic as a whole,</p> <p><b>BE IT THEREFORE ENACTED</b> by the Parliament of the Republic of South Africa, as follows:-</p>	
<b>Chapter 1</b>		
<b>Definitions</b>	<b>Social Security – includes both social assistance and social insurance</b>	Definition of Social Security might have to be reviewed since the Agency's sole focus is on Social Assistance.
<b>Chapter 2</b>		
<b>Establishment of the Agency</b>	2 (1) The South African Social Security Agency is hereby established as a juristic person.	<ul style="list-style-type: none"> <li>- To consider mentioning /looking into other pieces of legislation which establishes the Agency e.g. Social Assistance Act</li> </ul>

	(2) The Agency is subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).	<ul style="list-style-type: none"> <li>- Could also consider highlighting that the Agency is established as a schedule 3A public entity defined in the Public Finance Management Act.</li> </ul>
<b>Objects of the Agency</b>	<p>3. The objectives of the Agency are to -</p> <p>(a) act, eventually as the sole agent that will ensure the efficient and effective management, administration and payment of social assistance;</p>	<ul style="list-style-type: none"> <li>- 3(a) – to delete eventually in the first sentence.</li> </ul>
<b>Functions of the Agency</b>	4 (1)(c) establish a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained	<ul style="list-style-type: none"> <li>- The respective roles of the Agency and the Inspectorate Could also consider developing regulations on the provision in both sets of legislation.</li> <li>-</li> </ul>
	4(2)(a) The Agency may with the concurrence of the Minister enter into an agreement with any person to ensure effective payments to beneficiaries, and such	<ul style="list-style-type: none"> <li>- To take out with the concurrence of the Minister</li> </ul>



	an agreement must include provisions contemplated in subsection (3).	
<b>Chapter 3:</b>		
<b>Chief Executive officer and other staff of the Agency</b>	Chapter makes provision for appointment of the Chief Executive Officer (CEO), functions of the CEO, employment of members of staff of the Agency,	<ul style="list-style-type: none"> <li>- To re-write the entire chapter 3 with proposed new management structure. Refer to the chapter on the boards in the discussion document.</li> <li>- The chapter is essentially the core of the team's task.</li> <li>- It is important to explore and outline the following:             <ol style="list-style-type: none"> <li>1. Governing Body                 <ul style="list-style-type: none"> <li>- Boards</li> <li>- Process of appointment of boards</li> <li>- Operations of the board.</li> <li>- Relationship between the board, shareholders and CEO</li> </ul> </li> </ol> </li> </ul>

		<ul style="list-style-type: none"> <li>- Assessment of the board.</li> <li>2. Executive</li> <li>- CEO- Appointment, functions, reporting</li> <li>Management team - Structures</li> <li>- Staff – Appointment to board and CEO as part of the board</li> </ul>
<b>Section 8:</b>	<b>Conflict of interest</b>	<ul style="list-style-type: none"> <li>- Section not necessary, the provision is covered by government prescripts/ primary legislation applicable to all government officials.</li> </ul>
<b>Chapter 4</b>		
<b>Funds and business of the Agency</b>	<b>Financial management</b>  <b>10.</b> (1 ) The Chief Executive Officer must cause full and proper books of account and all the necessary records in relation thereto to be kept.  (2) The Chief Executive Officer must ensure that the Agency's annual budgets, corporate plans, annual	Financial management, Reporting and audit provisions to reworked chapter 3

reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

**Reporting and audit**

1. (1) (a) The Agency must in each financial year, on or before a date determined by the Minister, submit an annual report on its activities **and** a statement of its income and estimated expenditure for the following financial year to the Minister for approval.

(b) Notwithstanding subsection (1), the Agency must submit in addition to its reports such further reports as the Minister may require.

(2) The books, records of account and financial statements of the Agency must be audited annually by the Auditor-General.

