

REPUBLIC OF SOUTH AFRICA

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# OLDER PERSONS BILL

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*(As introduced in the National Assembly as a section 76 Bill; explanatory summary of Bill  
published in Government Gazette No. 25347 of 13 August 2003)  
(The English text is the official text of the Bill)*

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(MINISTER OF SOCIAL DEVELOPMENT)

**[B 68—2003]**

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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 respect, protect, promote and fulfil the rights in the Bill of Rights;

**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 enrichment 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—	25
	“ <b>abuse</b> ” means the violation of an older person’s rights enshrined in Chapter 2 of the Constitution;	
	“ <b>care</b> ” 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;	30
	“ <b>caregiver</b> ” means any person who provides care;	
	“ <b>community-based care and support services</b> ” means care and support services provided at a community-based centre and aimed at promoting and maintaining the independent functioning of older persons in a community;	
	“ <b>Department</b> ” means the Department of Social Development in the national sphere of government;	35
	“ <b>Director-General</b> ” means the Director-General of the Department;	
	“ <b>facility</b> ” means a building or other structure managed for the purposes of providing accommodation, housing and community-based care and support services to older persons, and includes a shelter but does not include a private residential home accommodating fewer than seven older persons for reward or a luncheon club or a building or other structure in or on which home-based care is provided;	40
	“ <b>frail person</b> ” means an older person whose physical or mental condition renders him or her in need of 24-hours continuous care;	45
	“ <b>home-based care</b> ” means care provided at the home of an older person by a caregiver other than the spouse or a family member of the older person concerned;	
	“ <b>luncheon club</b> ” means a club which provides a meal to an older person on one or more days of the week at a small charge;	
	“ <b>magistrate</b> ” includes an additional and an assistant magistrate;	50
	“ <b>manager</b> ” means the person responsible for the day-to-day management of a 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;	55

- “**older person in need of care and protection**” means an older person contemplated in section 18(5);
- “**owner**” means a person who owns a facility;
- “**police official**” 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; 5
- “**prescribed**” means prescribed by regulation;
- “**professional health care provider**” means a person providing health services in terms of any law;
- “**regulation**” means any regulation made under section 21; 10
- “**service**” means any activity or programme designed to meet the needs of an older person;
- “**shelter**” 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;
- “**social worker**” means any person registered as a social worker under section 17 of the Social Service Professions Act, 1978 (Act No. 110 of 1978); 15
- “**this Act**” includes any regulation.

## CHAPTER 1

### PROGRAMMES FOR DEVELOPMENT OF OLDER PERSONS

- Programmes for development of older persons** 20
2. (1) The Minister may, in consultation with any other relevant Minister—
- (a) develop programmes contemplated in subsection (2) or cause such programmes to be developed; and
- (b) support any person who runs programmes contemplated in subsection (2).
- (2) The programmes referred to in subsection (1) are programmes aimed at— 25
- (a) the recognition of the social, cultural, economic and political contribution of older persons;
- (b) the participation of older persons in decision-making processes at all levels;
- (c) the access of older persons to information, education and training;
- (d) the development of older persons in rural areas; 30
- (e) the protection and promotion of the rights of older persons;
- (f) the establishment of norms and standards for companies selling funeral policies and extending loans to older persons;
- (g) the utilisation and management of existing facilities for older persons as multi-purpose community centres and the development of an integrated community care and support system; 35
- (h) the provision of basic affordable accommodation for older persons;
- (i) the provision of care and services to older persons in rural areas and in disadvantaged communities;
- (j) the access of older persons to health, welfare and other care and support systems in order to enable older persons to maintain or regain their optimal level of physical, mental and emotional well-being and live with dignity in the community; 40
- (k) the establishment of a national research plan and communication network on ageing; 45
- (l) the creation of employment opportunities for older persons;
- (m) the establishment of recreational opportunities for older persons;
- (n) the exemption of older persons from the payment of property rates and taxes; and
- (o) the availability and accessibility of free or subsidised public transport facilities for older persons. 50

## CHAPTER 2

### ENSURING AN ENABLING AND SUPPORTIVE ENVIRONMENT FOR OLDER PERSONS

#### Facilities and services to comply with national norms and standards

3. (1) Facilities and services provided for or subsidised from funds appropriated by a provincial legislature for that purpose must comply with national norms and standards. 5  
 (2) The Minister must prescribe national norms and standards after consultation with the Minister of Finance, the Financial and Fiscal Commission and the Members of the Executive Councils responsible for social development in their respective provinces.

