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REPUBLIEK VAN SUID-AFRIKA

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## THE PRESIDENCY

No. 690 2 June 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 9 of 2004: South African Social Security Agency Act, 2004.**

## DIE PRESIDENSIE

No. 690 2 Junie 2004

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

**No. 9 van 2004: Wet op die Suid-Afrikaanse Agentskap vir Maatskaplike Sekerheid, 2004.**



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*(English text signed by the President.)*  
*(Assented to 30 May 2004.)*

# ACT

**To provide for the establishment of the South African Social Security Agency as an agent for the administration and payment of social assistance; to provide for the prospective administration and payment of social security by the Agency and the provision of services related thereto; and to provide for matters connected therewith.**

## PREAMBLE

**WHEREAS** 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;

**AND WHEREAS** 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;

**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, transparent, accountable and coherent governance in respect of social security for the Republic as a whole,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

## ARRANGEMENT OF SECTIONS

### CHAPTER 1

#### DEFINITIONS

5

1. Definitions

*(Engelse teks deur die President geteken.)  
(Goedgekeur op 30 Mei 2004.)*

# WET

**Om voorsiening te maak vir die instelling van die Suid-Afrikaanse Agentskap vir Maatskaplike Sekerheid as 'n agent vir die administrasie en betaling van maatskaplike bystand; om voorsiening te maak vir die voorgename administrasie en betaling van maatskaplike sekerheid deur die Agentskap en die lewering van verbandhoudende dienste; en om vir verwante aangeleenthede voorsiening te maak.**

## AANHEF

**AANGESIEN** die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), daarvoor voorsiening maak dat elkeen die reg van toegang tot maatskaplike sekerheid het, met inbegrip van die reg op maatskaplike bystand, indien hulle nie in staat is om hulself en hul afhanklikes te onderhou nie;

**EN AANGESIEN** die Grondwet die Staat binne die hulpbronne tot sy beskikking verplig om redelike wetgewende en ander maatreëls te tref om elk van hierdie regte in toenemende mate te verwesenlik;

**EN AANGESIEN** die effektiewe voorsiening van maatskaplike sekerheidsdienste eenvormige norme en standaarde, gestandaardiseerde diensleweringmeganismes en 'n nasionale beleid vereis vir die doeltreffende, ekonomiese en effektiewe gebruik van die beperkte hulpbronne wat vir maatskaplike sekerheid tot die Staat se beskikking is;

**EN AANGESIEN** 'n nasionale maatskaplike sekerheids- ekonomiese beleid vereis word om te voorkom dat 'n vermenigvuldiging van wette en beleidsrigtings betreffende maatskaplike sekerheid die begunstigdes van maatskaplike sekerheid benadeel, die ekonomiese belange van die Republiek of sy provinsies benadeel of die tenuitvoerlegging van sodanige nasionale maatskaplike sekerheids- ekonomiese beleid belemmer;

**EN** ten einde 'n bydrae te lewer om die welsyn van die mense van die Republiek te verseker en om effektiewe, deursigtige, verantwoordingspligtige en samehangende staatsbestuur ten opsigte van maatskaplike sekerheid vir die Republiek as geheel te voorsien,

**W**ORD DAAR DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

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**CHAPTER 1** 35**DEFINITIONS****Definitions**

1. In this Act, unless the context indicates otherwise—
- |  |    |
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| “Agency” means the South African Social Security Agency established by section 2;  | 40 |
| “Chief Executive Officer” means the Chief Executive Officer of the Agency appointed in terms of section 5(1);                        |    |
| “designated institution” means—  |    |
| (a) a national or provincial department as contemplated in section 7 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); | 45 |
| (b) an institution, other than the Agency, established for a public purpose by or under an Act of Parliament;                        |    |

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**HOOFSTUK 1****WOORDOMSKRYWING****Woordomskrywing**

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|-----|--|----|
| 1.  | In hierdie Wet, tensy die teendeel uit die samehang blyk, beteken —  |    |
|     | “aangewese instelling”—  | 40 |
| (a) | 'n nasionale of provinsiale departement soos beoog in artikel 7 van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994); |    |
| (b) | 'n instelling, anders as die Agentskap, by of kragtens 'n Wet van die Parlement vir 'n openbare doel ingestel;               |    |

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- (c) any other juristic person in respect of which the Minister has authorised the Agency to enter into an agreement for the rendering of services by the Agency to that person;
- “**financial year**” means the period from 1 April in any year to 31 March of the following year; 5
- “**Minister**” means the Minister of Social Development;
- “**prescribed**” means prescribed by regulation;
- “**public service**” means the public service contemplated in section 8 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
- “**social assistance**” means social assistance as defined in section 1 of the Social Assistance Act, 2004; 10
- “**social insurance**” means contribution based benefit payments aimed at income maintenance;
- “**social security**” includes both social assistance and social insurance;
- “**this Act**” includes the regulations. 15

## CHAPTER 2

## SOUTH AFRICAN SOCIAL SECURITY AGENCY

## Establishment of Agency

2. (1) The South African Social Security Agency is hereby established as a juristic person. 20
- (2) The Agency is subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

## Objects of Agency

3. The objects of the Agency are to—
- (a) act, eventually, as the sole agent that will ensure the efficient and effective management, administration and payment of social assistance; 25
- (b) serve as an agent for the prospective administration and payment of social security; and
- (c) render services relating to such payments.