	<p><b>Immovable property</b></p> <p><b>12.</b> (1) The Agency may, with the approval of the Minister, acquire, hold or dispose of immovable property in the course of its business.</p> <p>(2) The Minister must determine the policy and procedure of the Agency with regard to the acquisition and disposal of immovable property</p>	<p>Provisions under immovable property will be impacted by the revision of Chapter 3.</p>
	<p><b>General operations</b></p> <p><b>13.</b> ( 1) (a) Subject to such condition as the Minister may determine, the Agency may, at the request of the Minister or of any of the designated institutions, provide such services as it may reasonably be able )to render on an agency basis.</p> <p>(b) The rendering of services contemplated in paragraph (a) may not prevent the Agency from effectively and efficiently performing its functions in accordance with this Act.</p>	<p>Provision under general operations will be impacted by the revision of Chapter 3.</p>

	<p>(2) The Agency may, on such conditions as the Minister may determine, act as adviser to a designated institution in respect of matters falling within the scope of the functions of the Agency.</p>	
	<p><b>Limitation of Liability</b></p> <p><b>15.</b> Neither the Minister nor any member of staff of the Agency is liable for anything done in good faith in the performance of a function in terms of this Act.</p>	<p>Proposal that the provision be done away with because Sections 51, 57 and 83 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) PFMA provides for general responsibilities of accounting authorities, responsibilities of other officials in a public entity and financial misconduct by accounting authorities and officials of public entities respectively, and the Act supersedes the SASSA Act.</p>

## **Annexure B: REVISION OF CHAPTER 6 OF THE SASSA ACT**

The following should replace Chapter 6 of the SASSA Act:

### **Recovery of sums overpaid**

- (1) If the Agency pays money 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 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.
- (2) The Agency must recover the amounts to which a person was entitled, in accordance with the Public Finance Management Act, 1999.
- (3) The Minister must remit an amount owing by a person if such a person satisfies the Minister that he or she received the amount without knowing that he or she was not entitled thereto.
- (4) The Inspectorate shall investigate all complaints of alleged fraudulent withholding of the full or partial benefit due to a beneficiary; the holding of such an investigation must not affect the right of a beneficiary to receive the full value of the benefit from date of accrual.

### **Recovery of losses and damage.**

- 1) If a person who is or was in the employment of the Agency caused the Agency any loss or damage because he-
  - a) Failed to collect money due to the Agency and for the collection of which he is or was responsible;
  - b) Is or was responsible for an irregular payment of money of the Agency or for a payment of such money not supported by a proper voucher;
  - c) Is or was responsible for fruitless expenditure of money of the Agency owing to an omission to carry out his duties;

- d) Is or was responsible for a deficiency in, or for the destruction of, or any damage to money of the Agency, stamps, face value documents and forms having a potential value, securities, equipment, stores or any other property of the Agency;
  - e) Is or was responsible for a claim against the Agency owing to an omission to carry out his duties.
  - f) The accounting officer shall determine the amount of such loss or damage, and may order that person, by notice in writing, to pay to the Agency, within 30 days from the date of such notice, the whole or any part of the amount so determined.
- 2) If a person who is in the employment of the Agency and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice in question, the amount shall, subject to the provisions of subsections (4), (5) and (6), be deducted from his monthly salary: Provided that such deduction shall not in any month exceed a fourth of his monthly salary.
  - 3) If a person who was in the employment of the Agency and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice in question, the accounting officer shall, subject to the provisions of subsections (4), (5) and (6), recover the amount from the person concerned by legal process.
  - 4) If a person who has in terms of subsection (1) been ordered to pay an amount makes within the period stipulated in the notice in question, an offer to pay the amount in instalments, the accounting officer may allow payment in such instalments as he may consider reasonable.
  - 5) A person who has in terms of subsection (1) been ordered to pay an amount may within a period of 30 days from the date of such order appeal in writing against such order to the Board, stating the grounds for his appeal, and the

Board may, after such investigation as it may deem necessary, dismiss the appeal, or order that the appellant be exempted, either wholly or partly, according as the Board may deem fair and reasonable, from the payment of such amount.

- 6) A person who has in terms of subsection (1) been ordered to pay an amount may, instead of appealing to the Board under subsection (5), apply within a period of 30 days from the date of such order, or within such further period as the court may allow, to a competent court for an order setting aside such first-mentioned order or reducing such amount, and the court may upon such an application, if it is not convinced by the accounting officer on the merits of the case that the order was rightly made or that the amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be.

