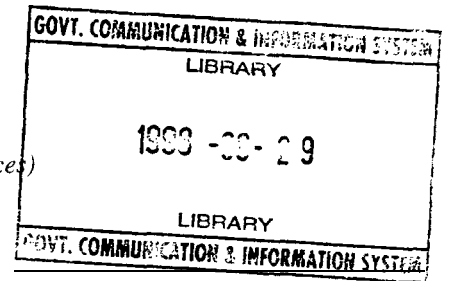


REPUBLIC OF SOUTH AFRICA

AGED PERSONS AMENDMENT BILL

(As introduced in the National Council of Provinces)

(SELECT COMMITTEE ON SOCIAL SERVICES)



[B 127—98]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP BEJAARDE PERSONE

(Soos ingedien in die Nasionale Raad van Provinsies)

(GEKOSE KOMITEE OOR MAATSKAPLIKE DIENSTE)

[W 127—98]

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GENERAL EXPLANATORY NOTE:

- [Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Aged Persons Act, 1967, so as to insert certain definitions; to provide for conditions regarding subsidies to managers of registered homes for the aged and to certain other institutions; to monitor compliance with conditions of registration of homes for the aged; to provide for the establishment of management committees for those homes; to provide for the accessibility of those homes; to provide for the enquiry by designated bodies into matters regarding aged persons; to require reporting on the abuse of aged persons and the keeping of a register thereon; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa. as follows:—

Amendment of section 1 of Act 81 of 1967, as amended by section 1 of Act 14 of 1971, section 4 of Act 97 of 1972, section 21 of Act 37 of 1973, section 1 of Act 46 of 1976, section 1 of Act 44 of 1994, Proclamation No. R. 40 of 1994 and Proclamation 5 No. R. 7 of 1996

1. Section 1 of the Aged Persons Act, 1967 (in this Act referred to as the principal Act), is hereby amended—

- (a) by the insertion before the definition of “aged person” of the following definition: 10
- “ ‘abuse’ includes, but is not limited to, intentional or negligent treatment of an aged person contrary to any provision of this Act or any other infliction of physical, mental or financial power on an aged person which adversely affects any right of that person;”;
- (b) by the insertion after the definition of “debilitated person” of the following definition: 15
- “ ‘designated body’ means a person or statutory body designated by the national Minister, by notice in the *Gazette*, for the purposes of sections 5A and 6;”;
- (c) by the insertion after the definition of “Minister of Finance” of the following definition: 20
- “ ‘national Minister’ means the Minister for Welfare and Population Development in the national sphere of government;”.

Insertion of section 2A in Act 81 of 1967

2. The following section is hereby inserted after section 2 of the principal Act:

“Conditions for subsidies to homes for the aged and certain other institutions

2A. (1) When a subsidy is paid in terms of section 2, the national Minister shall, in consultation with the relevant competent authority referred to in the definition of ‘Minister’ in section 1, determine the conditions of use of that subsidy, including conditions regarding the accounting for the subsidy so paid. 5

(2) Any person to whom a subsidy is paid in terms of section 2 shall use, and account for, the subsidy in accordance with the conditions determined in terms of subsection (1). 10

(3) If any condition determined in terms of subsection (1) is not complied with, the national Minister may, in consultation with the competent authority referred to in subsection (1) and after one month’s notice of the intention to do so, withdraw the subsidy in question. 15

(4) Any person to whom a subsidy in terms of section 2 is paid is personally liable for the refund of the amounts used contrary to any condition determined in terms of subsection (1).”.

Insertion of sections 3A, 3B and 3C in Act 81 of 1967

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3. The followings sections are hereby inserted after section 3 of the principal Act:

“Monitoring compliance with conditions for registration of homes for the aged

3A. (1) The national Minister may, in consultation with the relevant competent authority referred to in the definition of ‘Minister’ in section 1, appoint a designated body— 25

(a) to investigate compliance with the conditions referred to in section 3(3); and

(b) to order specific measures to be adopted to facilitate compliance with those conditions. 30

(2) The applicant concerned shall at all reasonable times report to the national Minister and the competent authority referred to in subsection (1) any circumstances which may result in his or her inability to fully comply with the conditions referred to in section 3(3). 35

(3) If the registration of a home for the aged has been cancelled in terms of section 3(4), or if the manager of a home for the aged desires to close down or transfer that home for any other reason, the manager shall— 40

(a) prior to any decision to close down or transfer that home is made, consult with the national Minister on the matter:

(b) furnish the national Minister with a full report on the future accommodation of the aged persons in question; and 45

(c) at least six months before the closing down or transfer of that home in writing notify the aged persons in question and the national Minister of such closure or transfer.