## Functions of Agency 30

4. (1) The Agency must—
- (a) administer social assistance in terms of Chapter 3 of the Social Assistance Act, 2004, and perform any function delegated to it under that Act;
- (b) collect, collate, maintain and administer such information as is necessary for the payment of social security, as well as for the central reconciliation and management of payment of transfer funds, in a national data base of all applicants for and beneficiaries of social assistance; 35
- (c) establish a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained; and
- (d) render any service in accordance with an agreement or a provision of any applicable law as contemplated in subsection (4). 40
- (2) The Agency may—
- (a) with the concurrence of the Minister enter into an agreement with any person to ensure effective payments to beneficiaries, and such an agreement must include provisions contemplated in subsection (3). 45
- (b) do anything necessary for the realisation of the Agency’s objects.
- (3) The agreement contemplated in subsection (2)(a) must include provisions to ensure—

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- (c) enige ander regspersoon ten opsigte waarvan die Minister die Agentskap gemagtig het om 'n ooreenkoms vir die lewering van dienste deur die Agentskap aan daardie persoon aan te gaan;
- “Agentskap”** die Suid-Afrikaanse Agentskap vir Maatskaplike Sekerheid by artikel 2 ingestel; 5
- “boekjaar”** die tydperk vanaf 1 April van enige jaar tot 31 Maart van die daaropvolgende jaar;
- “hierdie Wet”** ook die regulasies;
- “Hoof- Uitvoerende Beampte”** die Hoof- Uitvoerende Beampte van die Agentskap ingevolge artikel 5(1) aangestel; 10
- “maatskaplike bystand”** maatskaplike bystand soos omskryf in artikel 1 van die Wet op Maatskaplike Bystand, 2004;
- “maatskaplike sekerheid”** ook beide maatskaplike bystand en maatskaplike versekering;
- “maatskaplike versekering”** bydrae-gebaseerde voordeelbetalings gerig op inkomsteonderhoud; 15
- “Minister”** die Minister van Maatskaplike Ontwikkeling;
- “Staatsdiens”** die staatsdiens in artikel 8 van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), beoog;
- “voorgeskrewe”** voorgeskrewe by regulasie. 20

## HOOFSTUK 2

## SUID-AFRIKAANSE AGENTSKAP VIR MAATSKAPLIKE SEKERHEID

## Instelling van Agentskap

2. (1) Die Suid-Afrikaanse Agentskap vir Maatskaplike Sekerheid word hierby as 'n regspersoon ingestel. 25
- (2) Die Agentskap is aan die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), onderhewig.

## Oogmerke van Agentskap

3. Die oogmerke van die Agentskap is om—
- (a) uiteindelik op te tree as die alleenagent wat die doeltreffende en effektiewe bestuur, administrasie en betaling van maatskaplike bystand sal verseker; 30
- (b) te dien as 'n agent vir die voorgenome administrasie en betaling van maatskaplike sekerheid; en
- (c) dienste aangaande sodanige betalings te lewer.

## Werkzaamhede van Agentskap 35

4. (1) Die Agentskap moet—
- (a) maatskaplike bystand ingevolge Hoofstuk 3 van die Wet op Maatskaplike Bystand, 2004, administreer en enige werkzaamheid verrig wat kragtens daardie Wet aan die Agentskap gedelegeer is;
- (b) die inligting wat nodig is vir die betaling van maatskaplike sekerheid, sowel as vir die sentrale rekonsiliasie en bestuur van die betaling van oordragfondse, insamel, vergelyk, in stand hou en administreer in 'n nasionale databasis van alle aansoekers om en begunstigdes van maatskaplike bystand; 40
- (c) 'n nakomings- en bedrogmeganisme instel om te verseker dat die integriteit van die maatskaplike sekerheidstelsel gehandhaaf word; en 45
- (d) enige diens in ooreenstemming met 'n ooreenkoms of 'n bepaling van enige tersaaklike reg soos beoog in subartikel (4) lewer.
- (2) Die Agentskap kan—
- (a) met die instemming van die Minister 'n ooreenkoms aangaan met enige persoon om effektiewe betalings aan begunstigdes te verseker en so 'n ooreenkoms moet bepalings beoog in subartikel (3) insluit; 50
- (b) enigiets doen wat nodig is vir die verwesenliking van die Agentskap se oogmerke.
- (3) Die ooreenkoms beoog in subartikel (2)(a) moet bepalings bevat wat—

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- (a) the effective, efficient and economical use of funds designated for payment to beneficiaries of social security;
  - (b) the promotion and protection of the human dignity of applicants for and beneficiaries of social security;
  - (c) the protection of confidential information held by the Agency other than as is contemplated in section 16; 5
  - (d) honest, impartial, fair and equitable service delivery;
  - (e) mechanisms to regulate community participation and consultation; and
  - (f) financial penalties for non-compliance with the provisions of the agreement.
- (4) The Agency may in terms of any applicable law or any agreement between itself and any other relevant authority responsible for the provision of forms of social security, other than social assistance, administer, evaluate and verify any application for such forms of social security and effect payment in respect thereof. 10

**CHAPTER 3****CHIEF EXECUTIVE OFFICER AND OTHER STAFF OF AGENCY 15****Chief Executive Officer**

5. (1) The Minister must appoint a fit and proper and suitably qualified South African citizen as the Chief Executive Officer of the Agency.
- (2) The Chief Executive Officer is appointed for a term of five years and may be reappointed for one additional term of five years. 20
- (3) (a) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the Minister.
- (b) The Minister and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.
- (4) The Minister may terminate the Chief Executive Officer's employment in accordance with applicable labour law. 25
- (5) The Chief Executive Officer is entitled to the pension and retirement benefits calculated on the same basis as those of a head of a department in the public service.
- (6) Section 8 applies to the Chief Executive Officer, except that he or she must disclose his or her interests or any conflict of interest to the Minister. 30