#### Conditions of use, withdrawal and refunding of subsidies 10

4. (1) The Minister may prescribe conditions for the use of a subsidy contemplated in section 3, including conditions regarding accounting.  
 (2) Any person in receipt of a subsidy contemplated in section 3, must use and account for the subsidy in accordance with the conditions contemplated in subsection (1).  
 (3) If any condition contemplated in subsection (1) is not complied with, the relevant Member of the Executive Council may withdraw the subsidy in question after one month's notice of the intention to do so. 15  
 (4) Any person in receipt of a subsidy contemplated in section 3 must refund any amount used contrary to a condition contemplated in subsection (1).  
 (5) Any person who contravenes or fails to comply with a provision of this section is guilty of an offence. 20

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

5. (1) (a) Subject to section 23, no person may own, manage or operate a facility unless such facility has been registered under this section. 25  
 (b) A facility maintained by the State does not have to be registered under this section.  
 (2) A person who wishes to own, manage or operate a 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— 30  
 (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 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 35  
 complied with, whichever occurs first, reconsider the application. 40  
 (4) 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).  
 (5) (a) The amendment or cancellation of such registration certificate must be effected 45  
 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 after the date of the notice, unless the Minister and the holder of the registration certificate have agreed otherwise.  
 (6) A person to whom a registration certificate has been issued in terms of subsection 50  
 (3) may not transfer it to any other person.  
 (7) If the registration of a facility has been cancelled in terms of subsection (4), or if the owner of a 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 facility or with persons who, 55

in the opinion of a social worker, are fit and proper persons for accommodating the older person or older persons.

(8) 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.

#### **Minister to be notified of provision of certain services** 5

6. (1) A person must notify the Minister in writing if he or she—  
 (a) manages a luncheon club;  
 (b) provides home-based care; or  
 (c) accommodates fewer than seven older persons in a private residential home for reward. 10

(2) If a person contemplated in subsection (1) wishes to receive a subsidy, he or she must apply to the Minister on the prescribed form for the registration of such club, care or accommodation.

(3) Any person who accommodates more than six older persons in a private residential home for reward is guilty of an offence unless the home is registered as a facility in terms of section 5. 15

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

7. (1) If there is reason to believe that any of the conditions contemplated in section 5(3) have not been complied with, the Minister may order specific measures to be adopted to facilitate compliance with those conditions. 20

(2) The owner of a registered 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 5(3).

(3) If the registration of a facility has been cancelled in terms of section 5(4), or if the owner of a facility wishes to close down that facility, the owner must— 25

- (a) prior to any decision to close down that 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 5(7); and
- (c) hand over to the Department all assets bought with Government funds or donated with the specific intention of assisting older persons. 30

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

8. (1) If more than 10 older persons reside in a facility, a residents committee which represents the interests of the residents must be established by the residents. 35

(2) The Minister must prescribe—

- (a) the composition of a residents' committee contemplated in subsection (1), which must include representatives of the residents and members of staff of the relevant facility and may include members of the public;
- (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. 40

(3) A residents' committee established in terms of subsection (1) must ensure that the manager of the facility in question—

- (a) facilitates interaction between the residents of the facility and their families, the public in general and that committee; 45
- (b) provides quality service to the facility;
- (c) provides opportunities for the training of the staff of the facility;
- (d) applies principles of sound financial management and submits quarterly financial reports to the residents and staff of the facility; 50
- (e) monitors activities at the facility in order to deal speedily with any incidents of abuse of the residents of the facility and takes steps to report such incidents to the appropriate authority;
- (f) consults the residents' committee in the appointment of the staff of the facility;
- (g) establishes complaints procedures for the residents and staff of the facility and persons who wish to lodge a complaint on behalf of any such resident; and 55

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

### **Admission to facilities**

**9.** (1) No person may unfairly discriminate directly or indirectly against a person applying for admission to a facility on one or more grounds referred to in section 9(3) of the Constitution. 5

(2) The need for a facility to reflect broadly the race composition of South Africa must be considered when determining eligibility for admission to that facility.