Establishment of management committees for homes of the aged

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3B. (1) If more than 10 aged persons reside in a home for the aged, a management committee shall be established as prescribed by the national Minister by regulation in terms of section 20A.

(2) The national Minister shall, by regulation in terms of section 20A, prescribe— 50

(a) the composition of every management committee to be established in terms of subsection (1), which shall include representation of the residents of the home for the aged in question;

- (b) **the** election and appointment, qualifications, term of office, and grounds of removal from office, of the members of that committee; and
- (c) the number of meetings of that committee.
- (3) A management committee established under subsection (1) shall—
- (a) facilitate interaction between the residents of the home for the aged concerned and their families, the community and that committee;
- (b) maintain the quality of services to that home;
- (c) provide opportunities for the training of the staff of that home, where appropriate;
- (d) ensure the sound financial management of that home;
- (e) prevent neglect, abuse and exploitation of the residents of that home;
- (f) appoint the staff of that home;
- (g) establish complaints procedures for the residents and staff of that home and persons who wish to lodge a complaint on behalf of any such resident;
- (h) quarterly report to the residents and staff of that home on the financial position and the number and nature of complaints received from those residents and staff and the outcome of those complaints; and
- (i) do everything necessary or expedient for the effective functioning of that home.

Admission to homes for the aged

- 3C. (1)** In determining eligibility for admission to a home for the aged, no person may be unfairly discriminated against directly or indirectly.
- (2)(a) Any person who unfairly discriminates, directly or indirectly, against a person otherwise eligible for admission to a home for the aged shall be guilty of an offence.
- (b) Any person convicted of an offence referred to in paragraph (a) shall, notwithstanding section 19, be liable to a fine or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.
- (3) The manager of a home for the aged shall, on request by any person authorised by law to take a sworn statement, provide a sworn statement regarding the grounds on which the decision to refuse admission to that home is based.”.

Repeal of section 5 of Act 81 of 1967, as amended by sections 4 and 11 of Act 44 of 1994

4. Section 5 of the principal Act is hereby repealed.

Insertion of section 5A in Act 81 of 1967

5. The following section is hereby inserted before section 6 of the principal Act:

“Enquiry by designated body into matters regarding aged persons

- 5A. (1)** The Minister may appoint any designated body to inquire into and consider any matter relating to the rights of an aged person.
- (2) The designated body so appointed may, for the purposes of that enquiry—
- (a) summon in the manner prescribed by regulation in terms of section 20A any person—
- (i) who, in the opinion of the designated body, is able to furnish information of material importance to the enquiry; or
 - (ii) who the designated body has reason to believe has in his or her

- possession or custody or under his or her control, any book, document or record relating to the subject of the enquiry, to appear at a time and place specified in the summons to be examined or to produce that book, document or record and may retain for examination any book, document or record so produced; 5
- (b) through the person presiding at the enquiry—
- (i) administer an oath to, or accept an affirmation from, any person summoned in terms of paragraph (a); and
 - (ii) examine or cause him or her to be examined by a person designated by the designated body to lead the evidence at the enquiry and instruct him or her to produce any book, document or record in his or her possession or custody or under his or her control. 10
- (3) A summons referred to in subsection (2) shall contain the information and shall be served in the manner, prescribed by regulation in terms of section 20A, and section 5 1(2) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall *mutatis mutandis* apply in respect of any person on whom that summons has been so served. 15
- (4) The law relating to privilege, as applicable to a witness summoned to give evidence or to produce a book, document or record in any civil proceedings, shall *mutatis mutandis* apply in respect of the examination of or the production of any book, document or record by any person summoned in terms of this section. 20
- (5) If the record of any criminal or civil proceedings is relevant in any enquiry in terms of this section, that record shall on the mere production thereof be *prima facie* proof of the facts stated therein. 25
- (6) If the conduct which forms the subject of any enquiry referred to in subsection (1), forms or is likely to form the subject of any criminal or civil proceedings, the designated body may postpone the enquiry until those proceedings have been concluded. 30
- (7) Any person against whom an enquiry is instituted in terms of this Act, shall be entitled, in person or through his or her legal representative, to answer the charge and to be heard in his or her defence.
- (8)(a) The designated body may, generally or in any specified case, appoint a committee in the manner prescribed by regulation in terms of section 20A to exercise and perform all powers and duties of the designated body conferred or imposed by this Act. 35
- (b) If the designated body so appoints a committee, those powers and duties are regarded to have been delegated to the committee.
- (9) Any person who, having been duly sworn or having made an affirmation, tenders false evidence at an enquiry held in terms of this section, knowing that evidence to be false, shall be guilty of an offence and shall, notwithstanding section 19, be liable on conviction to the penalties which may be imposed for the offence of perjury.”. 40

