

CHAPTER 25

GRANTS AND SOCIAL SECURITY FOR CHILDREN

25.1 Introduction

Even before the release of Issue Paper 13, it was clear that a range of intersecting areas of law would have to be addressed in this investigation. There has been an overall perception that spending on social welfare services (as opposed to direct transfer payments in the form of grants and pensions) has diminished in the period since 1996, and financial strains experienced by the non-governmental welfare sector have been widely reported. Thus, a range of intersecting economic issues were explicitly identified as part of the challenge of child law reform.¹

Money issues and the scarcity of resources for both prevention of abuse and neglect and for the protection of children were raised by numerous workshop participants. It also emerged at consultative workshops and in responses from service providers that social security issues pertaining to children should form a central aspect of the proposed new children's statute. This is because the alternative care system for children who are removed, abandoned, or orphaned necessarily involves a review of the existing grants payable to the care-givers of such children, such as the foster grant, as well as subsidies currently payable to places of care. In other words, the alternative care system is inextricably intertwined with available subsidies and grants. The Commission has therefore been aware from the outset of the financial implications of the investigation, and of the important policy options that often fall to be decided based on affordability rather than principle or practicality.

¹

J Sloth-Nielsen and B van Heerden 'The political economy of child law reform: Pie in the sky?' in CJ Davel (ed) **Children's rights in a transitional society** Pretoria: Protea Book House 1999, p. 107.

Over the period of time that this investigation has been underway, a number of other issues relevant to the financing of welfare services have arisen. These are firstly, the release of the Department of Welfare's Financing Policy in 1998; second, the phasing out of the State Maintenance Grant (SMG)² along with the introduction of the Child Support Grant (CSG) in 1998; third, the appointment of a Committee of Inquiry³ into the Social Security system by the Minister for Social Development in 2000, hereafter named the Taylor Committee. In January 2000, the Minister for Social Development identified ten priorities to be addressed over a five year period by the Department of Social Development. Priority two was stated as follows: 'developing and implementing an integrated poverty eradication strategy that provides direct benefits for those in need, within a sustainable developmental approach'.⁴ Priority three ('developing a comprehensive social security system that links contributory and non-contributory schemes and prioritises the most vulnerable households')⁵ gave rise to the appointment of the abovementioned Committee. The Project Committee on the Review of the Child Care Act has made a formal submission to the Taylor Committee,⁶ and Project Committee members have attended a range of workshops, seminars and conferences linked to the process of reviewing

² Which was phased out over a three year period which ended on 1 April 2001.

³ At the time of writing, the Taylor Committee had submitted a report to Cabinet (on 14 November 2001), but the contents were not available for public scrutiny.

⁴ 'Department of Social Development inputs to Yearbook 2001/2002' at www.welfare.gov.za [accessed 14 November 2001].

⁵ Ibid.

⁶ On 17 October 2000.

aspects of the social security system.⁷ The Commission has also benefitted from having received copies of submissions made to the Taylor Committee by a range of other organizations, lobby groups and consortia.⁸

⁷ For example, the National Consultative workshop on Children's Entitlement to Social Security, held in Cape Town during March 2001 by the Child Health Policy Institute, Soul City, the Children's Rights Centre and the Committee of Inquiry into a comprehensive social security system; the National conference entitled 'Poverty eradication should start with children' hosted by the Institute for Child and Family Development on 31 October 2001 at the University of the Western Cape.

⁸ For example, submissions by the Black Sash and by the Alliance for Children's Entitlement to Social Security (ACCESS).

