

**PARLIAMENT**  
OF THE  
**REPUBLIC OF SOUTH AFRICA**

---

**ANNOUNCEMENTS,  
TABLINGS AND  
COMMITTEE REPORTS**

---

WEDNESDAY, 23 NOVEMBER 2005

---

**TABLE OF CONTENTS**

**ANNOUNCEMENTS**

**National Assembly and National Council of Provinces**

1. Draft Bill submitted — Joint Rule 159 ..... 2971

**COMMITTEE REPORTS**

**National Assembly and National Council of Provinces**

1. Improvement of Quality of Life and Status of Women ..... 2971  
2. Improvement of Quality of Life and Status of Women..... 2972

**National Assembly**

1. Transport ..... 2986  
2. Transport ..... 2989  
3. Social Development..... 2996  
4. Health ..... 3042  
5. Public Service and Administration ..... 3047

**National Council of Provinces**

1. Labour and Public Enterprises ..... 3066
-

## ANNOUNCEMENTS

### National Assembly and National Council of Provinces

#### The Speaker and the Chairperson

#### 1. Draft Bill submitted in terms of Joint Rule 159

- (1) *Road Traffic Amendment Bill*, 2005, submitted by the Minister of Transport on 29 October 2005. Referred to the **Portfolio Committee on Transport** and the **Select Committee on Public Services**.

## COMMITTEE REPORTS

### National Assembly and National Council of Provinces

1. Report of the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women on **Office on the Status of Women contained in the Report and Financial Statements of Vote 1 — The Presidency for 2004-2005, including the Report of the Auditor-General on the Financial Statements of Vote 1 for 2004-2005 [RP 191-2005]**, dated 11 November 2005:

The Joint Monitoring Committee on Improvement of Quality of Life and Status of Women, having considered Office on the Status of Women contained in the Report and Financial Statements of Vote 1 — The Presidency for 2004-2005, including the Report of the Auditor-General on the Financial Statements of Vote 1 for 2004-2005 [RP 191-2005]: referred to it, reports that it has concluded its deliberations thereon.

The following points were considered:

The Beijing + 10 Report referred to, was not sent out for discussion to the relevant stakeholders prior to its presentation to the meeting in New York. The Committee was not given the opportunity to discuss, comment on and/or adopt the Report. To its knowledge, the Committee is not aware that there has been a report back by the Office of the Status of Women to stakeholders.

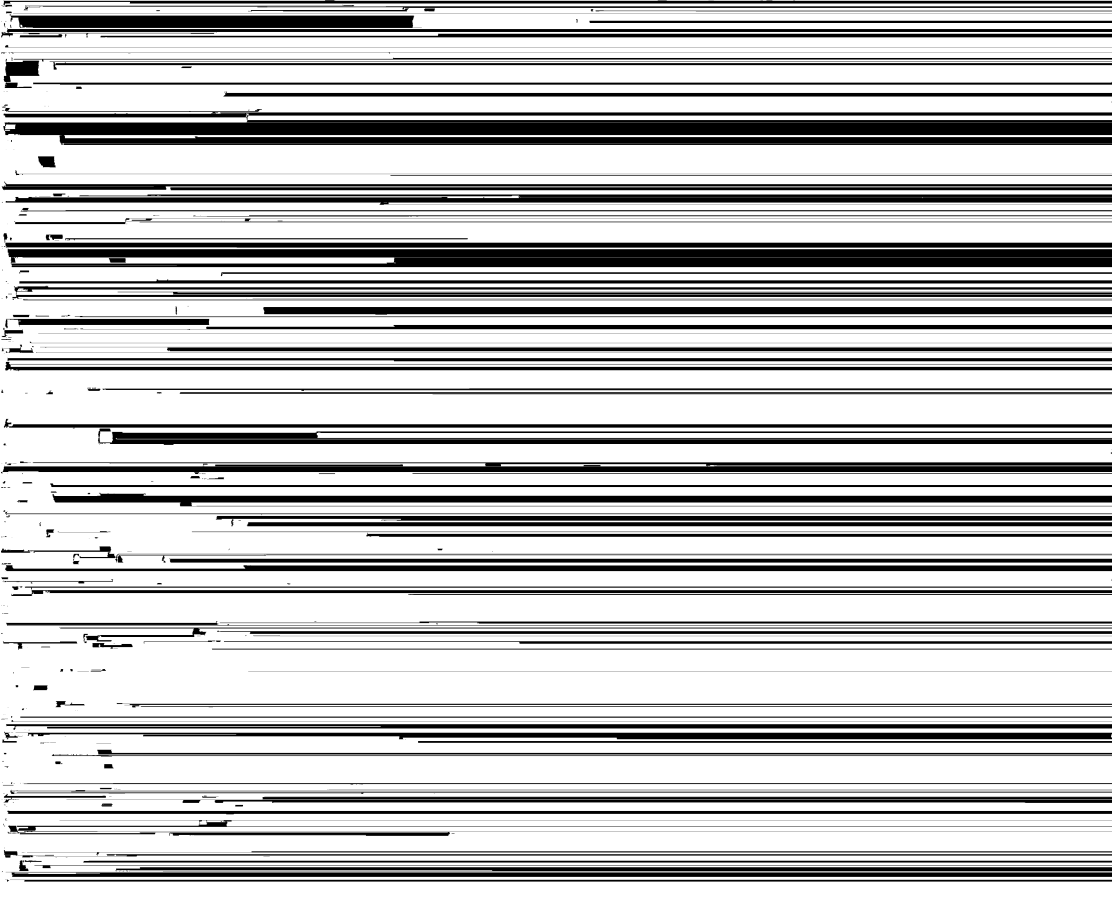
In the spirit of consultation and participation, that the government is committed to, the Committee would like to recommend that the 10-year National Action Plan for Gender Mainstreaming, be opened up for broad discussion, in all the provinces, before Cabinet/the government adopts it.