**Functions of Chief Executive Officer**

6. (1) The Chief Executive Officer is responsible for—
- (a) the management of the Agency, subject to the direction of the Minister;
  - (b) the compilation of a business and financial plan and reports in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for approval by the Minister; 35
  - (c) the appointment of members of staff contemplated in section 7(1); and
  - (d) control of, and maintenance of discipline over, members of staff of the Agency.
- (2) The Chief Executive Officer is accountable to the Minister and must report to him or her on the activities of the Agency. 40
- (3) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the Minister must, in writing, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions.
- (4) (a) The Chief Executive Officer may, in writing and on such conditions as he or she may determine, delegate any power or duty of the Chief Executive Officer to a senior member of the Agency, unless the Minister prohibits a specific delegation. 45
- (b) The power of the Chief Executive Officer to delegate includes the power to subdelegate.
- (5) A delegation made under subsection (4) does not— 50



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- (a) die effektiewe, doeltreffende en ekonomiese gebruik van fondse toegewys vir betaling aan begunstigdes van maatskaplike sekerheid verseker;
  - (b) die bevordering en beskerming van die menswaardigheid van aansoekers om en begunstigdes van maatskaplike sekerheid verseker;
  - (c) die beskerming verseker van vertroulike inligting wat deur die Agentskap gehou word anders as dié wat in artikel 16 beoog word; 5
  - (d) eerlike, onpartydige, billike en regverdige diensverskaffing verseker;
  - (e) meganismes verseker om gemeenskapsbetrokkenheid en oorlegpleging te reguleer; en
  - (f) strafboetes vir die nie-nakoming van die bepalings van die ooreenkoms 10 verseker.
- (4) Die Agentskap kan ingevolge enige tersaaklike reg of enige ooreenkoms tussen die Agentskap en enige ander toepaslike owerheid aanspreeklik vir die voorsiening van ander vorme van maatskaplike sekerheid as maatskaplike bystand, enige aansoek om sodanige vorme van maatskaplike sekerheid administreer, evalueer en verifieer en 15 betaling ten opsigte daarvan bewerkstellig.

**HOOFTUK 3****HOOF- UITVOERENDE BEAMPTTE EN ANDER PERSONEEL VAN  
AGENTSAP****Hoof- Uitvoerende Beampte** 20

5. (1) Die Minister moet 'n geskikte en gepaste en paslik gekwalifiseerde Suid-Afrikaanse burger as Hoof- Uitvoerende Beampte van die Agentskap aanstel.
- (2) Die Hoof- Uitvoerende Beampte word aangestel vir 'n tydperk van vyf jaar en kan vir 'n verdere tydperk van vyf jaar heraangestel word.
- (3) (a) Die aanstelling van die Hoof- Uitvoerende Beampte is onderhewig aan die sluiting van 'n geskrewe prestasie-ooreenkoms wat tussen daardie persoon en die Minister aangegaan word. 25
- (b) Die Minister en die Hoof- Uitvoerende Beampte kan die prestasie-ooreenkoms skriftelik en by ooreenkoms wysig.
- (4) Die Minister kan die Hoof- Uitvoerende Beampte se diens ooreenkomstig 30 toepaslike arbeidsreg beëindig.
- (5) Die Hoof- Uitvoerende Beampte is geregtig op die pensioen- en aftredevoordele op dieselfde grondslag bereken as dié van 'n hoof van 'n departement in die Staatsdiens.
- (6) Artikel 8 is van toepassing op die Hoof- Uitvoerende Beampte behalwe dat hy of sy sy of haar belange of enige botsing van belange aan die Minister moet openbaar. 35

**Werksaamhede van Hoof- Uitvoerende Beampte**

6. (1) Die Hoof- Uitvoerende Beampte is verantwoordelik vir—
- (a) die bestuur van die Agentskap, onderhewig aan die leiding van die Minister;
  - (b) die saamstel van 'n besigheids- en finansiële plan en verslae ingevolge die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), vir goedkeuring deur die Minister;
  - (c) die aanstelling van personeel in artikel 7(1) beoog; en
  - (d) beheer van en handhawing van dissipline oor die Agentskap se personeellede.
- (2) Die Hoof- Uitvoerende Beampte is aanspreeklik teenoor die Minister en moet aan hom of haar oor die werksaamhede van die Agentskap verslag doen. 45
- (3) Indien dit om enige rede vir die Hoof- Uitvoerende Beampte onmoontlik is om enige van sy of haar werksaamhede te verrig, moet die Minister skriftelik 'n ander persoon as Waarnemende Hoof- Uitvoerende Beampte aanstel totdat dit vir die Hoof- Uitvoerende Beampte moontlik is om daardie werksaamhede te hervat.
- (4) (a) Die Hoof- Uitvoerende Beampte kan skriftelik en op die voorwaardes wat hy of sy vasstel, enige bevoegdheid of plig van die Hoof- Uitvoerende Beampte aan 'n senior lid van die Agentskap delegeer, tensy die Minister 'n spesifieke delegasie verbied. 50
- (b) Die Hoof- Uitvoerende Beampte se bevoegdheid om te delegeer sluit die bevoegdheid in om verder te delegeer.
- (5) 'n Delegasie kragtens subartikel (4) gemaak— 55

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- (a) divest the Chief Executive Officer of the responsibility or accountability concerning the performance of the function in question;
- (b) prohibit the performance of the function in question by the Chief Executive Officer.