Prior to the appointment of the Taylor Committee, the Commission commissioned a research paper⁹ on grants from a well-known expert on social security, and this paper has formed the backdrop to some of the proposals contained in this Chapter. The research paper argued that maintenance and foster care grants play a key role in promoting community care and family preservation,¹⁰ but that there are large categories of needy people for whom the present system does not provide coverage.¹¹ For example, based on statistics from 1998, old age pensioners accounted for 6 out of every 10 beneficiaries of state social security, whilst recipients of disability grants accounted for another quarter of the total number of beneficiaries. However, for children under the age of 18, who form approximately half of the population of 40 million people,¹² the main grant available to combat poverty, the child support grant (CSG), will be available to only 3 million children over the next budget cycle. Significant barriers to accessing the CSG have been noted by NGO's and advocacy groups, including over-stringent criteria that have been set in the regulations to the Welfare Matters Amendment Laws, difficulties in accessing welfare offices as well as in finding offices of the Department of Home Affairs in order to apply for the necessary identification documents, not to mention some welfare officials who are allegedly unhelpful in assisting care-givers to successfully complete the required applications.

The current situation as regards children living in extreme poverty has been widely reported.¹³ According to IDASA, '[I]f we use lack of income to measure child poverty, and define a child as poor if he or she lives in one of the bottom 40% of households in South Africa, 60% or 3.8 million of our children, aged 0 - 6 years, and 10.2 million aged 0 - 18 are poor. Research based on the absolute definition of child poverty that counts a child as poor if he or she has income per month below the level estimated necessary to ensure a healthy, secure existence, finds that

⁹ D Budlender 'Social Security and Grants', research paper commissioned by the Commission, 1999.

¹⁰ 'Social security and grants' p. 28; see too the Lund Committee report (Department of Welfare 1996) p. 20.

¹¹ 'Social security and grants' p. 6.

¹² There are 17 million children aged under 18 in South Africa, 44% of the population and just over half of these children live in three provinces, Kwa Zulu-Natal, Eastern Cape and the Northern Province. 13% of the child population is aged under 6 years, and there are 1 million children under the age of 3 years. Two thirds of all children live in rural areas, and 49% of all children do not have birth certificates (Shirin Motala 'Children in South Africa: A contextual analysis' unpublished paper presented at the National Workshop on Social Security for Children in South Africa, 7 and 8 March 2001).

¹³ See, for example, IDASA Budget Brief no 61 (2001) 'Budget 2001 does little for child poverty'; Opening address by the Minister of Social Development at the National Conference in Children in Need of Special Protection, University of the Western Cape, Bellville October 2001 (<http://www.welfare.gov.za/> accessed 12 November 2001).

72% of children or 4.6 million aged 0-6, and 12,3 million aged 0-18 are poor'.¹⁴ 55% of the South African population earn less than \$2 per day, and about 12 million people are very poor, existing on under \$1 per day. It has been shown that the impact of HIV/Aids has exacerbated the above situation, and reports of child headed households with no access to food whatsoever have surfaced at different forums.¹⁵

It can be concluded that poverty and the effects of the HIV/Aids pandemic together constitute the most serious threats to children's well being in South Africa at present.

25.2 Current legal framework

¹⁴ IDASA Budget Brief no 61 (2001) p. 2.

¹⁵ See for example **Mail and Guardian** October 26- November 1 2001 for a report on the National Children's Forum on HIV/Aids held in Cape Town on 27 and 28 August 2001.

The three year process of phasing out of the State Maintenance Grant (which was payable in a amount much higher than the grant which replaced it) has now been concluded, with the result that, the only grants for children that currently exist are: the child support grant, introduced by the Welfare Laws Amendment Act 106 of 1997, which commenced on 1 April 1998; the foster child grant (FCG) which has been applied since 31 March 1998 in accordance with the Social Assistance Act 59 of 1992; and the so-called care dependency grant, also applied since 31 March 1998 in accordance with the Social Assistance Act.¹⁶

Presently, the amount payable for the CSG is R110, and the 'take-up rate' has increased from 30 000 children who benefitted in 1998, to 1.2 million children by April 2001.¹⁷ The Department of Social Development expects the take-up rate to exceed the projected target of reaching 3 million children aged below 7 years.¹⁸

