

REPUBLIC OF SOUTH AFRICA

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# OLDER PERSONS BILL

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*(As presented by the Mediation Committee)*  
*(The English text is the official text of the Bill)*

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(MINISTER OF SOCIAL DEVELOPMENT)

**[B 68F—2003 (Reprint)]**

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# BILL

**To deal effectively with the plight of older persons by establishing a framework aimed at the empowerment and protection of older persons and at the promotion and maintenance of their status, rights, well-being, safety and security; and to provide for matters connected therewith.**

## PREAMBLE

**WHEREAS** the Constitution establishes a society based on democratic values, social justice and fundamental human rights and seeks to improve the quality of life of all citizens and to free the potential of each person;

**AND WHEREAS**, in terms of the Bill of Rights as set out in the Constitution, everyone has inherent dignity and the right to have their dignity respected and protected;

**AND WHEREAS** the State must create an enabling environment in which the rights in the Bill of Rights must be respected, protected and fulfilled;

**AND WHEREAS** it is necessary to effect changes to existing laws relating to older persons in order to facilitate accessible, equitable and affordable services to older persons and to empower older persons to continue to live meaningfully and constructively in a society that recognises them as important sources of knowledge, wisdom and expertise,

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

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#### **Definitions**

1. In this Act, unless the context indicates otherwise—
  - “**abuse**” means abuse contemplated in section 30(2);
  - “**care**” means physical, psychological, social or material assistance to an older person, and includes services aimed at promoting the quality of life and general well-being of an older person; 45
  - “**caregiver**” means any person who provides care;

<b>“community-based care and support services”</b> means any programme contemplated in section 11;	
<b>“Department”</b> means the Department of Social Development in the national sphere of government;	
<b>“Director-General”</b> means the Director-General of the Department;	5
<b>“frail older person”</b> means an older person in need of 24-hour care due to a physical or mental condition which renders him or her incapable of caring for himself or herself;	
<b>“health care provider”</b> means a health care provider defined in section 1 of the National Health Act, 2003 (Act No. 61 of 2003);	10
<b>“home-based care”</b> means care provided or services rendered at the place where a frail older person resides, excluding at a residential facility, by a caregiver in order to maintain such frail older person’s maximum level of comfort, including care towards a dignified death;	
<b>“magistrate”</b> includes an additional and an assistant magistrate;	15
<b>“manager”</b> means the person responsible for the day-to-day management of a residential facility;	
<b>“Minister”</b> means the Minister of Social Development;	
<b>“older person”</b> means a person who, in the case of a male, is 65 years of age or older and, in the case of a female, is 60 years of age or older;	20
<b>“older person in need of care and protection”</b> means an older person contemplated in section 25(5);	
<b>“operator”</b> means a person who operates a residential facility;	
<b>“person”</b> includes a trust;	
<b>“police official”</b> means a member as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995), or a member of a municipal police service established under section 64A of that Act;	25
<b>“prescribed”</b> means prescribed by regulation;	
<b>“regulation”</b> means any regulation made under section 34;	
<b>“rehabilitation”</b> means a process by which an older person is enabled to reach and maintain his or her optimal physical, sensory, intellectual, psychiatric or social functional levels, and includes measures to restore functions or compensate for the loss or absence of a function, but excludes medical care;	30
<b>“residential facility”</b> means a building or other structure used primarily for the purposes of providing accommodation and of providing a 24-hour service to older persons;	35
<b>“respite care”</b> means a service offered specifically to a frail older person and to a caregiver and which is aimed at the provision of temporary care and relief;	
<b>“service”</b> means any activity or programme designed to meet the needs of an older person;	40
<b>“shelter”</b> means any building or premises maintained or used for the reception, protection and temporary care of an older person in need of care and protection;	
<b>“social worker”</b> means a person registered as a social worker under section 17 of the Social Service Professions Act, 1978 (Act No. 110 of 1978), and in the employ or service of government or a registered welfare organisation;	45
<b>“this Act”</b> includes any regulation.	

## CHAPTER 1

### OBJECTS, IMPLEMENTATION, APPLICATION AND GENERAL PRINCIPLES

<b>Objects of Act</b>	50
2. The objects of the Act are to—	
(a) maintain and promote the status, well-being, safety and security of older persons;	
(b) maintain and protect the rights of older persons;	
(c) shift the emphasis from institutional care to community-based care in order to ensure that an older person remains in his or her home within the community for as long as possible;	55

- (d) regulate the registration, establishment and management of services and the establishment and management of residential facilities for older persons; and
- (e) combat the abuse of older persons.

### **Implementation of Act**

3. (1) Subject to this Act allocating roles and responsibilities, the Act must be implemented by all organs of state rendering services to older persons in the national, provincial and, where applicable, local sphere of government in an integrated, co-ordinated and uniform manner. 5

(2) Recognising that competing social and economic needs exist, such organs of state must take reasonable measures to the maximum extent of their available resources to achieve the realisation of the objects of this Act. 10

(3) To achieve the implementation of this Act in the manner contemplated in subsections (1) and (2), all organs of state must co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to older persons. 15

### **Application of Act**

4. (1) The rights that an older person has in terms of this Act supplement the rights that an older person has in terms of the Bill of Rights.

