

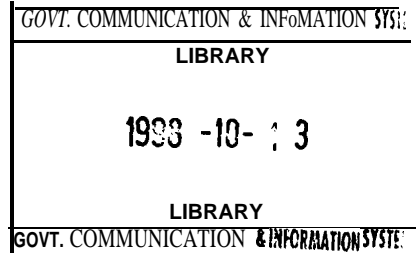
REPUBLIC OF SOUTH AFRICA

AGED PERSONS AMENDMENT BILL

(As amended by the Select Committee on Social Services (National Council of Provinces))

(SELECT COMMITTEE ON SOCIAL SERVICES)

[B 127B—98]



REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP BEJAARDE PERSONE

(Soos gewysig deur die Gekose Komitee oor Maatskaplike Dienste (Nasionale Raad van Provinsies))

(GEKOSE KOMITEE OOR MAATSKAPLIKE DIENSTE)

[W 127B—98]

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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, by regulation in terms of section 20A, prescribe 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 referred to in subsection (1), 10

(3) If any condition referred to in subsection (1) is not complied with, the national Minister may, in consultation with the relevant competent authority referred to in the definition of ‘Minister’ in section 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 referred to in subsection (1).”.

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

3. The following sections are hereby inserted after section 3 of the principal Act: 20

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

3A. (1) If there is reason to believe that any of the conditions referred to in section 3(3) have not been complied with, the national Minister shall, in consultation with the relevant competent authority referred to in the definition of ‘Minister’ in section 1, appoint a designated body— 25

(a) to monitor compliance with those conditions; and
(b) to order specific measures to be adopted to facilitate compliance with those conditions.

(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(?). 30

(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— 35

(u) prior to any decision to close down or transfer that home is made, consult with the national Minister and the competent authority referred to in subsection (1) on the matter;

(b) furnish the national Minister and the competent authority referred to in subsection (1) with a full report on the steps taken regarding the future accommodation of the aged persons in question as contemplated in section 3(7); and 40

(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 and the competent authority referred to in subsection (1) of such closure or transfer. 45

Establishment of management committees for homes for the aged

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 2(1A). 50

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

(a) the composition of every management committee to be established under subsection (1), which shall include representation of the residents and staff of the relevant home for the aged and the public in general; 55

(b) the election and appointment, qualifications, term of office, and grounds of removal from office, of the members of that committee and the filling of vacancies on that committee; and

(c) the number of, and procedure at, meetings of that committee.

(3) A management committee established under subsection (1) shall ensure that the manager of the home for the aged in question—

(a) facilitates interaction between the residents of the home and their families, the public in general and that committee;

(h) provides quality service to the home;

(c) provides opportunities for the training of the staff of the home;

(d) applies principles of sound financial management and submits quarterly financial reports to the residents and staff of the home;

(e) monitors activities at the home in order to deal speedily with any incidents of abuse of the residents of the home and takes steps to report such incidents to the appropriate authority;

(f) consults the management committee in the appointment of the staff of the home;

(g) establishes complaints procedures for the residents and staff of the home and persons who wish to lodge a complaint on behalf of any such resident; and

(h) does everything necessary or expedient for the effective functioning of the home.

Admission to homes for the aged

3C. (1) When deciding whether or not to admit a person to a home for the aged, no person shall unfairly discriminate directly or indirectly against the first-mentioned person on one or more grounds referred to in section 9(3) of the Constitution.

(2) Any person who contravenes the provisions of subsection(1) shall be guilty of an offence and shall, notwithstanding section 19, be liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

(3) The need for a home for the aged to reflect broadly the race composition of South Africa shall be considered when determining eligibility for admission to that home.

(4) If a person is refused admission to a home for the aged, the manager of that home shall, on the request of that person, give reasons for such refusal to the person.

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—

(u) 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 a reaffirmation from, any person summoned in terms of paragraph (u); 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 51(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 and section 5 of Act 44 of 1994 45

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 [5] 5A, shall enquire into the correctness or otherwise of the allegations contained in the summons in question. 50

(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 reconducted 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:
- “(11) 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:

Notification of abuse of aged persons

- 6A. (1)** Every registered dentist, medical practitioner, nurse or social worker or any other person who examines, attends to or deals with an aged person and suspects that that aged person—
- (a) has been abused; or
- (b) suffers from any injury,
- shall immediately notify the Director-General: Welfare or the relevant officer referred to in the definition of ‘Director-General’ in section 1.
- (2) On receipt of a notification in terms of subsection (1), the Director-General or the officer referred to in subsection (1)—
- (a) may issue a warrant, in the form and manner prescribed by regulation under section 20A, for the removal of the aged person concerned to a hospital or such other place as that Director-General or officer may determine;
- (b) shall arrange that the aged person receive the necessary treatment.
- (3) Any dentist, medical practitioner, nurse, social worker or other person shall not be liable in respect of any notification given in good faith in accordance with subsection (1).

(4) Any dentist, medical practitioner, nurse, social worker or other person who fails to comply with subsection (1) 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.

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Prohibition of abuse of aged persons

6B. Any person who abuses an aged person 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.

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Keeping of register of abuse of aged persons

6C. The national Minister shall, in the manner prescribed by regulation under section 20A, cause to be kept a register of all notifications in terms of section 6A(I), together with a description of the circumstances regarding each notification.

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Report to national Minister by managers of homes for the aged

6D. (1) 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 and the relevant competent authority referred to in the definition of 'Minister' in section 1 a report on—

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- (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,

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

(2) When the manager of a home for the aged fails to submit a report in accordance with subsection (1), the national Minister may, in consultation with the competent authority referred to in subsection (1)—

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- (a) give notice to that manager that if such report is not submitted within 90 days after the date of that notice, any subsidy paid in respect of that home in terms of section 2 will be withdrawn; and

- (b) if such report is not submitted within 90 days after the date of the notice given in terms of paragraph (a) withdraw such subsidy after giving one month's notice of the intent on to do so.

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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 national Minister by or in terms of this Act, except a power referred to in section 20A,

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(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.”.

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

20A. (1) The national Minister may, subject to subsection (2), 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;

(g) the conditions of use of subsidies paid in terms of section 2;

(h) the form of, and manner in which, a warrant referred to in section 6A(2)(a) is to be issued;

(i) the keeping of a register of all notifications in terms of section 6A(1).

(2) Any regulation made in terms of subsection (1) shall be made after consultation with every competent authority referred to in the definition of ‘Minister’ in section 1.”

Short title and commencement

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 and, in general, the prevention of such abuse;
- (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 Adviser: 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.