Because the foster care grant is payable in an amount that is approximately four times larger than the CSG, there have been reports that there have been increased applications for payment of this grant.¹⁹ It must also be born in mind that there are, independent of the direct financial

¹⁶ See, in general, Van Heerden et al **Boberg's Law of Persons and the Family** 260 -7. The Care Dependency Grant is payable in the amount of R520 per month to a caregiver who remains out of the employment market because of the necessity of caring for a profoundly disabled child on a more or less permanent basis. It is, in other words, an income substitute for the caregiver of the child, to replace what would otherwise have been earned, rather than a child related grant targeting the caregivers of special needs children whose costs in respect of such children are higher than is ordinarily the case. See further 'Social security and grants' supra 10-15.

¹⁷ 'Department of Social Development inputs to yearbook 2001/2002' at www.welfare.gov.za [accessed 14 November 2001].

¹⁸ Ibid.

¹⁹ G O Hollamby ' Submission to the Committee of Inquiry into a Comprehensive Social Security System' delivered on 17 October 2000 p. 6.

transfer involved in this grant, also associated costs linked to the administration of the foster care grant, for example the costs associated with children's court enquiries, statutory supervision services and the required reports that have to be completed every two years to ensure continuation of the grant. The amount payable under this grant is in the region of R370 per month.

At March 2001, a total of 52 642 FCG's were being paid,²⁰ up from approximately 42 000 grants paid in 1995/6.²¹ The most recent statistics on beneficiaries of this grant suggest that two provinces together account for 42% of all FCG's. These are the Western Cape and the Eastern Cape. In the North West and Northern Province respectively, fewer than 2000 FCG's were paid in each province as at 31 March 2001.²² It has been suggested that some magistrates are reluctant to award FCG's where children are placed with relatives, such as grandmothers.²³ There is, however, no legal impediment to the payment of FCG's to relatives, as the present section 15(1)(b) permits the placement of a child 'into the custody of a suitable foster parent designated by the court under the supervision of a social worker' which indicates that there is no legislative distinction between placements with relatives as opposed to non-relatives.

Further, in contrast to the CSG and other grants available in South Africa, it must be noted that the FCG is not means tested.

The third grant payable in regard to the care of children is the Care Dependency Grant (CDG), which, like to FCG, is payable until the child reaches the age of 18 years. The amount paid under this grant is in the region of R520 per month. After attaining the age of 18 years, a child beneficiary may apply for a disability grant. Problems in regard to the payment of this grants have been identified by non-governmental organizations and service providers, including the lack of clear criteria for the awarding of this grant, and these include the lack of a coherent definition of 'care dependency' with a consequent lack of uniformity in assessments of care dependent children. The criteria for assessment are also based on medical factors, which goes

²⁰ This does not mean that 50 000 children benefited, as a foster parent may receive a grant for more than one child. Hollamby estimated in 2000 that approximately 100 000 children benefited from the FCG.

²¹ Department of Welfare (1996) **Report of the Lund Committee of Inquiry on Child and Family Support**.

²² 'Department of Social Development inputs to Yearbook 2001/2002' at www.welfare.gov.za [accessed 14 November 2001].

²³ South Africa National Council for Child and Family Welfare 'Supplementary report to the Committee of Inquiry into a comprehensive Social Security System' 29 November 2000.

against the social model of disability which government would prefer to promote.²⁴

A significant problem facing South African children at present concerns the availability of financial support for children orphaned by HIV/AIDS, and especially those living in child headed households. Unless they are aged under 7, and living with a primary care-giver who can apply for a CSG, or placed in formal foster care in order for the FCG to be payable, there is no monetary support available. Further, children who themselves are HIV/Aids positive are not regarded as able to qualify for the CDG.