(2) All organs of state and all officials, employees and representatives of organs of state must respect, protect and promote the rights of older persons contained in this Act. 20

(3) This Act binds both natural or juristic persons to the extent that it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

### **General principles**

5. (1) The general principles set out in this section guide— 25

- (a) the implementation of all legislation applicable to older persons, including this Act; and
- (b) all proceedings, actions and decisions by any organ of state in any matter concerning an older person or older persons in general.

(2) All proceedings, actions or decisions in a matter concerning an older person must— 30

- (a) respect, protect, promote and fulfil the older person's rights, the best interests of the older person and the rights and principles set out in this Act, subject to any lawful limitation;
- (b) respect the older person's inherent dignity; 35
- (c) treat the older person fairly and equitably; and
- (d) protect the older person from unfair discrimination on any ground, including on the grounds of the health status or disability of the older person.

(3) In any matter concerning an older person—

- (a) an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided; and 40
- (b) a delay in any action or decision to be taken must be avoided as far as possible.

## **CHAPTER 2**

### **CREATING AN ENABLING AND SUPPORTIVE ENVIRONMENT FOR OLDER PERSONS 45**

#### **Development of and compliance with national norms and standards**

6. (1) The Minister may, from time to time, by notice in the *Gazette*, prescribe national norms and standards in order to define the acceptable levels of services that may be provided to older persons and in terms of which services must be monitored and evaluated. 50

(2) Any person who provides a service to an older person must comply with the norms and standards contemplated in subsection (1).

### **Rights of older persons**

7. Older persons enjoy the rights contemplated in section 9 of the Constitution of the Republic of South Africa and in particular may not be unfairly denied the right to—
- (a) participate in community life in any position appropriate to his or her interests and capabilities; 5
  - (b) participate in inter-generational programmes;
  - (c) establish and participate in structures and associations for older persons;
  - (d) participate in activities that enhance his or her income-generating capacity;
  - (e) live in an environment catering for his or her changing capacities; and
  - (f) access opportunities that promote his or her optimal level of social, physical, 10 mental and emotional well being.

### **Support for services delivered by third parties**

8. (1) The Minister—
- (a) may, in consultation with the Minister of Finance, provide financial awards to service providers that provide social services to older persons from funds 15 appropriated by Parliament for that purpose;
  - (b) may for the purposes of paragraph (a) prioritise needs and services for older persons;
  - (c) may in the prescribed manner enter into contracts with service providers to ensure that the services contemplated in paragraph (b) are provided; 20
  - (d) must prescribe conditions for the receiving of financial awards, including accounting measures, compliance measures and norms and standards; and
  - (e) must prescribe remedies for failure to comply with the prescribed conditions contemplated in paragraph (d).
- (2) The Minister must open and maintain a register of all assets bought with 25 Government funds and prescribe conditions for the management of such assets.

### **Guiding principles for provision of services**

9. Any service must be provided in an environment that—
- (a) recognises the social, cultural and economic contribution of older persons;
  - (b) promotes participation of older persons in decision-making processes at all 30 levels;
  - (c) recognises the multi-dimensional needs of older persons and therefore promotes inter-sectoral collaboration;
  - (d) ensures access to information by, education of and training of older persons;
  - (e) promotes the development and basic care of older persons in rural and urban 35 areas;
  - (f) promotes the prevention of exploitation of older persons;
  - (g) promotes the respect and dignity of older persons;
  - (h) ensures that older persons receive priority in the provision of basic services;
  - (i) ensures rehabilitation and the provisioning of assisted devices to older 40 persons; and
  - (j) ensures, as far as is practicable, that services and facilities are accessible to older persons.

## **CHAPTER 3**

### **COMMUNITY-BASED CARE AND SUPPORT SERVICES 45 FOR OLDER PERSONS**

#### **Rights of older persons receiving community-based care and support services**

10. An older person receiving community-based care and support services has, in addition to the rights contemplated in section 7, the right to—
- (a) reside at home as long as possible; 50
  - (b) pursue opportunities for the full development of his or her potential; and
  - (c) benefit from family and community care and protection in accordance with society's system of cultural values.

### Community-based programmes for older persons

- 11.** (1) The Minister may, in collaboration with any relevant Minister or Member of the Executive Council in a province—
- (a) develop community-based programmes that fall into two broad categories, namely—
    - (i) prevention and promotion programmes, which ensure the independent living of an older person in the community in which the older person resides; and
    - (ii) home-based care, which ensures that a frail older person receives maximum care within the community through a comprehensive range of integrated services.
  - (b) determine how any person who runs a programme contemplated in paragraph (a) may be supported, either financially or otherwise.
- (2) The programmes contemplated in subsection (1) are programmes aimed at—
- (a) economic empowerment of older persons;
  - (b) establishment of recreational opportunities for older persons;
  - (c) information, education and counselling services, including HIV and AIDS, care for orphans, Alzheimer's, dementia and basic emergency care;
  - (d) spiritual, cultural, medical, civic and social services;
  - (e) provision of nutritionally balanced meals to needy older persons;
  - (f) promotion of skills and capacity of older persons to sustain their livelihoods;
  - (g) professional services, including care and rehabilitation to ensure independent living of older persons;
  - (h) appropriate services contained in the indigent policy for vulnerable and qualifying older persons;
  - (i) the utilisation and management of existing facilities for older persons as multi-purpose community centres;
  - (j) integrated community care and development systems for older persons; and
  - (k) inter-generational programmes.
- (3) Home-based care programmes directed at frail older persons within the community may include—
- (a) provision of hygienic and physical care of older persons;
  - (b) provision of professional and lay support for the care of older persons within the home;
  - (c) rehabilitation programmes that include provision of assisted devices;
  - (d) provision of respite care;
  - (e) information, education and counselling for family members, caregivers and the community regarding ageing and associated conditions; and
  - (f) provision of free health care to frail older persons and to other older persons determined by the Minister.