**Amendment of section 6 of Act 81 of 1967, as amended by section 3 of Act 46 of 1976 45
and section 5 of Act 44 of 1994**

6. Section 6 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections:
- “(1) Subject to the provisions of this section, [**a magistrate**] the designated body before whom any person is brought in terms of section 50 [5] 5A, shall enquire into the correctness or otherwise of the allegations contained in the summons in question.
 - (2) The [**Public Prosecutor or any other person designated by the magistrate shall appear at the enquiry, and**] designated body may call witnesses and cross-examine any other witnesses giving evidence at the enquiry.”; 55
- (b) by the substitution of subsection (5) of the following subsection:

- “(5) The proceedings at the enquiry shall be conducted in an open court room or behind closed doors, as the **[magistrate] designated body** holding the enquiry may determine.”;
- (c) by the substitution for subsections (8), (9) and (10) of the following subsections:
- “(8) The **[report referred to in section 5(2) shall be submitted to the magistrate holding the enquiry, and he]** designated body may direct the district surgeon, or a psychiatrist or a clinical psychologist designated by **[him]** the body to examine the aged or debilitated person in question and to furnish **[him]** the body with a report on his or her findings.
- (9) The contents of a report **[submitted or]** furnished in terms of subsection (8) shall be disclosed to the person against whom the allegations were made, and if he or she so desires, he or she or his or her legal representative shall be given an opportunity of cross-examining the person who made the report, in relation to any matter arising out of the report, and of disproving any allegation occurring therein.
- (10) If after consideration of the evidence and of any report **[submitted or]** furnished in terms of subsection (8), it appears to the **[magistrate] designated body** that any allegation in the summons in question against the person in question is correct, **[he]** the body may—
- (a) prohibit that person from accommodating or caring for the aged or debilitated person in question except subject to such conditions and in accordance with such requirements as the **[magistrate]** designated body may impose; or
- (b) prohibit that person from accommodating or caring for any aged or debilitated person for such period, but not exceeding ten years, as may be determined by the **[magistrate]** designated body.”; and
- (d) by the substitution for subsection (11) of the following subsection:
- “(1 1) Any person who contravenes or fails to comply with any condition, requirement or prohibition imposed in terms of subsection (10) shall, subject to the provisions of subsection (12), be guilty of an offence and shall, notwithstanding section 19, be liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.”.

Insertion of sections 6A, 6B and 6C in Act 81 of 1967

7. The following sections are hereby inserted after section 6 of the principal Act:

“Report on abuse of aged persons

6A. (1) Any person who examines, treats, attends to, advises, or cares for an aged person in circumstances which ought to give rise to the reasonable suspicion that that aged person has been abused or suffers from any injury, shall immediately report such circumstances to the Director-General: Welfare and a police officer or social worker.

(2) Any person who fails to report such cases of suspected abuse shall be guilty of an offence and shall, notwithstanding section 19, be liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Keeping of register

6B. The national Minister shall, in the manner prescribed by regulation in terms of section 20A, cause to be kept a register of cases of suspected abuse of aged persons reported in terms of section 6A, together with the details thereof.

Report to national Minister by managers of homes for the aged

6C. The manager of a home for the aged shall within 60 days after the end of the financial year of that home submit to the national Minister a report on—

(a) compliance with—

(i) the service standards, prescribed by regulation in terms of section 20A; and

(ii) the measures, so prescribed, to prevent and combat abuse of aged persons,

during that financial year; and

(b) the content of the service level agreements, so prescribed, concluded during that financial year.”.