25.3 **The constitutional and policy considerations underpinning the allocation of grants to children**

²⁴ Children with HIV/Aids do not presently qualify for the CDG. The proposals discussed later in this Chapter concerning the payment of a 'top-up' grant for children with special needs must be viewed in relation to amendments /alterations to the CDG, rather than as constituting an altogether new grant. The proposals discussed below are in essence simply a change of name, not a new financial allocation.

The Constitution provides, in section 27(1)(c), for the rights of everyone to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. Section 27(2) spells out the nature of the State's obligation in regard to social security, namely that the State is obliged to take reasonable legislative and other measures, within its available resources, to achieve progressive realization of this right. Section 28(1)(c) of the Constitution refers directly to the child's rights to basic social services, and it has been alleged that 'there is a close link between social security and social services rights'.²⁵ The CRC provides an indication as to what social services should be provided by ratifying States Parties to children in articles 26 and 27. These include protecting children from physical or mental violence, injury or abuse, neglect or negligent treatment, and protecting children against economic exploitation.

In its concluding observations on the First Country Report submitted by the South African Government to the Committee on the Rights of the Child, Government was urged to extend the reach of the CSG to provide greater support to children, and further to extend its availability to children aged above 7 years.

²⁵ S Liebenberg and K Pillay 'Socio-economic rights in South Africa' Community Law Centre, University of the Western Cape 2000 at 324. See too S Liebenberg 'The Protection of Economic and Social Rights in Domestic Legal Systems' in A Eide et al **Economic Social and Cultural Rights** Kluwer Publishers, Netherlands, 2001.

The starting point for any analysis of the scope and nature of the State's obligations with regards to socio-economic rights is the constitutional court decision in **Government of the Republic of South Africa v Grootboom and others**.²⁶ Although the judgement concerned the right to housing rather than the right to have access to social security, the judgment nevertheless underlined the constitutional obligation which rests upon the State to protect children from maltreatment, neglect and abuse (section 28(1)(d)). This obligation is not subject to progressive realization over time, nor to the constraints of available resources that qualify other (socio-economic) rights. The Constitutional Court's judgment in **Grootboom** thus supports the notion of state responsibility for preventive action where child neglect stems solely from parental poverty, and, further, it can be inferred from the reasoning of the Cape High Court in the first **Grootboom** judgment²⁷ that family preservation is a policy goal that is worthy of state support. However, the Commission is of the view that there are currently inadequate prevention and early intervention strategies in our children's legislation, as the entire Child Care Act 74 of 1983 is weighted towards removal procedures, i.e. taking children away from parents into one or another form of alternative care, which they are at risk of neglect due to parental or familial poverty.

Further, although Yacoob J spelt out that the primary responsibility for supporting children lies on parents and families,²⁸ the State does bear the primary responsibility for providing for children who are abandoned or who otherwise lack a family environment. This strongly suggests that urgent and immediate steps need to be taken to provide state support and social services to children orphaned by HIV/Aids, of whom there are an ever-increasing number.²⁹

It is axiomatic that the CSG is limited in reach to children aged under 7 years, and that the amount payable is insufficient to address children's basic needs.³⁰ There is no available financial relief for parents or children living in dire poverty where the children are aged over 7

²⁶ 2000 (11) BCLR 1169 (CC).

²⁷ **Grootboom v Oostenberg Municipality** 2000 (3) BCLR 277 (C).

²⁸ In terms of the Constitutional Court's reading of the interplay between section 28(1)(b) and section 28(1)(c).

²⁹ Although exact statistics are unavailable, one recent study estimates that there are 420 000 children in South Africa who are Aids orphans, and predicts that there may be as many as 800 000 children orphaned by Aids by the year 2005 (Report on a study into the situation and special needs of children in child headed households, unpublished study for the Nelson Mandela Children's Fund dated 18 June 2001 (hereafter Nelson Mandela report)).