(6) A delegation made under subsection (4) may be repealed, withdrawn or amended, but the repeal, withdrawal or amendment does not affect any right which may have accrued to a person as a result of the function performed before the delegation was repealed, withdrawn or amended. 5

(7) The Minister may override any decision taken by the Chief Executive Officer.

### Staff of Agency 10

7. (1) The Chief Executive Officer must, subject to subsection (2), employ members of staff of the Agency.

(2) The Minister for the Public Service and Administration in consultation with the Minister and the Minister of Finance—

- (a) must determine a human resources policy for the Agency; 15
- (b) must determine the remuneration and conditions of service of the Chief Executive Officer and the other members of staff of the Agency;
- (c) may determine non-pensionable allowances for the Chief Executive Officer and the other members of staff of the Agency.

(3) The Minister must after consultation with the Chief Executive Officer determine a code of conduct, applicable to all members of staff of the Agency and justiciable for purposes of disciplinary proceedings, to ensure— 20

- (a) compliance with applicable law;
- (b) the effective, efficient and economical use of the Agency's resources;
- (c) the effective, efficient and economical use of funds designated for payment to beneficiaries of social security; 25
- (d) the promotion and protection of the human dignity of applicants for and beneficiaries of social security;
- (e) the promotion and maintenance of a high standard of professional ethics;
- (f) the prevention of conflicts of interest other than those contemplated in section 8; 30
- (g) the protection of confidential information held by the Agency other than as is contemplated in section 16; and
- (h) honest, impartial, fair and equitable service. 35

(4) A person employed by the Agency becomes a member of the Government Employees' Pension Fund mentioned in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), and is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service.

(5) The Agency may utilise persons seconded or, subject to section 22, transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994). 40

### Conflict of interest

8. (1) A member of staff of the Agency must, on appointment, submit to the Agency a written statement in which it is declared whether or not that member has any direct or indirect interest, financially or otherwise, which— 45

- (a) may constitute a conflict of interest in respect of his or her functions as a member of staff of the Agency; or
- (b) could reasonably be expected to compromise the Agency in the performance of its functions. 50

(2) If any member of staff of the Agency acquires an interest contemplated in subsection (1), he or she must immediately in writing declare that fact to the Chief Executive Officer of the Agency or his or her representative.

(3) A member of staff of the Agency may not be present at, or take part in, the discussion of or the taking of a decision on any matter before the Agency in which that member has an interest contemplated in subsection (1). 55

- (a) onthef nie die Hoof- Uitvoerende Beampte van die verantwoordelikheid of aanspreeklikheid aangaande die verrigting van die tersaaklike werksaamheid nie;
- (b) verbied nie die Hoof- Uitvoerende Beampte om die tersaaklike werksaamheid self te verrig nie. 5
- (6) 'n Delegasie kragtens subartikel (4) gemaak, kan herroep, teruggetrek of gewysig word, maar die herroeping, terugtrekking of wysiging beïnvloed nie enige reg nie wat 'n persoon opgeloo het as gevolg van verrigting van die werksaamheid voordat die delegasie herroep, teruggetrek of gewysig is.
- (7) Die Minister kan enige besluit van die Hoof- Uitvoerende Beampte ophef. 10

### Personeel van Agentskap

7. (1) Die Hoof- Uitvoerende Beampte moet behoudens subartikel (2) personeel vir die Agentskap in diens neem.
- (2) Die Minister vir die Staatsdiens en Administrasie in oorleg met die Minister en die Minister van Finansies— 15
- (a) moet 'n mensehulpbronbeleid vir die Agentskap vasstel;
- (b) moet die besoldiging en diensvoorwaardes van die Hoof- Uitvoerende Beampte en ander personeellede van die Agentskap bepaal;
- (c) kan nie-pensioendraende toelaes vir die Hoof- Uitvoerende Beampte en ander personeellede van die Agentskap bepaal. 20
- (3) Die Minister moet na oorleg met die Hoof- Uitvoerende Beampte 'n gedragskode bepaal wat op al die personeellede van die Agentskap van toepassing is en wat beregbaar is vir doeleindes van dissiplinêre verrigtinge, ten einde—
- (a) nakoming van die tersaaklike reg te verseker;
- (b) die effektiewe, doeltreffende en ekonomiese gebruik van die Agentskap se hulpbronne te verseker; 25
- (c) die effektiewe, doeltreffende en ekonomiese gebruik van fondse toegewys vir betaling aan begunstigdes van maatskaplike sekerheid te verseker;
- (d) die bevordering en beskerming van die menswaardigheid van aansoekers om en begunstigdes van maatskaplike sekerheid te verseker; 30
- (e) die bevordering en instandhouding van 'n hoë standaard van professionele etiek te verseker;
- (f) die voorkoming van ander botsende belange as dié in artikel 8 beoog, te verseker;
- (g) die beskerming van vertroulike inligting wat deur die Agentskap gehou word, anders as dié wat in artikel 16 beoog word, te verseker; en 35
- (h) eerlike, onpartydige, billike en regverdige diens te verseker.
- (4) 'n Persoon wat in diens van die Agentskap geneem word, word 'n lid van die Regeringswerknemerspensioenfonds beoog in artikel 2 van die "Government Employees Pension Law", 1996 (Proklamasie No. 21 van 1996), en is geregtig op die pensioen- en aftreevoordele asof daardie persoon in diens is in 'n pos wat in 'n afdeling van die Staatsdiens ingedeel is. 40
- (5) Die Agentskap kan gebruik maak van persone wat gesekondeer is, of behoudens artikel 22, van die Staatsdiens ooreenkomstig die bepalinge van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), oorgeplaas is. 45