### Community-based care and support services to be registered

- 12.** (1) No person may provide community-based care and support services unless the service is registered in terms of section 13.
- (2) A person who renders a community-based care and support service that has not been registered in terms of section 13 is guilty of an offence.

### Registration of community-based care and support services

- 13.** (1) Any person who wishes to provide a community-based care and support service must apply to the Director-General for the registration of such service.
- (2) The Minister must prescribe conditions for the registration of community-based care and support services, including application for registration, approval of registration, temporary registration, withdrawal and termination of registration, and any matter contemplated in subsection (4).
- (3) Registration granted in terms of this section is not transferable to another person.
- (4) If the provider of a service for any reason intends to stop providing the service, the provider must, prior to stopping the service in question—
- (a) notify the Director-General of the intention and the implications of such stoppage for the affected older persons;
  - (b) inform the older persons affected of the intended stoppage of the service; and

- (c) take reasonable steps to ensure that the older persons benefiting from the service are not adversely affected or put at risk and, where appropriate, are referred to a person providing similar services.

#### **Persons providing home-based care**

- 14.** (1) Any person who provides home-based care must ensure that caregivers receive the prescribed training. 5
- (2) All social workers and health care providers providing care to older persons contemplated in subsection (1) must be registered with the appropriate statutory council responsible for the relevant profession.
- (3) (a) The Minister must keep a register of all caregivers providing home-based care and must prescribe a code of conduct for such caregivers. 10
- (b) Paragraph (a) does not apply to social workers and health care providers referred to in subsection (2).
- (4) Any person who contravenes or fails to comply with any provision of this section is guilty of an offence. 15

#### **Monitoring and evaluation of community-based care and support services**

- 15.** Section 22 applies with the necessary changes in respect of the monitoring and evaluation of community-based care and support services.

### **CHAPTER 4**

#### **RESIDENTIAL FACILITIES 20**

##### **Rights of older persons in residential facilities**

- 16.** An older person residing in a residential facility has, in addition to the rights he or she has in terms of the Bill of Rights or any other rights he or she may have, the right to—
- (a) appoint a representative to act on his or her behalf; 25
  - (b) have reasonable access to assistance and visitation;
  - (c) keep and use personal possessions;
  - (d) have access to basic care;
  - (e) be informed about the financial status of the residential facility and changes in management; 30
  - (f) participate in social, religious and community activities of his or her choice;
  - (g) privacy;
  - (h) his or her own physician if he or she can afford it; and
  - (i) be given at least 30 days' notice of a proposed transfer or discharge.

##### **Services at residential facilities 35**

- 17.** The following services may be provided at residential facilities, namely—
- (a) 24-hour care and support services to frail older persons and older persons who need special attention;
  - (b) care and supervision services to older persons who are suffering from dementia and related diseases; 40
  - (c) rehabilitation services;
  - (d) public education on issues of ageing, including dementia;
  - (e) counselling services to residents and family members who need these services;
  - (f) implementation and monitoring of outreach programmes; 45
  - (g) provision of beds for the temporary accommodation of older persons at risk;
  - (h) respite care services;
  - (i) training of volunteer caregivers to deal with frail older persons; and
  - (j) sport and recreational activities.



### **Prohibition on operation of unregistered residential facilities, and registration of such facilities**

**18.** (1) (a) Subject to section 35, no person may operate a residential facility unless such facility has been registered under this section.

(b) Paragraph (a) does not apply to a private residence in which an older person is looked after by a family member. 5

(2) A person who wishes to operate a residential facility must, in the prescribed manner, apply to the Minister for registration thereof.

(3) After consideration of an application contemplated in subsection (2) the Minister may— 10

(a) refuse the application or grant it subject to such conditions as he or she may determine, and if he or she grants it, direct that a registration certificate specifying those conditions be issued to the applicant in the prescribed form; or

(b) subject to such conditions as he or she may determine, grant authority to the applicant to operate the residential facility for such period, not exceeding 12 months, as the Minister may determine, and direct that a temporary registration certificate specifying those conditions be issued to the applicant in the prescribed form for that period, and after expiration of the said period, or after notice by the applicant in the prescribed manner that the said conditions have been complied with, whichever occurs first, reconsider the application. 15 20

(4) Temporary registration contemplated in subsection (3)(b) may not be extended for more than 12 months under the same conditions.

(5) The Minister may at any time after one month's notice of his or her intention to do so, and after consideration of any representations received by him or her during such month, amend or cancel a registration certificate issued in terms of subsection (3)(a). 25

(6) (a) The amendment or cancellation of such registration certificate must be effected by notice to the holder thereof, and takes effect on a date specified in the notice.

(b) The date specified in the notice may not be earlier than three months for permanent registration and one month for temporary registration after the date of the notice, unless the Minister and the holder of the registration certificate have agreed otherwise. 30

(7) A person to whom a registration certificate has been issued in terms of subsection (3) may not transfer it to any other person.