³⁰ The amount payable was until recently R100 per month, an amount which was increased to a meagre R110 in the 2001 budget.

years. Yet, one source estimated that of the 750 children for whom foster care placements had been arranged recently, 520 of these were placements due to severe parental poverty.³¹ Submissions received and sources consulted by the Commission revealed not only the strong links between poverty and neglect, but also the apparent rising incidence of extreme forms of poverty - and consequent neglect - amongst children.

³¹ G O Hollamby 'Submission to the Committee on Inquiry into a Comprehensive Social Security System by the Project Committee on the Review of the Child Care Act of the South African Law Commission', 17 October 2000.

In summary, bearing in mind the rationale in the decision in **Government of the Republic of South Africa v Grootboom**, and bearing in mind the links between neglect and abuse of children and poverty in present day South Africa,³² it is suggested that the constitutional obligation regarding the prevention child abuse, malnutrition and neglect contained in section 28(1)(d) of the Constitution requires a more concerted effort to provide social security to children in dire poverty than obtains at present. In August 2001, widespread reports of severe child malnutrition in the Eastern Cape were profiled after a study conducted by the School of Public Health at the University of the Western Cape. The Minister for Social Development reacted strongly to the plight of these children in the light of their difficulties in obtaining financial relief through the present Child Support Grant, reportedly requesting departmental officials to relax the criteria for successful applications in order to facilitate greater access to the grant.

25.4 Evaluation and recommendations

The Commission recommends addressing the lacuna identified above in a variety of ways. First, the overall proposals contained in this Discussion Paper **focus far more strongly than present legislation on providing a concrete legislative framework for preventive and early intervention strategies to combat child abuse and neglect**,³³ as an adjunct to more expensive and more invasive tertiary intervention strategies, such as removal of children in need of services into formal alternative care settings.

³² J Sloth-Nielsen 'The child's right to social services, the right to social security, and primary prevention of child abuse: some conclusions in the aftermath of *Grootboom*' 2001 (16) **SAJHR** 317.

³³ IMC policy proposals included the concept of different levels of intervention, with statutory removal of children placed lower down the rung of options by comparison to both prevention and to early intervention strategies. See the Chapter entitled 'Prevention and early intervention' above.

Second, the Commission proposes that the foster care system should be rationalised and its focus altered. Ideally, the FCG should not function as a poverty alleviation measure, but rather as a mechanism for ensuring short term, temporary care of children pending a more permanent placement or return to the family setting. In addition, the unnecessary reviews that have to be undertaken ever two years to secure continued payment of the FCG for what is in reality a permanent placement, is a waste of scarce resources. However, the Commission cannot suggest removal or diminution of the current amount payable under the FCG unless adequate measures are implemented in place of the FCG system to provide a safety net for current beneficiaries.³⁴ **The Commission therefore recommends that the FCG should be restricted to court ordered temporary placements, and where a placement takes on a permanent nature, the foster placement should be converted.** It has been suggested that the amount of the grant should possibly be reviewed,³⁵ although **the Commission is reluctant to propose a lowered amount for foster-carers who are needed to provide alternative care for children who have to be removed from the family environment.** The Commission recognizes, however, that non-uniformity in amounts payable to children as social security may create the adverse consequence that it is financially more beneficial to place the child in informal foster care with a relative who can then claim a formal FCG than to apply as a primary care-giver for a CSG to maintain one's own child.³⁶ Nevertheless, the Commission is not, at this

³⁴ See Pia Zain 'A Small Process of Dying: The impact of the cancellation of the State Maintenance Grant' Nadel research report no 12 (2000) details how the phasing out of the SMG adversely affected especially the ability of women caregivers to meet their care duties towards children.

³⁵ See T Guthrie 'Options and Improvements for social security in South Africa' unpublished paper presented at the National Workshop for Social Security for Children in South Africa, Cape Town, March 2001.