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## **Annexure C: OVERVIEW OF PAST INSTITUTIONAL ARRANGEMENTS IN COMBATING FRAUD AND CORRUPTION**

### DEDICATED UNIT TO FIGHT FRAUD AND CORRUPTION AT SASSA

There is a Fraud Management and Compliance Unit in the establishment of the Agency. The unit performs three main functions, namely: fraud prevention; fraud investigation; data quality and compliance. The focus is not only on social grants fraud and corruption, but broader. A complaints mechanism is established as well at SASSA's Head Office. The unit has about hundred (100) employees throughout the country.

### FRAUD AND CORRUPTION STRATEGIES EMPLOYED DURING THE FINANCIAL YEAR 2010/11

According to the SASSA Annual Report in 2010/11, the Agency addressed the implementation of an integrity model. The integrity model introduced a paradigm shift, from focusing on detection and investigation to validation of the eligibility of beneficiaries for social grants including life verification and to confirm the existence of beneficiaries. A total of 132 603 beneficiaries were verified for eligibility and existence with a total of 7 133 found to be fraudulent. The Agency, through the Special Investigation Unit (SIU) continued to investigate and prosecute persons found to have defrauded the system. A total of 2 828 persons were brought before the courts in that year.

### FRAUD AND CORRUPTION STRATEGIES EMPLOYED DURING THE FINANCIAL YEAR 2011/12

In the financial year 2011/12 the SASSA continued to fall prey to unscrupulous persons and syndicates who defrauded the social assistance programme. The Agency was successful in improving its detection mechanisms to identify fraudulent grants that would not have been detected ordinarily. A total of forty (40) of the Agency's officials were charged, some criminally with grant fraud. The Agency investigated 2,488 fraudulent grants and prosecuted 2,258 persons for grant fraud. A total of 5, 487

persons signed acknowledgement of debts valued at R56, 8 million to repay the fraudulently paid grants.

## FRAUD AND CORRUPTION STRATEGIES EMPLOYED DURING THE FINANCIAL YEAR 2012/13

In the financial year 2012/13 SASSA continued to implement its zero tolerance approach to fraud and corruption and the endeavour led to 7 734 fraud and corruption cases registered. Seven thousand seven hundred and forty seven (7 747) cases were finalised, 2 747 cases were closed and 3 715 cases were not finalised during the financial year. The monetary value for cases finalised amounted to R59.4 million.

Other successes include the arrest of 50 individuals in the Mahlabathini area within the Ulundi District, in Kwa-Zulu Natal province – who were found to be in possession of 127 unregistered Agency cards; 3 CPS registration machines and R 47 000.00 in cash. In partnership with law enforcement agencies, the Agency managed to trace crime syndicates in certain provinces resulting in the arrest and conviction of ten (10) SASSA officials, three (3) former employees and fifteen (15) agents. During that financial year, fifty two (52) SASSA officials were suspended from duty and twenty-five officials (25) were dismissed.

Seventy Eight percent (78%), which amounts to four thousand (4 000) of fraud cases were investigated during the same period. Ninety percent (90 %) of suspicious grants were verified for validity.

## RE- REGISTRATION PROJECT

During the financial year 2012/13 SASSA introduced its Re-registration Project to ensure standardisation in service delivery as well as to root out fraud and corruption in the payment of social grants. The project entailed the mass re-registration of existing beneficiaries, children receiving grant and procurators. As part of the transition to the new system, a new bio-metric based payment solution resulted in over 150 000 social grants being cancelled, leading to a saving of R150 million per annum. The highest affected grant was the Child Support Grant (CSG) with 22 432 cases, followed by the Old Age Grant (OAG) with 12 367 grants cancelled.

## FRAUD AND CORRUPTION HOTLINE

To intensify its effort to fight fraud and corruption, SASSA has from 30 April 2012 joined the Office of the Public Service Commission's National Anti-corruption Hotline to allow for members of the public as well as SASSA employees to anonymously and confidentially report fraudulent and corrupt activities they come across or become aware of.