(3) If a person is refused admission to a facility, the manager of that facility must, on the request of that person, give reasons for such refusal to the person. 10

(4) Any person who contravenes subsection (1) is guilty of an offence.

### **Monitoring of registered facilities or places**

**10.** (1) A social worker in the employ of the State or any person designated by the Director-General must, after being requested to do so by the Director-General— 15

(a) visit and monitor a registered facility or any other registered place where an older or frail person is cared for or accommodated;

(b) interview any older or frail person accommodated in such facility or place;

(c) either with or without the assistance of a professional health care provider enquire into the well-being of any such older or frail person; and

(d) direct any person who has in his or her possession or custody any book or document relating to such facility or place, to submit such book or document to him or her for inspection. 20

(2) A social worker or designated person exercising any power in terms of subsection (1) must, at the request of the manager of the 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. 25

(3) 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 or frail person accommodated in a facility or place 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 managers of facilities**

**11.** (1) The manager of a registered facility must within 60 days after the end of the financial year of that 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 manager of a registered facility fails to submit a report in terms of subsection (1), the Minister may—

(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 facility in terms of section 3 may be withdrawn; and 45

(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 intention to do so. 50

### CHAPTER 3

#### PROTECTION FOR OLDER PERSONS

##### Rights of older persons in facilities

- 12.** An older person residing in a facility has the right to—
- (a) appoint a representative to act on his or her behalf; 5
  - (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 facility and changes in management; 10
  - (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.

##### Prohibition of abuse of older persons 15

- 13.** Any person who abuses an older person is guilty of an offence.

##### Procedure for bringing person who accommodates or cares for older or frail person before magistrate

**14.** (1) If a social worker or a professional health care provider submits or makes a written statement under oath 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— 20

- (a) accommodates or cares for an older or frail person in circumstances or in a manner likely to be injurious to the older or frail person's physical or mental well-being; or 25
- (b) takes advantage of an older or frail person by receiving excessive remuneration, by way of money or goods, for the accommodation or care of such older or frail 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. 30

(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 professional health care provider a report on the accommodation or care of the older or frail person concerned. 35

(3) If on the grounds of a statement under oath referred to in subsection (1) the magistrate has reason to suspect that a social worker or professional health care provider will be prevented or prohibited from going into or entering upon the place where the older or frail person concerned is being accommodated or cared for to make the necessary investigation for the purposes of a report referred to in subsection (2), or if such social worker or health care 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 professional health care provider to go into or enter upon that place to make such investigation. 40 45

(4) A magistrate may in a warrant issued by him or her in terms of subsection (3) authorise the social worker or professional 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) 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. 50

- (6) A person is guilty of an offence if that person— 55

- (a) obstructs or hinders a social worker or a professional health care provider in the performance of his or her functions in terms of this section; or
- (b) refuses to furnish to a social worker or a professional health care provider any information in connection with the accommodation or care of an older or frail person at his or her disposal which such officer requires for the purposes of an investigation referred to in subsection (3). 5

### **Enquiry into accommodation or care of older or frail person**

**15.** (1) Subject to this section, a magistrate before whom any person is brought in terms of section 14 must enquire into the correctness or otherwise of the allegations contained in the summons in question. 10

(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.

(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). 15

(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. 20

(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. 25

(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. 30

(8) The report referred to in section 14(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 or frail person concerned and to furnish the magistrate with a report on the findings of such examination.

(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. 35

(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— 40

- (a) authorise the person concerned to accommodate or care for the older or frail person concerned under such conditions as the magistrate may impose; or
- (b) prohibit that person from accommodating or caring for any older or frail person for such period, but not exceeding 10 years, as may be determined by the magistrate. 45

(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. 50

### **Notification of abuse of older persons**

**16.** (1) Any person who examines, attends to or deals with an older person must immediately notify the Director-General if he or she suspects that the older person—

- (a) has been abused; or
- (b) suffers from any abuse-related injury. 55

(2) On receipt of a notification in terms of subsection (1), the Director-General must arrange—

- (a) for the removal of the older person concerned to a hospital in case of injury or to such other place as the Director-General may determine; and

(b) that the older person receives the necessary treatment.