³⁶ See J Sloth-Nielsen and B van Heerden 'The political economy of child law reform: Pie in the sky?' in CJ Davel (ed) **Children's rights in a transitional society** 107; see too, Department of Social Development 'Proposed Amendments to the Social Assistance Act, Act no 59 of 1992', a briefing to the Portfolio Committee for Welfare and Population Development dated 27 September 2000, to be found on www.welfare.gov.za [accessed 14 October 2001].

stage, proposing the amount payable as a FCG should be reviewed downwards.

The Commission is of the view, however that where the carer of the child is related to the child by kin (so-called kinship care), the category of foster care should be renamed, to be named 'care with relatives'.³⁷ Other alternatives to foster care should also be provided for by law. In this regard, there have been many submission received by the Commission pointing to the inequality that currently exists as regard semi-permanent fostering arrangements (which do attract a cash grant) and more permanent placement of children, adoption, which attracts none.

³⁷

G O Hollamby 'Placement of children in foster care with relatives', unpublished submission to the Portfolio Committee on Social Development, 22 November 2001.

To achieve this end, **the Commission consequently recommends the establishment of grants aimed at subsidizing adoptions, to enable long-term foster care to be converted into the more secure and permanent option of adoption.** It is also suggested that if a grant was available to enable adoptions to be subsidized, this would have the further benefit of assisting to encourage the development of community placements for at least some proportion of children who have been orphaned by HIV/AIDS. It is arguable that the introduction of adoption grants are supported by the view of Yacoob J in **Grootboom**, as he regarded the State as bearing the primary responsibility (as regards the duty of support) where children lack a family environment, such as where they are orphaned, abandoned, or removed from their families. Therefore, where willing prospective adoptive parents are available, but unable to bear the additional costs attendant upon raising a child, it is again arguable that the State (in **Grootboom's** reasoning) is obliged to adopt measures to ensure fulfillment of its primary obligation to support such children. While the judgment the **Grootboom** case does not *prescribe* in any way what such measures might be, there are, in reality, only two choices: to require the state to ensure that children are looked after in state or other institutions, or find some other form of care. And, if state institutions do not exist, or are full, the second option compels an examination of existing subsidies and grants to facilitate alternative placements outside institutional settings.³⁸

Indeed, insofar as fostering constitutes a relief for the state from its subsidiary 'parental' function, there can be no logical distinction between long-term foster care (more often than not until the child reaches the age of 18 years) and a more permanent legal relationship between adult and child in adoption. The costs to the State may in fact diminish, as bi-annual social worker reports and reviews of placement are rendered unnecessary once a more permanent solution is put in place.

³⁸ Both foster care grants and any idea of subsidized adoptions fulfil other important international law requirements. Both ensure that children grow up in a family environment, rather than in an institution, as international law recognized the undesirability of institutionalisation of children (see, for example, the United National Rules for Juveniles Deprived of their Liberty (1990) and the CRC).

Third, as regards the present Child Support Grant, it must be pointed out that the Committee on the Rights of the Child responded to the South Africa country report by urging Government to consider extending the ambit and reach of the child support grant.³⁹ **The Commission also recommends the extension of the CSG to become a more universal social security system, targeting all poor children aged under 18 years.** This proposal accords with recent advocacy efforts to lobby for the introduction of a Basic Income Grant (BIG) which would be payable to all South Africans, including children, and that it would be recovered via an increase in the amount of revenue raised through VAT (Value Added Tax) as well as other tax mechanisms.⁴⁰ Some lobbyists have proposed that even if Government were to find the immediate implementation of such a grant to be financially beyond the realm of possibility, at least it should be implemented incrementally, commencing with children up to the age of 18 years. **The Commission supports such proposals, as they would go along way towards addressing some of the problems with the present system of grants outlined in this Chapter. We are further of the view that this basic income grant, whether payable to adults and children alike, or whether it commences with payments regarding children, should not be means tested.**

The Commission is further of the view that the current amount of the CSG is inadequate to enable care-givers to provide for children's primary needs. Although the amount payable was increased in 2001, as mentioned above, this was the first increase in the amount since introduction of the CSG in 1998. **The Commission therefore proposes that the legislation require government to review the amount payable for the CSG on an annual basis, and to adjust it in line with, or preferably above, the inflation rate.** The Commission would like to recommend that Government review the amount payable as social security for children, and if this is fiscally at all feasible, to increase the amount to a level which is commensurate with the actual costs of feeding and otherwise raising children.