The National Policy Framework on Women's Empowerment and Gender Equality, adopted in 2000, sets out both short-term and long-term indicators for the achievement of gender equality. The Committee, as part of its monitoring role, would like the Office of the Status of Women to undertake research that responds directly to the indicators, to determine what progress has been made, five years after the policy has become operational.

The National Gender Machinery, of which the Committee is one of the co-chairs, holds most of its meetings in Pretoria. The Committee would like to recommend the rotational holding of the meetings in different provinces, as a way of broadening the participation of provincial stakeholders, and giving a broader base of civil society organisations access to the National Gender Machinery deliberations.

Report to be considered.

2. Annual Report of Joint Monitoring Committee on Improvement of Quality of Life and Status of Women, dated 11 November 2005:

IMPROVEMENT OF QUALITY OF LIFE AND STATUS	Year 2005	and Status of Women.	with regard to the improvement in the quality specific reference to the Government's	Convention on the Elimination of	Discriminations	and status of women and gender equality across the	country. Appropriate policies and programmes are implemented in
							

Ref 19/38/1/17

- Monitor all legislation including the Budget for compliance with the Beijing Platform for Action and Cedaw
- Monitor all ministries and departments in the Republic of South Africa to ensure they have mainstreamed gender in all their programmes and budgets

#### 2.4 List of Entities reporting to the Committee

Refer to Joint Rules, the Constitution, Cedaw and the Beijing Platform for Action

#### 3 CHAIRPERSON'S OVERVIEW: -

- Attendance continues to be a problem for the committee. Factors contributing to this are:

Commitments of NCOP members in provincial legislatures

Members disputing their membership

The committee, having been allocated Fridays for meetings only (under Group D), and excluded from meeting during the week, has to compete for attendance with committees from groups A, B and C, which are allocated Tuesdays, Wednesdays and Fridays for meetings. (Illustration below)

#### SCHEDULE FOR WEEKS HAVING PLENARIES:

SLOTS	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
09:00 – 13:00		GROUP C	GROUP C		GROUP C
09:00 – 13:00		GROUP A	GROUP B		*GROUPS A, B & D

\*Groups A and B to Alternate the 9:00-11:00 and 11:00-13:00 slots. Group D to meet 9:00-17:00 if required.