### Botsing van belange

8. (1) 'n Personeellid van die Agentskap moet aanstelling by die Agentskap 'n skriftelike verklaring indien waarin verklaar word of daardie lid enige regstreekse of onregstreekse belang, hetsy finansiële of andersins, het wat—
- (a) 'n botsing van belange ten opsigte van sy of haar werksaamhede as 'n lid van die Agentskap se personeel kan uitmaak; 50
- (b) redelikerwys verwag kan word om die Agentskap in die verrigting van sy werksaamhede te kompromitteer.
- (2) Indien 'n personeellid van die Agentskap 'n belang in subartikel (1) beoog, verkry, moet hy of sy daardie feit onmiddellik skriftelik aan die Hoof- Uitvoerende Beampte van die Agentskap of sy of haar verteenwoordiger verklaar. 55
- (3) 'n Personeellid van die Agentskap mag nie teenwoordig wees nie by of deelneem nie aan die bespreking van of die neem van 'n besluit oor enige aangeleentheid wat voor die Agentskap dien waarin daardie lid 'n belang beoog in subartikel (1) het.

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(4) A member of staff of the Agency may not use his or her position or privileges, or confidential information obtained as a member of staff of the Agency, for personal gain or to improperly benefit another person.

(5) A member of staff of the Agency who fails or refuses to comply with subsection (1), (2), (3) or (4) is subject to disciplinary measures contemplated in applicable employment and labour law, and the Public Finance Management Act, 1999 (Act No. 1 of 1999). 5

(6) The Agency must keep a register of the interests of members of staff disclosed in terms of subsection (1) and must update that register from time to time.

**CHAPTER 4** 10**FUNDS AND BUSINESS OF AGENCY****Funds of Agency**

9. (1) The funds of the Agency consist of—

- (a) money appropriated by Parliament;
- (b) grants made to the Agency by a designated institution; 15
- (c) donations or contributions received by the Agency with the approval of the Minister, subject to subsection (3);
- (d) fees for services rendered to any designated institution in terms of a service agreement.

(2) The Agency must utilise its funds to defray expenses incurred by it in the performance of its functions. 20

(3) The Agency must utilise the donations and contributions referred to in subsection (1)(c) in accordance with the conditions, if any, imposed by the donor or contributor concerned, but those conditions may not be inconsistent with the objects of the Agency as contained in this Act or any other law. 25

(4) The Chief Executive Officer must, with the concurrence of the Minister and the Minister of Finance—

- (a) open an account in the name of the Agency with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
- (b) deposit therein all money received in terms of subsection (1). 30

**Financial management**

10. (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 reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999). 35

**Reporting and audit**

11. (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. 40

(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. 45

**Immovable property**

12. (1) The Agency may, with the approval of the Minister, acquire, hold or dispose of immovable property in the course of its business.

(2) The Minister must determine the policy and procedure of the Agency with regard to the acquisition and disposal of immovable property. 50

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(4) 'n Personeellid van die Agentskap mag nie sy of haar posisie of voorregte of vertroulike inligting wat hy of sy as personeellid van die Agentskap verkry het, gebruik vir persoonlike wins of om onbehoorlik 'n ander persoon tot voordeel te strek nie.

(5) 'n Personeellid van die Agentskap wat versuim of weier om aan subartikel (1), (2), (3) of (4) te voldoen, is onderhewig aan dissiplinêre maatreëls beoog in toepaslike indiensnemings- en arbeidsreg, en die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999). 5

(6) Die Agentskap moet 'n register hou van die belange wat personeellede ingevolge subartikel (1) openbaar het en moet daardie register van tyd tot tyd bywerk.

**HOOFSTUK 4** 10**FONDSE EN BESIGHEID VAN AGENTSAP****Fondse van Agentskap**

9. (1) Die fondse van die Agentskap bestaan uit —

- (a) geld deur die Parlement bewillig;
- (b) toekennings deur 'n aangewese instelling aan die Agentskap gedoen; 15
- (c) skenkings of bydraes deur die Agentskap met die toestemming van die Minister ontvang, behoudens subartikel (3);
- (d) gelde vir dienste gelewer aan enige aangewese instelling ingevolge 'n diensoreenkoms.

(2) Die Agentskap moet sy fondse gebruik om uitgawes te bestry wat deur hom in die verrigting van sy werksaamhede aangegaan is. 20

(3) Die Agentskap moet die skenkings en bydraes bedoel in subartikel (1)(c) gebruik ooreenkomstig die voorwaardes, indien enige, wat deur die betrokke skenker of bydraer gestel is, maar daardie voorwaardes mag nie onbestaanbaar wees nie met die oogmerke van die Agentskap soos in hierdie Wet of enige ander wet vervat. 25

(4) Die Hoof- Uitvoerende Beampte moet met die instemming van die Minister en die Minister van Finansies —

- (a) 'n rekening in die naam van die Agentskap open by 'n instelling wat ingevolge die Bankwet, 1990 (Wet No. 94 van 1990), as 'n bank geregistreer is; en
- (b) daarin alle gelde deponeer wat ingevolge subartikel (1) ontvang is. 30

**Finansiële bestuur**

10. (1) Die Hoof- Uitvoerende Beampte moet toesien dat volledige en behoorlike rekeningboeke en al die nodige rekords ten opsigte daarvan gehou word.