(8) If the registration of a residential facility has been cancelled in terms of subsection (5), or if the operator of a residential facility wishes to close down such facility for any reason, he or she must take reasonable steps to ensure that on the closing down of such facility the older persons concerned are accommodated in another registered residential facility or with persons who, in the opinion of a social worker, are fit and proper persons for accommodating the older person or older persons. 35

(9) Any person who contravenes or fails to comply with a provision of this section, or of a condition imposed thereunder, is guilty of an offence. 40

### **Compliance with conditions for registration of residential facilities**

**19.** (1) If there is reason to believe that any of the conditions contemplated in section 18(3) have not been complied with, the Minister may order specific measures to be adopted to facilitate compliance with those conditions.

(2) The operator of a registered residential facility must, at all reasonable times, report to the Minister any circumstances which may result in his or her inability to comply fully with any condition contemplated in section 18(3). 45

(3) If the registration of a residential facility has been cancelled in terms of section 18(5), or if the operator of a residential facility wishes to close down that residential facility, the operator must— 50

(a) prior to any decision to close down that residential facility, consult with the Minister on the matter;

(b) furnish the Minister with a full report on the accommodation of the older persons concerned required in terms of section 18(7); and

(c) hand over to the Department all assets bought with Government funds. 55

(4) Any person who fails to comply with subsection (3) is guilty of an offence.

### **Establishment of residents' committees for residential facilities**

**20.** (1) If more than 10 older persons reside in a residential facility, excluding a shelter, a residents' committee which represents the interests of the residents must be established by the residents. 60

- (2) The Minister must prescribe—
- (a) the composition of a residents' committee contemplated in subsection (1), which must be reflective of the profile of residents and must include representatives of the residents and members of staff of the relevant residential facility and may include members of the public; 5
  - (b) the election, appointment, qualifications, terms of office and grounds for removal from office of the members of a residents' committee and the filling of vacancies on such committee; and
  - (c) the number of, and procedure at, meetings of a residents' committee.
- (3) A residents' committee established in terms of subsection (1) must ensure that the 10  
manager of the residential facility in question—
- (a) facilitates interaction between the residents of the residential facility and their families, the public in general and that committee;
  - (b) provides quality service to the residents of the residential facility;
  - (c) provides opportunities for the training of the staff of the residential facility; 15
  - (d) applies principles of sound financial management and submits quarterly financial reports to the residents and staff of the residential facility;
  - (e) monitors activities at the residential facility in order to deal speedily with any incidents of abuse of the residents of the residential facility and takes steps to report such incidents to the appropriate authority; 20
  - (f) consults the residents' committee in the appointment of the residential staff of the residential facility;
  - (g) establishes complaints procedures for the residents and staff of the residential facility and persons who wish to lodge a complaint on behalf of any such resident; and 25
  - (h) does everything necessary or expedient for the effective functioning of the residential facility.

### Admission to residential facilities

21. (1) No person may unfairly discriminate directly or indirectly against an older person applying for admission to a residential facility on one or more grounds referred 30  
to in section 9(3) of the Constitution.
- (2) If a person is refused admission to a residential facility, the manager of that residential facility must, on the request of that person, give reasons in writing for such refusal to the person.
- (3) (a) An older person may not be admitted to a residential facility without his or her 35  
consent, unless his or her mental condition renders him or her incapable of giving such consent, in which case a person authorised to give such consent in terms of any law or in terms of a court order may give the required consent.
- (b) In the absence of a person contemplated in—
- (i) paragraph (a), the required consent may be given by the spouse or partner of 40  
the older person concerned or, in the absence of such spouse or partner, an adult child or sibling of the older person, in the specific order as listed; or
  - (ii) paragraph (a) or subparagraph (i), the required consent may be given by the Minister.
- (c) The consent contemplated in paragraph (b)(i) or (ii) may only be given after a 45  
medical practitioner registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), has certified that any delay in the admission of the older person might result in his or her death or irreversible damage to his or her health.
- (4) The operator of a residential facility must take all reasonable steps to obtain the 50  
older person's consent.
- (5) Notwithstanding subsection (3), an older person who is capable of understanding must be informed of the intended admission even if his or her mental condition renders him or her incapable of giving the required consent in terms of that subsection.
- (6) The operator of a residential facility into which an older person is admitted as a 55  
result of consent given in terms of subsection (3)(b) must notify the Director General of the admission within 48 hours after such admission.
- (7) On receipt of the notice referred to in subsection (6), the Director-General may constitute such a multidisciplinary team as may be prescribed in order to assess and to confirm or reject the admission contemplated in that subsection.
- (8) Any person who contravenes this section is guilty of an offence. 60

### Monitoring of registered residential facilities

**22.** (1) A social worker in the employ of the State may at any time, and any social worker or person designated by the Director-General must, if requested to do so by the Director-General—

- (a) visit and monitor a registered residential facility in order to ensure compliance with this Act; 5
- (b) interview any older person cared for or accommodated in such residential facility;
- (c) either with or without the assistance of a health care provider enquire into the well-being of any such older person; 10
- (d) direct any person who has in his or her possession or custody any book or document relating to such residential facility, to submit such book or document to him or her for inspection;
- (e) submit a report to the Director-General on the outcome of the inspection; and
- (f) provide the operator of the residential facility with a report on the findings of the inspection. 15

(2) A social worker or designated person exercising any power in terms of subsection (1) must, at the request of the manager of the residential facility in question or the person who has control over the place in question, as the case may be, produce a certificate issued by the Director-General stating that he or she is such a social worker or designated person. 20

(3) A social worker or designated person may issue a compliance notice to the operator concerned if a provision of this Act has not been complied with.