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# Sources of information

## Publications

How one word can change the game: case study on state capture and the South African Social Security Agency. Stellenbosch University, 2018

King IV Report on Corporate Governance for South Africa, 2016

OECD Principles of good corporate governance, 2004

UNDP Towards good governance,

Y. K. Sheng, UNESCAP, What is good governance.

## Reports

First Report to the Constitutional Court by the AG and the Panel of Experts in the Matter of Black Sash v Minister of Social Development and Others case CCT 48/17 September 2017.

Management report, AGSA 2017

Ministerial Task Team Report on Unlawful and /or immoral debit deductions, 27 August 2014

Reports of the Portfolio Committee on Social Development

Second Report to the Constitutional Court by the AG and the Panel of Experts in the Matter of Black Sash v Minister of Social Development and Others case CCT 48/17, 16 November 2017.

Second Ministerial Task Team Report to address unlawful, fraudulent and immoral deductions from SASSA beneficiary accounts, November, 2015.

South African Social Security Agency Annual Reports, Years???

Tenth Report to the Constitutional Court by the AG and the Panel of Experts in the Matter of Black Sash v Minister of Social Development and Others case CCT 48/17

Third Report to the Constitutional Court by the AG and the Panel of Experts in the Matter of Black Sash v Minister of Social Development and Others case CCT 48/17 (Signed 16 November 2017).

## Legislation

Companies Act, 2008

Constitution of the Republic of South Africa, 1996 (Act. No. 108 of 1996)

Promotion of Administrative Justice Act, 2000 ((Act No. 3 of 2000)

Public Finance Management Act, 1999 (Act No. 1 of 1999)

Social Assistance Act, 2004 (Act No. 13 of 2004)

South African Social Security Agency Act, 2004, (Act No. 13 of 2004)

## Court Judgments

Matter of Blacksash v Minister of Social Development and Others, Case CCT 48/17

# PRESENTATION TO ORGANISATIONS LABOUR ON REVIEW OF THE SA ACT NO. 9 OF 2004

BRANCH: COMPREHENSIVE SOCIAL SECURITY

25 August 2021

BUILDING A CARING SOCIETY. TOGETHER.



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# PRESENTATION OUTLINE

- Overview
- Strategic gap analysis and the need for change
- Governance Challenges
- Emerging Recommendations
- Proposed Amendments to the SASSA Act
- Recommendations



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# OVERVIEW

- The review of the South African Social Security Agency Act, 2004 was a result of:
  - Misalignment between the Department and SASSA on corporate governance matters
  - Numerous audit concerns raised by the AG and internal audit, and
  - Governance weaknesses at SASSA raised by the Constitutional Court and Parliament
- The Branch established a Project Team to tackle the challenges. The team produced a Discussion Document comprising the following 6 sections:
  1. Background to SASSA establishment as schedule 3A public entity creation, management, administration, and payment of social assistance;
  2. Gap analysis;
  3. Overview of good governance drawing from local and international benchmarks, PFMA, and King 4 Code on good corporate governance;
  4. Discussion of corporate governance from a South African perspective and types of boards and the composition of boards in Schedule 3A entities;
  5. Discussion of corporate governance, boards and their fiduciary duties; and
  6. Annexures 1, and 2 proposes recommendations





# STRATEGIC GAP ANALYSIS AND THE NEED FOR C

- The Social Assistance Act, 2004 (Act No. 13 of 2004) makes provision for the grants to various vulnerable groups, subject to qualification criteria as provided in the
- The South African Social Security Agency Act, 2004, (Act No. 9 of 2004) establishes an agency mandated to administer and manage the social assistance programme and in an effective and efficient manner.
- To date the Agency has made great progress in fulfilling its mandate.
- However, it has also been confronted with challenges, some of which emanate from empowering legislation.

## Governance challenges

- The shortcomings of the governance arrangement for SASSA has come to the fore in recent developments. This includes:
  - the Constitutional Court case,
  - outcomes of the inquiry into the role of the Minister of Social Development in the crisis, and
  - the case between Corruption Watch and the CEO of SASSA and others.
- Governance failures at SASSA resulted in the Constitutional Court literally playing over SASSA.