(2) Die Hoof- Uitvoerende Beampte moet verseker dat die Agentskap se jaarlikse begrotings, korporatiewe planne, jaarverslae en geouditeerde finansiële state ooreenkomstig die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), opgestel en voorgelê word. 35

**Verslagdoening en oudit**

11. (1) (a) Die Agentskap moet in elke boekjaar, op of voor 'n datum deur die Minister vasgestel, 'n jaarverslag oor sy werksaamhede en 'n staat van sy inkomste en geraamde uitgawes vir die volgende boekjaar aan die Minister vir goedkeuring voorlê. 40

(b) Ondanks paragraaf (a) moet die Agentskap buiten sy verslae die ander verslae wat die Minister nodig het, voorlê.

(2) Die boeke, rekords van rekeninge en finansiële state van die Agentskap moet jaarliks deur die Ouditeur-generaal geouditeer word. 45

**Onroerende eiendom**

12. (1) Die Agentskap kan met die goedkeuring van die Minister onroerende eiendom in die loop van sy besigheid verkry, hou en daarvoor beskik.

(2) Die Minister moet die Agentskap se beleid en prosedure ten opsigte van die verkryging van en beskikking oor onroerende eiendom bepaal. 50

**General operations**

**13.** (1) (a) Subject to such conditions 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.

(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. 5

(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. 10

**Legal proceedings against Agency**

**14.** (a) Any legal proceedings against the Agency must be instituted in accordance with the Institution of Legal Proceedings against Certain Organs of State Act, 2002 (Act No. 40 of 2002).

(b) The Agency is, for purposes of paragraph (a), deemed to be an organ of state contemplated in paragraph (c) of the definition thereof in section 1 of the above Act. 15

**Limitation of liability**

**15.** 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.

**CHAPTER 5** 20**GENERAL PROVISIONS****Security of confidential information held by Agency**

**16.** (1) Subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information submitted in connection with any application or instruction for or in respect of a grant, payment, benefit or assistance made available by the Agency, unless he or she is ordered to do so by a court of law or unless the person who made such application consents thereto in writing. 25

(2) (a) No person may disclose any information kept in the register contemplated in section 8(6) unless such disclosure is— 30

- (i) in terms of any law that compels or authorises such disclosure;
- (ii) materially necessary for the proper functioning of the Agency; or
- (iii) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Agency;

(b) Where a disclosure contemplated in paragraph (a) is to be made, the person concerned must be informed thereof timeously. 35

(3) Any person who contravenes subsection (1) or (2)(a) is guilty of an offence.

**Dissolution of Agency**

**17.** The Agency may not be dissolved except in terms of an Act of Parliament.

**Use of name of Agency** 40

**18.** (1) Unless authorised in writing by the Agency to do so, no person may in any way represent or make use of logos, designs or advertising material used or owned by the Agency.

(2) No person may falsely claim to be acting on behalf of the Agency.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence. 45

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**Algemene werksaamhede**

13. (1)(a) Behoudens die voorwaardes wat die Minister bepaal, kan die Agentskap, op versoek van die Minister of enige van die aangewese instellings, die dienste lewer waartoe dit redelikerwys in staat is om op 'n agentskapsgrondslag te lewer.

(b) Die lewering van dienste in paragraaf (a) beoog mag nie die Agentskap verhoed om sy werksaamhede ooreenkomstig hierdie Wet effektief en doeltreffend te verrig nie. 5

(2) Die Agentskap kan, op die voorwaardes wat die Minister bepaal, as adviseur van 'n aangewese instelling optree ten opsigte van aangeleenthede wat binne die bestek van die werksaamhede van die Agentskap val.

**Regsgedinge teen Agentskap**

14. (a) Enige regsgedinge teen die Agentskap moet ooreenkomstig die Wet op die Instel van Regsgedinge teen Sekere Staatsorgane, 2002 (Wet No. 40 van 2002), ingestel word.

(b) Die Agentskap word by die toepassing van paragraaf (a) geag 'n staatsorgaan beoog in paragraaf (c) van die omskrywing daarvan in artikel 1 van bogenoemde Wet te wees. 15

**Beperking van aanspreeklikheid**

15. Nóg die Minister nóg enige personeellid van die Agentskap is aanspreeklik vir enigiets wat te goeder trou in die verrigting van 'n werksaamheid ingevolge hierdie Wet gedoen is. 20

**HOOFTUK 5****ALGEMENE BEPALINGS****Veiligheid van vertroulike inligting deur Agentskap gehou**

16. (1) Behoudens die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), en die Wet op die Bevordering van Toegang tot Inligting, 2000 (Wet No. 2 van 2000), mag geen persoon enige inligting wat in verband met enige aansoek of opdrag vir of ten opsigte van 'n toelae, 'n betaling, 'n voordeel of bystand deur die Agentskap beskikbaar gestel is, openbaar nie, tensy hy of sy deur 'n geregshof daartoe gelas word of tensy die persoon wat sodanige aansoek gedoen het skriftelik daartoe instem. 25 30

(2) (a) Geen persoon mag enige inligting gehou in die register beoog in artikel 8(6) openbaar nie tensy sodanige openbaarmaking—

(i) gedoen word ingevolge enige reg wat sodanige openbaarmaking verplig of magtig; 35

(ii) wesenlik noodsaaklik is vir die behoorlike funksionering van die Agentskap; of

(iii) gedoen word vir doeleindes van monitering, evaluering, ondersoek of die oorweging van enige aktiwiteit rakende die Agentskap.