(4) A compliance notice remains in force until the relevant provision of this Act has been complied with and the social worker or designated person has issued a compliance certificate in respect of that notice. 25

(5) A person is guilty of an offence if that person—

- (a) obstructs or hinders a social worker or designated person in the performance of his or her functions in terms of subsection (1);
- (b) refuses to give a social worker or designated person access to an older person cared for or accommodated in a residential facility referred to in subsection (1); or 30
- (c) refuses or fails to comply with a direction in terms of subsection (1)(d).

### Report to Minister by operators of residential facilities

**23.** (1) The operator of a registered residential facility must within 60 days after the end of the financial year of that residential facility submit to the Minister a report covering that financial year in respect of— 35

- (a) compliance with—
  - (i) the prescribed service standards; and
  - (ii) the prescribed measures to prevent and combat abuse of older persons; 40
 and
- (b) the provisions of the prescribed service level agreements concluded during that financial year.

(2) If the operator of a registered residential facility fails to submit a report in terms of subsection (1), the Minister may— 45

- (a) give notice to that operator that if such report is not submitted within 90 days after the date of that notice, the registration may 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 registration after giving one month's notice of the intention to do so. 50

## CHAPTER 5

### PROTECTION FOR OLDER PERSONS

#### Effect of Act on Domestic Violence Act, 1998

**24.** The provisions of this Act must not be construed as limiting, amending, repealing or otherwise altering any provision of the Domestic Violence Act, 1998 (Act No. 116 of 1998), or as exempting any person from any duty or obligation imposed by that Act or prohibiting any person from complying with any provision of that Act. 55

### Older person in need of care and protection

**25.** (1) Any person who is involved with an older person in a professional capacity and who on personal observation concludes that the older person is in need of care and protection must report such conclusion to the Director-General.

(2) Any person other than a person in subsection (1) who is of the opinion that an older person is in need of care and protection may report such opinion to a social worker. 5

(3) The Director-General or the social worker to whom a report has been made must investigate the matter.

(4) If the report is substantiated by the investigation, the Director-General or the social worker concerned may take any one or more of the following actions, namely 10 to—

- (a) facilitate the removal of the older person concerned to a hospital, in case of injury, or to a shelter;
- (b) make a report to a police official requesting the latter to act in terms of section 27; 15
- (c) take such other steps as may be prescribed to ensure adequate provision for the basic needs and protection of the older person concerned; or
- (d) if the older person concerned is the victim of an offence or crime, assist the older person to see a police official in order to lay a complaint.
- (5) An older person who is in need of care and protection is one who— 20
  - (a) has his or her income, assets or old age grant taken against his or her wishes or who suffers any other economic abuse;
  - (b) has been removed from his or her property against his or her wishes or who has been unlawfully evicted from any property occupied by him or her;
  - (c) has been neglected or abandoned without any visible means of support; 25
  - (d) lives or works on the streets or begs for a living;
  - (e) abuses or is addicted to a substance and without any support or treatment for such substance abuse or addiction;
  - (f) lives in circumstances likely to cause or to be conducive to seduction, abduction or sexual exploitation; 30
  - (g) lives in or is exposed to circumstances which may harm that older person physically or mentally; or
  - (h) is in a state of physical, mental or social neglect.

### Notification of abuse of older persons

**26.** (1) Any person who suspects that an older person has been abused or suffers from an abuse-related injury must immediately notify the Director-General or a police official of his or her suspicion. 35

(2) A person is not liable in respect of any notification given in good faith in terms of subsection (1).

(3) A person who fails to comply with subsection (1) is guilty of an offence. 40

(4) On receipt of a notification in terms of subsection (1)—

- (a) the Director-General must investigate the matter and if the suspicion is substantiated by the investigation, section 25(4) applies; and
- (b) the police official must inform the Director-General of the alleged abuse or, if he or she is satisfied that it will be in the best interests of the older person if the alleged offender is removed from the home or place where the older person resides, act in terms of section 27. 45

(5) Subsection (4)(a) applies with the necessary changes if the Director-General receives information contemplated in subsection (4)(b).

### Written notice to alleged offender 50

**27.** (1) A police official to whom a report contemplated in section 25(4)(b) has been made or who is satisfied that it will be in the best interests of the older person if the alleged offender is removed from the home or place where the older person resides, must issue a written notice which—

- (a) specifies the names, surname, residential address, occupation and status of the alleged offender; 55