# EMERGING RECOMMENDATIONS

- **Exemption of the Agency, from the provisions of the Public Service Act.**
  - Although a schedule 3A Public Entity, there are sections of the Act (Sections 5 and 7) that obliges the Agency to adhere to the provisions.
- **To improve the governance structure of the Agency by way of competent and qualified Board and management.**
  - It remains crucial that the Minister maintains an impartial stance in his/her dealings with the Board.
  - The independence of the Board can only be secured by the Executive Director ensuring that there is no any undue influence.
  - In the eventuality the Board acts contrary to its mandate, the Minister may intervene but not in any way try to usurp the responsibilities accorded to the Board. Any such intervention must be in the public interest. The Minister must ensure the Agency can function efficiently without any undue influence and is not unlawfully inhibited from executing its mandate.



# RECOMMENDATIONS continued....

## Rationale for the Board

- The governing body ensures the achievement of strategic objectives and values, discharges its responsibilities and duties. Governing body operations include operational policy, oversight and management of disclosures and they will ensure that the entity is managed with integrity, competence and accountability in a fair and transparent manner.
- Currently these functions are performed solely by an executive authority, which is SASSA, it is not possible or humanly feasible for a single person to be able to provide the required oversight and management.

## Preferred Board for SASSA

- Given the level of governance challenges and the size and nature of the entity, it is recommended that a **Supervisory Board** be appointed for the following reasons:
  - They have full authority over the governance of the entity;
  - They will play an active role in the selection and oversight of management, performance, approval of strategy, and assessment of risks; and
  - They have legal responsibilities and legislated fiduciary duties.
- Other board forms have many shortcomings which will be similar to adding governance, but maintaining the status quo.

# PROPOSED AMENDMENTS TO THE SASSA ACT

- **Preamble**
  - To be reviewed to be aligned to the work of the Agency (Management, Administration and Assistance benefits).
- **Definition of Social Security**
  - Might have to be reviewed since the Agency's sole focus is on Social Assistance.
- **Establishment of the Agency**
  - 3a Public Entity
- **Objects of the Agency** (Act eventually as the sole agent)
  - Delete "eventually"
- **Functions of the Agency**
  - 4(2)(a) The Agency may with the concurrence of the Minister enter into an agreement with effect payments to beneficiaries, and such
  - To take out "with the concurrence of the Minister".
- **Limitation of Liability**
  - s15. Neither the Minister nor any member of staff of the Agency is liable for anything done in the performance of a function in terms of this Act.
  - Delete – covered by Sections 51, 57 and 83 of the Public Finance Management Act, 1997

# PROPOSED AMENDMENTS CONT.

- **Chapter 3: CEO and other staff of the agency** - rework to include:
  - Governing Body,
  - Boards,
  - Process of appointment of boards,
  - Operations of the board,
  - Relationship between the board, shareholders and CEO, and
  - Assessment of the board.
  - Exemption of the Agency, from the provisions of the Public Service Act
- **Section 8: Conflict of interest**
  - Not necessary, provision covered by government prescripts/ primary legislation.
- **Chapter 4: Funds and business of the Agency**
  - To be aligned with reworked chapter 3
- **Chapter 6: To be revised**
  - Recovery of sums overpaid
  - Recovery of losses and damages





# PROGRESS TO DATE AND ENVISAGED ACTIVITIES

- The following key departments were consulted:
  - SASSA
  - National Treasury
  - DPME
  - DPSA & DPE
- June –July 2021
  - Internal DSD – 27 July 2021
  - MANCO – presented to MANCO on 21 June 2021
    - supports recommendations for a Supervisory board & amendment
  - Academic/ research institutions, CSO's – 28 & 30 June 2021 respectively. Wr submitted by 31 July 2021.
  - SASSA regions – 13 July 2021.
- August - December:
  - Incorporation of comments post consultation
  - Appointment of service provider for legislative drafting (TOR completed already)
- December 2021– March 2022
  - Draft SASSA Amendment Bill

# RECOMMENDATION

It is recommended that the organised labour:

- notes the progress made to date;
- comment on the Review of the SASSA Act, 2004 ( Act No. 9 of 2004)



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