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Insertion of section 18A in Act 81 of 1967

8. The following section is hereby inserted after section 18 of the principal Act:

“Delegation by national Minister

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18A. (1) The national Minister may, on such conditions as he or she may determine, in writing delegate to the Director-General: Welfare or any other officer in the service of the State, any power conferred upon the Minister by or in terms of this Act, except a power referred to in section 20A.

(2) The national Minister shall not be divested of any power delegated by him or her, and may amend or set aside any decision taken by a person in the exercise of the power delegated to him or her.”.

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Insertion of section 20A in Act 81 of 1967

9. The following section is hereby inserted after section 20 of the principal Act:

“Regulations by national Minister

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25A. The national Minister may make regulations regarding—

(a) any matter which in terms of this Act is required or permitted to be prescribed by the national Minister;

(b) measures—

(i) to prevent, combat and deal with the abuse of aged persons;

(ii) to be taken to advance persons disadvantaged by unfair discrimination;

(iii) to promote the rights of residents of homes for the aged;

(c) the form and content of service level agreements between the residents and the management committee of a home for the aged;

(d) the minimum service standards for homes for the aged;

(e) the minimum norms and standards for the care of aged persons;

(f) criteria, and assessment procedures, for admission of persons to homes for the aged.”.

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Short title and commencement

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10. This Act shall be called the Aged Persons Amendment Act, 1998, and shall come into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE AGED PERSONS AMENDMENT BILL, 1998

Background and main object of Bill

The administration of the Aged Persons Act, 1967 (Act No. 81 of 1967), except—

- (a) sections 5, 6 and 16 of that Act; and
- (b) insofar as it falls outside the functional areas mentioned in Schedule 6 to the Interim Constitution or it relates to matters referred to in section 126(3) of that Constitution,

was, with effect from 1 March 1996, assigned to a competent authority within each provincial government by Proclamation No. R. 7 of 1996.

Various problems facing the aged persons particularly those in residential care and homes point to the abuse of the aged and the poor quality of service to the aged. It has become apparent that existing provisions in the Aged Persons Act, 1967 ("the Act"), relating to the welfare of aged persons are not adequate and effective and are in fact too rigid to allow speedy and effective resolution of those problems.

The main object of the Bill is to upgrade measures relating to the protection of the aged against abuse through the provision of more effective measures for the investigation and handling of cases of abuse, the introduction of service delivery provisions and higher control of the utilisation of subsidies paid to managers of homes for the aged. To this end the Bill proposes to amend the Act by—

- (a) the insertion of **new** sections in the Act; and
- (b) the repeal of section 5 and the amendment of section 6 of the Act — the administration of both sections have **not** been assigned to the respective provincial authorities, but still vests in the national sphere of government.

Main features of Bill

The Bill provides for—

- (a) the imposition of conditions regarding subsidies to managers of registered homes for the aged and to certain other institutions;
- (b) the monitoring of compliance with conditions for registration of homes for the aged;
- (c) the establishment of management committees for those homes;
- (d) the accessibility of those homes;
- (e) the enquiry by designated bodies into matters regarding aged persons;
- (f) reporting on abuse of aged persons and the keeping of a register thereon;
- (g) reporting by the managers of homes for the aged on certain stipulated matters regarding those homes; and
- (h) the issuing of regulations by the national Minister *inter alia* regarding measures to prevent and combat the abuse of aged persons and minimum service standards for homes for the aged as well as criteria and assessment procedures for admission of persons to those homes.

Consultation

The content of the Bill originates from inputs received from various interested parties that were invited to make proposals as to new legislation regarding older persons which is under consideration by the Department of Welfare and which is envisaged to be finalised and to be tabled in Parliament in 1999. In view of an urgent need to address certain matters regarding the well-being of older persons, it was considered desirable to propose amendments to the existing Act as contained in the Bill.

Parliamentary procedure

The Department of Welfare and the State Law Advisers are of the opinion that the Bill should be dealt with by Parliament in accordance with the procedures established in section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996, since it deals with the functional area of “Welfare Services” listed in Schedule 4 to that Constitution.