(b) Waar 'n openbaarmaking beoog in paragraaf (a) gedoen moet word, moet die betrokke persoon betyds daarvoor ingelig word. 40

(3) Enige persoon wat subartikel (1) of (2)(a) oortree, is aan 'n misdryf skuldig.

**Ontbinding van Agentskap**

17. Die Agentskap kan nie ontbind word nie behalwe ingevolge 'n Wet van die Parlement.

**Gebruik van naam van Agentskap**

18. (1) Tensy skriftelik deur die Agentskap daartoe gemagtig, mag geen persoon op enige wyse 'n voorstelling maak of gebruik maak van logo's, ontwerpe of advertensiemateriaal wat deur die Agentskap gebruik of besit word nie.

(2) Geen persoon mag valslik beweer dat hy of sy namens die Agentskap optree nie.

(3) Enige persoon wat subartikel (1) oortree, is aan 'n misdryf skuldig. 50

**General offences**

19. (1) A member of staff, adviser, agent or other person employed by or acting on behalf of the Agency is guilty of an offence if he or she directly or indirectly accepts any unauthorised fee or reward from any person in respect of or in connection with any service rendered or anything done or offered by the Agency. 5

(2) Any person is guilty of an offence if he or she, in respect of or in connection with any service rendered or anything done or offered by the Agency, bribes or attempts to bribe, or corruptly influences or attempts to corruptly influence, any member of staff or any adviser, agent or other person employed by or acting on behalf of the Agency.

(3) Any person who falsely claims that he or she is authorised to charge or collect fees on behalf of or by direction of the Agency, is guilty of an offence. 10

**Penalties**

20. Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding 15 years.

**Regulations**

21. The Minister must make regulations regarding any matter that must be prescribed in terms of this Act and may make regulations regarding—

- (a) any matter that may be prescribed in terms of this Act;
- (b) the establishment and operations of the compliance and fraud mechanism contemplated in section 4(1)(c); 20
- (c) any matter which it is necessary to prescribe for the effective carrying out or furtherance of the provisions or objects of this Act.

**CHAPTER 6****TRANSITIONAL PROVISIONS****Transfer of staff**

22. (1) The transfer of staff of designated institutions to the Agency must be effected in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995), and any applicable collective bargaining agreement with organised labour.

(2) (a) A person transferred to the Agency as contemplated in subsection (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the transfer date to the extent that they remain applicable. 30

(b) Any proceedings against such person which were pending immediately before the transfer date must be disposed of as if that person had not been transferred.

(3) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when employment is taken up at the Agency by a person contemplated in subsection (1). 35

**Assets, liabilities and funds**

23. (1) Whenever the Minister acts under section 24, the Minister must, in conjunction with the executive authority of the designated institution concerned and with the approval of the Minister of Finance, enter into an agreement to ensure that the assets, rights, obligations and liabilities, including the unexpended balance of appropriations, authorisations, allocations and other funds employed, held or used in connection with the management, administration and payment of social security, are transferred to the Agency. 40

(2) The Registrar of Deeds must make the necessary entries or endorsements for the transfer of any property in terms of subsection (1), and no office fee or other charge is payable in respect of that entry or endorsement. 45



**Algemene misdrywe**

19. (1) 'n Personeellid van die Agentskap of 'n adviseur, agent of ander persoon in diens van die Agentskap of wat namens die Agentskap optree, is skuldig aan 'n misdryf indien hy of sy regstreeks of onregstreeks enige ongemagtigde gelde of vergoeding van enige persoon aanvaar ten opsigte van of in verband met enige diens gelewer of enigiets deur die Agentskap gedoen of aangebied. 5

(2) Enige persoon is skuldig aan 'n misdryf indien hy of sy, ten opsigte van of in verband met enige diens gelewer of enigiets gedoen of aangebied deur die Agentskap, enige personeellid van die Agentskap of 'n adviseur, agent of ander persoon in diens van die Agentskap of wat namens die Agentskap optree, omkoop of poog om dit te doen, of op korruptiewe wyse daardie persoon beïnvloed of poog om dit te doen. 10

(3) Enige persoon wat valslik voorgee dat hy of sy gemagtig is om gelde namens of in opdrag van die Agentskap te verhaal of in te samel, is aan 'n misdryf skuldig.

**Strawwe**

20. Enige persoon wat aan 'n misdryf ingevolge hierdie Wet skuldig bevind word, is strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 15 jaar. 15

**Regulasies**

21. Die Minister moet regulasies uitvaardig ten opsigte van enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf moet word en kan regulasies uitvaardig ten opsigte van— 20

- (a) enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf kan word;
- (b) die instelling en werking van die nakomings- en bedroegmeganisme beoog in artikel 4(1)(c);
- (c) enige aangeleentheid wat nodig is om voor te skryf vir die effektiewe uitvoering of bevordering van die bepalings of oogmerke van hierdie Wet. 25

**HOOFTUK 6****OORGANGSBEPALINGS****Oorplasing van personeel**

22. (1) Die oorplasing van personeel van aangewese instellings na die Agentskap moet plaasvind ooreenkomstig die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), en enige toepaslike kollektiewe onderhandelingsooreenkoms met die georganiseerde arbeid. 30

(2) (a) 'n Persoon wat soos beoog in subartikel (1) na die Agentskap oorgeplaas word, bly onderhewig aan enige besluite, verrigtinge, beslissings en aanwysings wat onmiddellik voor die oorplasingsdatum op daardie persoon van toepassing is in die mate wat hulle toepaslik bly. 35

(b) Enige verrigtinge teen sodanige persoon wat hangende was onmiddellik voor die oorplasingsdatum moet afgehandel word asof daardie persoon nie oorgeplaas is nie.