- (b) calls upon the alleged offender to leave the home or place where the older person resides and refrain from entering such home or place or having contact with the older person until the court hearing specified in paragraph (c);
  - (c) calls upon the alleged offender to appear at a magistrates' court having jurisdiction on a date and at a time specified in the written notice to advance reasons why he or she should not be permanently prohibited from entering the home or place where the older person resides: Provided that the date so specified must be the first court day after the day upon which the notice is issued; and 5
  - (d) contains a certificate under the hand of the police official that he or she has handed the original of such written notice to the alleged offender and that he or she has explained to the alleged offender the importance thereof. 10
- (2) The police official must forthwith forward a duplicate original of the written notice to the clerk of the magistrates' court concerned.
- (3) The mere production to the magistrates' court of the duplicate original referred to in subsection (2) is *prima facie* proof of the issue of the original thereof to the alleged offender and that such original was handed to the offender. 15
- (4) Section 55 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) apply, with the necessary changes, to a written notice handed to an alleged offender in terms of subsection (1). 20
- (5) A magistrates' court before which an alleged offender to whom a written notice in terms of subsection (1) has been issued, appears, may summarily inquire into the circumstances which gave rise to the issuing of the notice.
- (6) The magistrates' court may, after having considered the circumstances which gave rise to the issuing of the written notice and after having heard the alleged offender— 25
- (a) issue an order prohibiting the alleged offender from entering the home or place where the older person resides or from having any contact with the older person, or both from entering such home or place and having contact with the older person, for such period of time as the court deems fit;
  - (b) order that the alleged offender may enter the home or the place where the older person resides or have contact with the older person upon such conditions as would ensure that the best interests of the older person are served; 30
  - (c) order that the alleged offender will be responsible for the maintenance of his or her family during the period contemplated in paragraph (a); or
  - (d) make such other order with regard to the matter as the court deems fit. 35
- (7) Misuse of a power referred to in subsection (1) by a police official constitutes grounds for disciplinary proceedings contemplated in section 40 of the South African Police Service Act, 1995 (Act No. 68 of 1995), against such police official.
- (8) A person is guilty of an offence if that person—
- (a) has been issued with a written notice contemplated in subsection (1) and— 40
    - (i) refuses to leave the home or place where the older person resides; or
    - (ii) has contact with the older person in contravention of the written notice;
  - (b) contravenes or fails to comply with an order of the magistrates' court issued in terms of subsection 6 or with any condition contained in such order. 45

#### **Procedure for bringing alleged abuser of older person before magistrate**

- 28.** (1) If a social worker or a health care provider submits or makes a written statement under oath or affirmation to a public prosecutor, and in such statement it is alleged that any person within the area of jurisdiction of the magistrate's court to which that public prosecutor is attached abuses an older person, that public prosecutor may, subject to subsection (2), request the clerk of that court to issue a summons informing such first-mentioned person of the allegations against him or her and calling upon him or her to appear, at a time and place specified therein, before a magistrate within that area. 50
- (2) A public prosecutor may not in terms of subsection (1) request a clerk of the court to issue a summons unless he or she has obtained from the social worker or health care provider a report on the alleged abuse of the older person concerned. 55
- (3) If on the grounds of a statement under oath or affirmation referred to in subsection (1) the magistrate has reason to suspect that a social worker or health care provider will be prevented or prohibited from going into or entering upon the place where the older person concerned resides to make the necessary investigation for the purposes of a report referred to in subsection (2), or if such social worker or health care 60



provider has been prevented or prohibited from doing so, the magistrate concerned may on the application of the public prosecutor issue a warrant authorising the social worker or health care provider to go into or enter upon that place to make such investigation.

(4) A magistrate may in a warrant issued by him or her in terms of subsection (3) authorise the social worker or health care provider to take a police official with him or her for the purposes of an investigation referred to in the said subsection. 5

(5) The Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies, with the necessary changes, in relation to the form and manner of service of summonses in criminal cases in lower courts, the time to be allowed to a person summoned to appear, and the manner in which persons who have been summoned to appear may be dealt with if they fail to appear or to remain in attendance, as required, in respect of summonses issued in terms of this section. 10

(6) A person is guilty of an offence if that person—

- (a) obstructs or hinders a social worker or a health care provider in the performance of his or her functions in terms of this section; or 15
- (b) refuses to furnish to a social worker or a health care provider any information in connection with the alleged abuse of an older person at his or her disposal which such officer requires for the purposes of an investigation referred to in subsection (3).

### **Enquiry into abuse of older person** 20

**29.** (1) Subject to this section, a magistrate before whom any person is brought in terms of section 28 must 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 for the purpose must appear at the enquiry and may call witnesses and cross-examine any other witnesses giving evidence at the enquiry. 25

(3) The person against whom the allegations in question were made, may give evidence and he or she, or his or her legal representative, may cross-examine any witnesses called in terms of subsection (2) and may call witnesses and must be given the opportunity to advance reasons why an order should not be issued under subsection (10). 30

(4) Subject to anything to the contrary contained in this Act, the law relating to criminal trials in magistrates' courts applies with the necessary changes in respect of subpoenas, the calling and examination of witnesses for the purposes of or at the enquiry, the taking of evidence and the production of documents and other articles thereat, and the payment of allowances to witnesses. 35

(5) The magistrate holding the enquiry may determine whether or not the proceedings must be conducted in an open court room or behind closed doors.

(6) Section 159(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in so far as it relates to the conduct of a criminal trial in the absence of an accused, applies with the necessary changes in respect of an enquiry held in terms of this section. 40

(7) Section 108 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), applies with the necessary changes in respect of any proceedings in connection with an enquiry held in terms of this section.

(8) The report referred to in section 28(2) must be submitted to the magistrate holding the enquiry, who may direct the district surgeon, a psychiatrist or a clinical psychologist to examine the older person concerned and to furnish the magistrate with a report on the findings of such examination. 45

(9) The contents of a report submitted or furnished in terms of subsection (8) must 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 must be given an opportunity to cross-examine the person who made the report, in relation to any matter arising out of the report, and to disprove any allegation made therein. 50

(10) If, after consideration of the evidence and of any report submitted or furnished in terms of subsection (8), it appears to the magistrate that any allegation in the summons is correct, the magistrate may— 55

- (a) authorise the person concerned to accommodate or care for the older person concerned under such conditions as the magistrate may impose; or
- (b) prohibit that person from accommodating or caring for any older person for such period, but not exceeding 10 years, as may be determined by the magistrate. 60

(11) Any person who contravenes or fails to comply with any condition imposed in terms of subsection (10)(a) or who contravenes or fails to comply with subsection (10)(b) is guilty of an offence.