Fourth, because we have committed throughout our consultative processes to ensuring that new child care legislation pays specific attention to children with disabilities and other special needs children, **the Commission is of the view that, in certain circumstances, an 'add-on grant' (such as the existing care dependency grant) should be provided for in the new**

³⁹ 'The Committee recommends that the State party expand its Child Support programme to develop alternative programmes to include support to children up to the age of 18 years, who are still in school' (CRC/C/15/Add.122 par 16).

⁴⁰ The proposal which was allegedly initially tabled by COSATU, but which has found broad support from numerous other organizations (see the Access submission to the Taylor Committee dated March 2001).

children's statute.⁴¹ The focus here would be on children who are especially vulnerable, such as children living in child-headed households and children in foster care who are also disabled. This view has been supported in numerous submissions to the Commission, and **the Commission therefore recommends that the Department of Social Development should identify which categories of special needs children should benefit from such a 'top-up grant' and design criteria outlining the precise circumstances within which such a top-up grant would be payable.**

Fifth, the Commission believes it is counter-productive to dispense state social security resources via the Social Development budget, only to have the positive financial effect for children and families mitigated by reason of the fact that these state funds are then used to subsidise other government services, such as education. **The Commission therefore proposes that recipients of state social security such as the CSG and the CDP, as well as beneficiaries of the FCG, should be exempted from school fees in respect of the children at whom the grant is targeted.** This was previously the position, and, although still in place, is reportedly not proving to be an effective access mechanism for children to ensure their right to education. The use of school user fees has reportedly caused undue hardship for grant receiving families. In addition to the above, there are supporting proposals elsewhere in this Discussion Paper which are aimed at providing financial relief to welfare organisations involved with the care of abused, neglected, orphaned or abandoned children. One example is the possibility of rebates from local government.

⁴¹ The same reasoning would ensure retention of the foster care grant for children in out-of home care.

Sixth, the Commission is mindful of the problems that have been experienced as regards ensuring the CSG actually reaches children in dire need, and more particular those living in remote and in rural areas. The present means test as provided for in the regulations to the Welfare Laws Amendment Act have proved difficult to implement, and thus served as a serious impediment to care givers wishing to access the grant. It has been suggested that as at March 2001, the CSG reached only 7% of children in need, and only 33% of those targeted.⁴² Further, it is unrealistic to demand of children orphaned or otherwise abandoned due to the HIV/Aids epidemic to fulfil complicated administrative requirements as a pre-condition to accessing state social security.

The Commission therefore recommends that administrative impediments and hurdles caused by over onerous regulations, which are frequently overzealously applied, be addressed in the regulations which specify the conditions for the payments of grants.

These should be simplified and the barriers caused by the requirement of proving compliance with the means test altogether removed. Provision must also be made for the payment of persons who must be deputised or designated to lawfully receive grants on behalf of children who are living in child-headed households, and who cannot themselves receive the grant directly by virtue of their youthful age.⁴³

The above proposals are substantially in accordance with the proposals of ACESS (Alliance for Children's Entitlement to Social Security) proposals, which include the following:

In respect of the Care Dependency Grant (CDG)

- Eligibility should be needs based.
- The CDG should extend to children with moderate disabilities and chronic illnesses, including those with HIV/Aids.

⁴² ACESS submission to the Taylor Committee of Inquiry, March 2001.

⁴³ Currently grant receivers must be aged over 18 years, even with regards to the CSG.

- Permanent home care should not be a pre-requisite in order to be eligible for the CDG.