(3) Section 14(3) applies with the necessary changes in respect of the removal of the older person concerned.

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

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

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

**17.** (1) The Minister must in the prescribed manner keep—

(a) a register of all notifications in terms of section 16(1), together with the particulars regarding each notification; and

(b) a register of persons convicted of the abuse of an older person.

(2) A person whose name appears in a register contemplated in subsection (1)(b) may not own, manage or operate a facility.

### **Older person in need of care and protection**

**18.** (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.

(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 must take such steps as may be prescribed to ensure adequate provision for basic needs and protection of the older person.

(5) An older person who is in need of care and protection is one who—

(a) has his or her old age grant taken against his or her wishes;

(b) has been removed from his or her property against his or her wishes;

(c) has been neglected or abandoned without any visible means of support;

(d) lives or works on the streets or begs for a living;

(e) is addicted to a substance and without any support or treatment for such addiction;

(f) lives in circumstances likely to cause or to be conducive to seduction, abduction or sexual exploitation;

(g) lives in or is exposed to circumstances which may harm that older person physically or mentally;

(h) is in a state of physical, mental or social neglect; or

(i) has been or is being abused.

## **CHAPTER 4**

### **GENERAL AND SUPPLEMENTARY PROVISIONS**

#### **Delegation**

**19.** (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.

(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.

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

(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—
  - (a) delegate to any other officer of the Department any power conferred upon the Director-General by this Act; and 5
  - (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 Director-General of a provincial administration (in this section referred to as the “provincial Director-General”)— 10
  - (a) delegate to that provincial Director-General any power conferred upon the Director-General by this Act; and
  - (b) authorise that provincial Director-General to perform any duty imposed upon the Director-General by this Act.
- (6) A provincial Director-General may— 15
  - (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).
- (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. 20
- (8) Any delegation of a power or authorisation to perform a duty under this section—
  - (a) must be in writing; 25
  - (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.

## Penalties 30

- 20.** Any person convicted of an offence in terms of—
- (a) section 4(5), 5(8), 6(3), 10(3)(a), (b) or (c) or 14(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
  - (b) section 9(4), 13, 15(11) or 16(5) is liable to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment. 35

## Regulations

- 21.** (1) The Minister may make regulations regarding—
- (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; 40
  - (c) the procedure to be followed and the conditions which may be imposed in connection with the registration of facilities, and the minimum standards with which such facilities are to comply; 45
  - (d) the books, accounts and registers which are to be kept by the managers of 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 facility;
  - (f) measures to—
    - (i) prevent, combat and deal with the abuse of older persons; 55
    - (ii) be taken to advance persons disadvantaged by unfair discrimination;
    - (iii) promote the rights of residents of facilities;
  - (g) the form and content of service level agreements between the residents and the residents’ committee of a facility;

- (h) the minimum norms and standards for admission of persons to facilities;
- (i) service standards;
- (j) the levels of community-based care services;
- (k) the keeping of registers in terms of section 17; and
- (l) generally, any matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objectives of this Act. 5

(2) 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.

(3) 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. 10

### **Act binds State**

**22.** This Act binds the State except in so far as criminal liability is concerned.

### **Repeal of laws, and transitional provisions and saving** 15

**23.** (1) (a) The Aged Persons Act, 1967 (Act No. 81 of 1967), is hereby repealed insofar as it relates to provisions which have not been assigned to a competent authority within the jurisdiction of the government of a province in terms of Proclamation No. R.7 of 1996.

(b) The Aged Persons Amendment Act, 1998 (Act No. 100 of 1998), is hereby repealed. 20

(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 5 of this Act. 25

(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 5 of this Act.

(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. 30

(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.

### **Short title and commencement** 35

**24.** This Act is called the Older Persons Act, 2003, 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, 2003**

### **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”.



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