### **Prohibition of abuse of older persons and special measure to combat abuse of older persons**

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**30.** (1) Any person who abuses an older person is guilty of an offence.

(2) Any conduct or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress or is likely to cause harm or distress to an older person constitutes abuse of an older person.

(3) For the purposes of subsection (2), “abuse” includes physical, sexual, psychological and economic abuse and—

- (a) “physical abuse” means any act or threat of physical violence towards an older person;
- (b) “sexual abuse” means any conduct that violates the sexual integrity of an older person;
- (c) “psychological abuse” means any pattern of degrading or humiliating conduct towards an older person, including—
  - (i) repeated insults, ridicule or name calling;
  - (ii) repeated threats to cause emotional pain; and
  - (iii) repeated invasion of an older person’s privacy, liberty, integrity or security;
- (d) “economic abuse” means—
  - (i) the deprivation of economic and financial resources to which an older person is entitled under any law;
  - (ii) the unreasonable deprivation of economic and financial resources which the older person requires out of necessity; or
  - (iii) the disposal of household effects or other property that belongs to the older person without the older person’s consent.

(4) If a court, after having convicted a person of any crime or offence, finds that the convicted person has abused an older person in the commission of such crime or offence, such finding must be regarded as an aggravating circumstance for sentencing purposes.

### **Keeping of register of abuse of older persons**

**31.** (1) The Minister must in the prescribed manner keep a register of persons convicted of the abuse of an older person or of any crime or offence contemplated in section 30(4).

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(2) A person whose name appears in the register contemplated in subsection (1) may not in any way—

- (a) operate or be employed at any residential facility;
- (b) provide any community-based care and support service to an older person.

## **CHAPTER 6**

40

### **GENERAL AND SUPPLEMENTARY PROVISIONS**

#### **Delegation**

**32.** (1) The Minister may—

- (a) delegate to any officer of the Department any power conferred upon the Minister by this Act, except the power to make regulations; and
- (b) authorise any such officer to perform any duty imposed upon the Minister by this Act.

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(2) The Minister may, with the concurrence of the Premier of a province—

- (a) delegate to the Member of the Executive Council of that province responsible for social development any power conferred upon the Minister by this Act, except the power to make regulations; and
- (b) authorise that Member of the Executive Council to perform any duty imposed upon the Minister by this Act.

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(3) The Member of the Executive Council of a province responsible for social development may—

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- (a) delegate to any officer of the provincial administration concerned any power delegated to that Member under subsection (2);
- (b) authorise any such officer to perform any duty which that Member is authorised to perform under subsection (2).
- (4) The Director-General may— 5
  - (a) delegate to any other officer of the Department any power conferred upon the Director-General by this Act; and
  - (b) authorise any such officer to perform any duty imposed upon the Director-General by this Act.
- (5) The Director-General may, with the concurrence of the relevant Director-General of a provincial administration— 10
  - (a) delegate to the Head of Department of that province responsible for social development any power conferred upon the Director-General by this Act; and
  - (b) authorise that Head of Department to perform any duty imposed upon the Director-General by this Act. 15
- (6) A Head of Department may—
  - (a) delegate to any other officer of the provincial administration concerned any power delegated to him or her under subsection (5); and
  - (b) authorise any such officer to perform any duty which he or she is authorised to perform under subsection (5). 20
- (7) Any person to whom any power has been delegated or who has been authorised to perform a duty under this section must exercise that power or perform that duty subject to such conditions as the person who effected the delegation or granted the authorisation considers necessary.
- (8) Any delegation of a power or authorisation to perform a duty under this section— 25
  - (a) must be in writing;
  - (b) does not prevent the person who effected the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and
  - (c) may at any time be withdrawn in writing by that person. 30

### Penalties

- 33. Any person convicted of an offence in terms of—
  - (a) section 12(2), 14(4), 18(8), 19(4), 22(5)(a), (b) or (c) or 28(6)(a) or (b) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment; or 35
  - (b) section 21(8), 26(3), 27(8)(a) or (b), 29(11) or 30(1) is liable to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

### Regulations

- 34. (1) The Minister may make regulations regarding— 40
  - (a) any matter which may or must be prescribed in terms of this Act;
  - (b) the form of any application, authority, certificate, consent, notice, order, register, process or subpoena which is to or may be made, granted, given, issued or kept in terms of this Act, and any other form required in administering this Act; 45
  - (c) the procedure to be followed and the conditions which may be imposed in connection with the registration of residential facilities, and the minimum standards with which such residential facilities are to comply;
  - (d) the books, accounts and registers which are to be kept by the managers of residential facilities, the manner in which such books, accounts and registers are to be kept and dealt with, and the returns and reports to be furnished in connection with such facilities; 50
  - (e) the records to be kept by any person who cares for or accommodates for remuneration, whether by way of money or goods, any older or frail person in any place other than a residential facility; 55
  - (f) measures to—
    - (i) prevent, combat and deal with the abuse of older persons;
    - (ii) be taken to advance persons disadvantaged by unfair discrimination;