In respect of the Child Support Grant (CSG)

- The CSG should be extended to 18 years.
- The amount of the CSG should be increased and determined by objective poverty measures linked to inflation.
- The CSG should be non-means tested and universally available.
- Aids orphans and child-headed households should be enabled to access the CSG immediately.

In respect of the Foster Care Grant (FCG)

- Subsidized adoptions must be introduced in order to encourage families to adopt children.
- The process of accessing the FCG should be simplified.
- Incentives should be introduced for fostering HIV/Aids orphans, such as tax rebates, free health care and education for foster children and biological children, coverage of funeral expenses of HIV positive children etc.

A key issue which has been the subject of debates during the course of this investigation is the question as to whether legislation dealing with child-related grants should feature in the new children's statute, or whether it should remain within the context of overall social security or social assistance legislation. The advantage of transferring legislation on children's grants to the new child care legislation is that it would promote a comprehensive approach to key issues affecting children's lives, and have the benefit of linking children who are extremely vulnerable to the means to address that vulnerability. The FCG is a good example of this, in that child and family courts are - and will be - the primary protective mechanism to ensure that neglected children are provided with alternative care within a family environment, and that the family is in turn provided with the means to care for such child. It has been suggested in responses to the Commission that when the FCG was linked to the 1960 Children's Act, the overall protection of child beneficiaries was better than is presently the case.

A counter argument is that, especially as regards non-court related grants, such as the CSG, it might be preferable to include all detail, regulations and conditions in one piece of legislation, to promote uniformity of policy and practice amongst those who implement that payment of the grant at the local level. It must be born in mind here that the child related grants discussed in this Chapter are but part of a larger social assistance scenario, which includes payments of old age pensions, disability grants to those aged over 18 and war veteran grants to name three. This line of reasoning would suggest that administrative delivery might be impeded if welfare

officials had to apply different pieces of legislation to carry out their day-to-day duties.

The Commission is, at this stage, awaiting the recommendations of the Taylor Committee of Inquiry on this aspect, particularly as a key focus of that Committee was to conduct a review, and develop recommendations to promote administrative efficacy in the grants system. The Commission however, is of the opinion that a *via media* is possible here, as the child related grants must ideally be referred to in the new children's statute, as well as the conditions under which they must be paid. Thus for example, it should be spelt out that a court-ordered grant should be payable as from the date of the court order. However, administrative details concerning the administration of grants can fruitfully be included in social assistance legislation.

The Commission is fully cognisant of the fact that the grants system and the recommendations concerning the broadening of access of children in dire need to state provided social security, as contained in this Chapter, will have far reaching fiscal implications for the State. The Commission has, as has become the norm with respect to investigations concerning law reform that will have financial implications for Government, always intended to commission thorough costings of the proposals contained in the Discussion Paper. This would include the financial implications of broadening the CSG, altering the FCG, providing for subsidised adoption grants, and the introduction of the 'top-up' grants payable in certain defined situations to children in special need. The Commission is, however, hopeful that some of the required costing of improvements to the grants system will have been undertaken at the behest of the Taylor Committee of Inquiry, thus diminishing the need for further financial forecasts.

In summary, the Commission recommends:

- **a stronger focus on preventive and early intervention strategies to combat child abuse and neglect;**
- **the continuation of the FCG;**
- **a differentiation between foster care and care by relative situations;**
- **the introduction of subsidised adoptions;**
- **the extension of the CSG, both in the amount payable and its reach;**
- **payment of an 'top-up grant' to certain categories of special needs children;**
- **exemption from school fees in respect of children in receipt of state social security; and**
- **the simplification of the regulations which specify the conditions for payment of**

social security grants.

The Commission further proposes that enabling provision be enacted to permit the Minister to (by regulation) spell out under which circumstances more than one grant, or a portion of a specific grant, may be claimed. Thus, although a person may be able to apply for a CSG and a FCG, the amount payable under the latter may be lower where a 'care by relative' situations is concerned.