**COMMITTEE WEEKS:**

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
DUP C	GROUP C	GROUP C		
DUP A	GROUP B	GROUP A		**GROUPS A, B, C & D
DUP B	GROUP A	GROUP B	GROUP A, B, C	

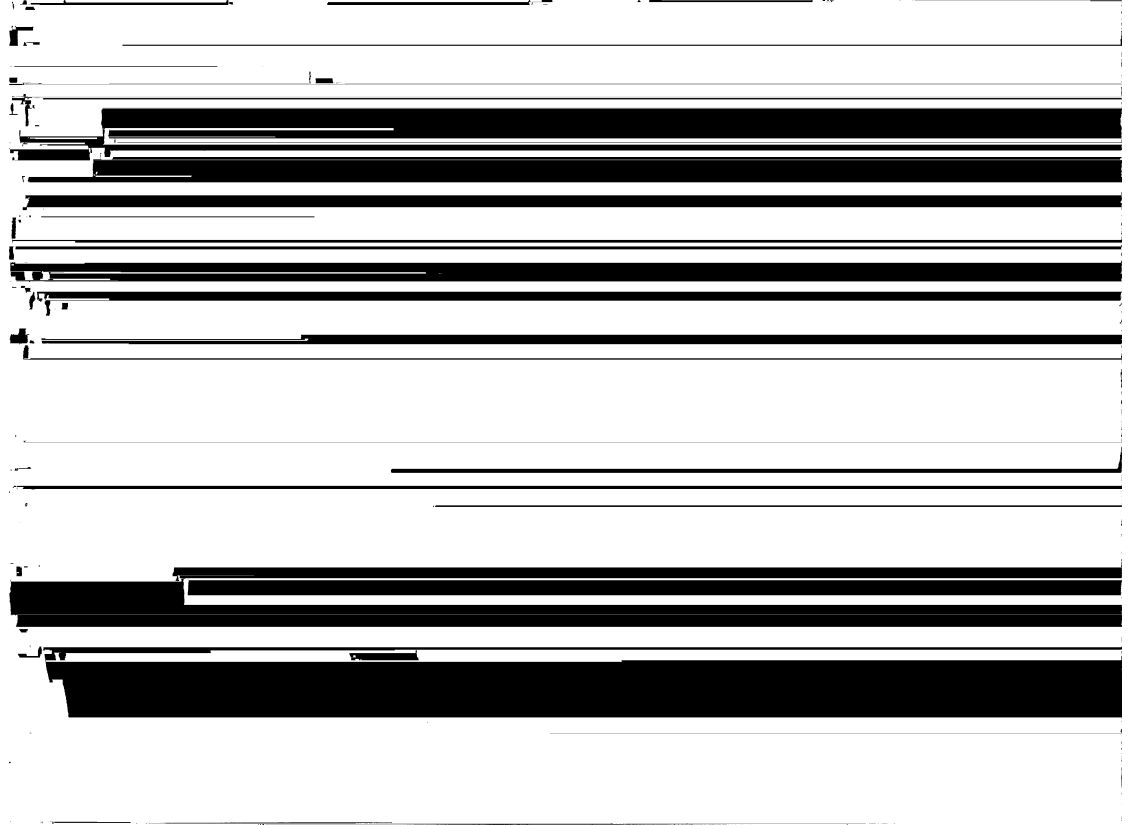
Alternate the 9:00-11:00 and 11:00-13:00 slots. Groups C & D to meet 9:00-17:00 if required.

**NOTES:**

just -  
 late progress with regard to the improvement in the quality of life and status of women in  
 specific reference to the Government's commitments -  
 Beijing platform of action; and  
 regard to the implementation of the Convention on the Elimination of Discrimination  
 Women; and  
 by other applicable international instruments;  
 recommendations to both or either of the Houses, or any joint or House committee, on any matter arising  
 (b).

programme budget 2005/6 Annual Report 2004	25 February 2005	
Protocol to the United Elimination of All Forms Discrimination Against Women. Memorandum to the Convention on the Elimination of All Forms Discrimination Against Women. Memorandum to the Convention on the Elimination of All Forms Discrimination Against	7 March 2005 Cancelled	
Protocol to the United Elimination of All Forms Discrimination Against Women. Memorandum to the Convention on the Elimination of All Forms Discrimination Against	08 March 2005	
Additional gender machinery Additional training Commissioner M Tlake	15 April 2005	
Uganda research findings Uganda: strategic plans as part of the Presidency, and 1. The Presidency, and	20 May 2005	