- (iii) promote the rights of residents of residential facilities;
  - (iv) promote the rights of older persons that are not in residential facilities;
  - (g) the form and content of service level agreements between the residents and the residents' committee of a residential facility;
  - (h) the minimum norms and standards for admission of persons to residential facilities; 5
  - (i) service standards;
  - (j) the levels of community-based care and support services;
  - (k) the keeping of registers in terms of section 31; and
  - (l) generally, any other ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation of this Act. 10
- (2) The regulations may provide that any person who contravenes or fails to comply with a regulation is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year or to both a fine and such imprisonment.
- (3) Any regulation made in terms of subsection (1) which affects the South African Police Service must be made after consultation with the Minister for Safety and Security. 15
- (4) Any regulation made in terms of subsection (1) which deals with the size or value of services and subsidies and with the criteria for eligibility of services must be made with the concurrence of the Minister of Finance. 20
- (5) Before the Minister makes any regulation under this section, he or she must publish a draft of the proposed regulation in the *Gazette* together with a notice calling on interested persons to comment, in writing, within a period stated in the notice of not less than 30 days from the date of publication of the notice
- (6) The Minister must submit to Parliament the draft regulations contemplated in subsection (5) and comments received in terms of that subsection before final publication. 25
- (7) The Minister may, if circumstances necessitate the immediate publication of a regulation, publish that regulation without consultation as contemplated in subsection (5). 30

### **Repeal of laws, and transitional provisions and saving**

- 35.** (1) The Aged Persons Act, 1967 (Act No. 81 of 1967), and the Aged Persons Amendment Act, 1998 (Act No. 100 of 1998), are hereby repealed.
- (2) Any person managing a home for the aged which was registered in terms of the Aged Persons Act, 1967 (Act No. 81 of 1967), immediately before this Act took effect, must within 12 months of the date on which this Act took effect apply for registration in terms of section 18 of this Act. 35
- (3) A home for the aged contemplated in subsection (2) remains registered in terms of the Aged Persons Act, 1967 (Act No. 81 of 1967), until the Minister grants or refuses the application as contemplated in section 18 of this Act. 40
- (4) Any manager who received a subsidy under section 2 of the Aged Persons Act, 1967 (Act No. 81 of 1967), immediately before this Act took effect continues to receive such subsidy for 12 months after the date on which this Act took effect.
- (5) Anything done or deemed to have been done under any provision of a law repealed by subsection (1) and which may or must be done in terms of this Act, must be regarded as having been done in terms of the corresponding provision of this Act. 45

### **Short title and commencement**

- 36.** This Act is called the Older Persons Act, 2006, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE OLDER PERSONS BILL**

### **1. INTRODUCTION**

Growing old should be a period when a person's contribution to society is acknowledged and valued. In poor communities old people make a valuable contribution to households as carers for children, people with disabilities and those affected and infected by HIV and Aids. This Bill seeks to maintain and increase the capacity of older persons to support themselves and to contribute to the well-being of those around them.

### **2. OBJECTS**

The main objects of this Bill are—

- (a) to maintain, increase and promote the status, well-being, safety and security of older persons;
- (b) to maintain and protect the rights of older persons as recipients of services;
- (c) to regulate the registration of facilities for older persons; and
- (d) to combat the abuse of older persons.

### **3. CONSULTATION**

Consultative workshops on the provisions of the Bill were held with the Portfolio Committee on Social Development in the National Assembly, the Select Committee for Social Services in the National Council of Provinces, national bodies and councils and provincial departments responsible for social development. A number of national departments, such as the Departments of Transport, Safety and Security, Health, Home Affairs and Water Affairs and Forestry also participated in workshops and gave valuable input which led to the drafting of this Bill.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

4.1 The Department of Social Development has considered the financial implications posed by the Bill, and the necessary budgetary provision will be factored into the Medium Term Expenditure Framework.

4.2 A consultant has been appointed to do a scoping exercise of the preliminary costing of the Bill with the view to identifying the intergovernmental fiscal implications and budgetary implications of the proposed Bill, taking into consideration—

- \* fiscal risks (provisions that create implicit or explicit obligations on government);
- \* administrative costs and cost drivers (e.g. additional processes, personnel, management practices and procedures, information and reporting); and
- \* institutional arrangements (e.g. new Committees, Units, Associations) delegation and assignment of functions to provincial or local government.

A report on the outcome is available from the Department.

4.3 The Department of Social Development has simultaneously embarked on the broader costing process of the Bill aimed at—

- \* evaluating the social costs and benefits of the Bill;
- \* identifying direct private cost implications of the Bill (i.e any direct costs that the Bill imposes on private individuals and entities);
- \* understanding and analysing the full fiscal and budgetary implications of the Bill.

4.4 The summary of cost drivers for various sectors is as follows:

- (a) Department of Social Development:  
The cost of providing basic services;  
the establishment and operation of a register of facilities for older persons;  
the establishment of a register of persons unfit to provide care to older persons; and  
intergovernmental fiscal implications.
- (b) Justice Sector:  
The responsibilities associated with holding enquiries.

- (c) Health Sector:  
Funding of basic health services;  
responding to decisions made with respect to older persons in need of care and protection.

## **5. PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Social Development are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely “Welfare services”.