(3) By die toepassing van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), word geen verandering van werkgewer geag plaas te gevind het nie wanneer diens deur 'n persoon in subartikel (1) beoog by die Agentskap aanvaar word. 40

**Bates, laste en fondse**

23. (1) Wanneer die Minister kragtens artikel 24 optree, moet die Minister, in samewerking met die uitvoerende gesag van die betrokke aangewese instelling en met die goedkeuring van die Minister van Finansies, 'n ooreenkoms aangaan om te verseker dat die bates, regte, verpligtinge en laste, met inbegrip van die onbestede balans van bewilligings, magtigings, toewysings en ander fondse aangewend, gehou of gebruik in verband met die bestuur, administrasie en betaling van maatskaplike sekerheid, aan die Agentskap oorgedra word. 45

(2) Die Registrateur van Aktes moet die nodige inskrywings of endossemente vir die oordrag van enige eiendom ingevolge subartikel (1) aanbring, en geen kantoorgelde of ander heffing is ten opsigte van daardie inskrywing of endossement betaalbaar nie. 50

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(3) Any litigation resulting from any cause of action in relation to the assets, rights, obligations or liabilities transferred to the Agency in terms of subsection (1) which arose—

- (a) before the transfer date, must be conducted by or against the designated institution concerned; and
- (b) on or after the transfer date must be conducted by or against the Agency.

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**Transfer of social assistance administration to Agency**

**24.** The Minister must, after consultation with the Minister of Finance and the Minister for the Public Service and Administration, and in the spirit of co-operative government envisaged in Chapter 3 of the Constitution, enter into memoranda of understanding with the respective Members of Executive Councils of provinces responsible for the administration of social assistance in terms of the Social Assistance Act, 1992, insofar as it has been assigned to the provincial sphere of government, in order to ensure that—

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- (a) the payment of social assistance contemplated in the Social Assistance Act, 2004, is in future exclusively performed by the Agency; 15
- (b) the right to social assistance to recipients thereof in terms of the Social Assistance Act, 1992, is not in any way interrupted, discontinued or decreased;
- (c) the transfer of the social assistance function to the Agency contemplated in paragraph (a) does not in any way cause discomfort, stress or an interruption of payments to recipients thereof; 20
- (d) the transfer of the function does not negatively impact on the effective, efficient and economical use of resources at both national and provincial level;
- (e) the matters contemplated in sections 22 and 23 are adequately provided for at administrative level; 25
- (f) adequate and appropriate capacity and mechanisms exist to effect an effortless transfer of the social assistance administration and ancillary matters to the Agency;
- (g) adequate provision has been made in respect of budgetary matters affecting the transfer of the social assistance administration to the Agency. 30

**Short title and commencement**

**25.** This Act is called the South African Social Security Agency Act, 2004, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

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(3) Enige gedingvoering gebaseer op enige skuldoorsaak ten opsigte van die bates, regte, verpligtinge en laste aan die Agentskap ingevolge subartikel (1) oorgedra wat ontstaan het —

- (a) voor die oordragdatum, moet gevoer word deur of teen die betrokke aangewese instelling; en
- (b) op of na die oordragdatum, moet gevoer word deur of teen die Agentskap.

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#### Oordrag van administrasie van maatskaplike bystand aan Agentskap

24. Die Minister moet, na oorleg met die Minister van Finansies en die Minister vir die Staatsdiens en Administrasie en in die gees van samewerkende regering beoog in Hoofstuk 3 van die Grondwet, verstandhoudingsooreenkomste aangaan met die onderskeie lede van uitvoerende rade van provinsies verantwoordelik vir die administrasie van maatskaplike bystand ingevolge die Wet op Maatskaplike Bystand, 1992, in soverre genoemde Wet aan die provinsiale regeringsfeer opgedra is, ten einde te verseker dat—

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- (a) die betaling van maatskaplike bystand beoog in die Wet op Maatskaplike Bystand, 2004, in die toekoms uitsluitlik deur die Agentskap uitgevoer word;
- (b) die reg op maatskaplike bystand van ontvangers daarvan ingevolge die Wet op Maatskaplike Bystand, 1992, nie op enige wyse onderbreek, beëindig of verminder word nie;
- (c) die oordrag van die maatskaplike bystandswerksaamheid aan die Agentskap in paragraaf (a) beoog nie op enige wyse ongerief, spanning of 'n onderbreking van betalings aan ontvangers daarvan veroorsaak nie;
- (d) die oordrag van die werksaamheid nie 'n negatiewe impak op die effektiewe, doeltreffende en ekonomiese gebruik van hulpbronne op beide nasionale en provinsiale vlak het nie;
- (e) daar voldoende voorsiening op administratiewe vlak vir die aangeleenthede beoog in artikels 22 en 23 is;
- (f) voldoende en geskikte kapasiteit en meganismes bestaan om 'n maklike oordrag van die administrasie van maatskaplike bystand en verwante aangeleenthede na die Agentskap teweeg te bring;
- (g) voldoende voorsiening gemaak is vir begrotingsaangeleenthede wat die oordrag van die administrasie van maatskaplike bystand aan die Agentskap raak.

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#### Kort titel en inwerkingtreding

25. Hierdie Wet heet die Wet op die Suid-Afrikaanse Agentskap vir Maatskaplike Sekerheid, 2004, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

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