<p>New York 2005                  Investigate how                  women and how                  to set for visits to                  Domestic Violence                  Centres                  Ground and                  information, publications,                  etc.</p>	<p>27 May 2005</p>
<p>Briefing on the                  progress of                  CEDAW                  implementation                  in rural                  areas</p>	<p>3 June 2005</p>
<p>Workshop on the                  progress of                  CEDAW                  implementation                  in rural                  areas</p>	<p>10 June 2005</p>
<p>Workshop on the                  progress of                  CEDAW                  implementation                  in rural                  areas</p>	<p>21 June 2005</p>
<p>Workshop on the                  progress of                  CEDAW                  implementation                  in rural                  areas</p>	<p>24 June 2005</p>
<p>Workshop on the                  progress of                  CEDAW                  implementation                  in rural                  areas</p>	<p>5 August 2005</p>
<p>Workshop on the                  progress of                  CEDAW                  implementation                  in rural                  areas</p>	<p>12 August 2005</p>
<p>Workshop on the                  progress of                  CEDAW                  implementation                  in rural                  areas</p>	<p>24 August 2005</p>

	er 2005	iber 2005	r 2005	er 2005
				
	all	DW al	S	

<p>CIQSW - Members of Parliament</p>	<p><b>Venue</b> Cape Town The Bay Hotel</p>	<p><b>Date</b> 7 – 8 February 2005</p>	
<p>Members of Parliament</p>	<p><b>Venue</b> Gauteng Province Johannesburg</p>	<p><b>Date</b> 10 October 2005</p>	<p><b>Members participating</b> Mrs M R Morutoa (Chairperson), ANC, NA Ms I W Direko, ANC, NA Dr A Luthuli, ANC, NA Mrs J A Semple, DA, NA</p>
<p>Members of Parliament</p>	<p><b>Venue</b> Gauteng Province, Mogale City (Krugersdorp)</p>	<p><b>Date</b> 11 October 2005</p>	<p><b>Members participating</b> Mrs M R Morutoa (Chairperson), ANC, NA Ms I W Direko, ANC, NA Dr A Luthuli, ANC, NA</p>
<p>Members of Parliament</p>	<p><b>Venue</b> Eastern Cape Province, Bisho</p>	<p><b>Date</b> 12 October 2005</p>	<p><b>Members participating</b> Mrs M R Morutoa (Chairperson), ANC, NA</p>

Ref 19/38/1/17	Departments, including meeting with Eastern Cape Cabinet, Director General in Premier's Office and Chairperson of provincial legislature sister committee	Eastern Cape Province, Mtata, O R Tambo municipality.	12 October 2005	Mrs M R Morutoa (Chairperson), ANC, NA; Mrs J A Semple, DA, NA
Meeting with local government representatives, including the local government gender focal person, on issues around implementation of local government legislation and the National Gender Policy	Mtata Medium Security Correctional Facility	Eastern Cape Province, Mtata	12 October 2005	Mrs M R Morutoa (Chairperson), ANC, NA; Mrs J A Semple, DA, NA
Monitoring the implementation of the Domestic Violence Act, the Maintenance Act		Eastern Cape Province, Mtata	13 October 2005	Mrs M R Morutoa (Chairperson), ANC, NA; Mrs J A Semple, DA, NA
Meeting with local government representatives on issues around implementation of local government legislation and the National Gender Policy		Eastern Cape Province, Queenstown, Chris Hani municipality	13 October 2005	Mrs M R Morutoa (Chairperson), ANC, NA; Mrs J A Semple, DA, NA
Meeting with local government representatives, including the local government gender focal person, on issues around implementation of local government legislation and the National Gender Policy		Eastern Cape Province, Port Elizabeth, Nelson Mandela Metro	14 October 2005	Mrs M R Morutoa (Chairperson), ANC, NA;





Optional Protocol to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. For consideration and report. Considered on 3 March 2005  
 Considered on 8 March 2005  
 Short publication (ATC date) 8 March 2005  
 Considered 9 March 2005 (NA) and 9 March 2005 (NCOP)

**REPORTS PUBLISHED - OTHER**

Workshops held with the National and Provincial Gender Machinery on 21 November 2003, dated 16 September 2004 (ATC date) 27 September 2005

**REGIONAL VISITS**

	<b>Date</b>	<b>Venue</b>	<b>Members participating</b>
in the African Union and in the Rights Commission. The focus is on research and legislative Machinery	12 April 2005	Johannesburg	1) Mrs M R Morutoa, Chairperson 2) Mrs E S Mabe, Deputy Chairperson
	12-13 May 2005	Pretoria	1) Mrs M R Morutoa – ANC, NA 2) Ms I W Direko – ANC, NA 3) Mrs M M Mdlalose, IFP, NA 4) Mrs J Semple, DA, NA 5) Mrs J N Vilakazi, IFP, NCOP

117 South Africa's 10 report	26 August 2005	Pretoria	1) Mrs M R Morutoa, ANC, NA 2) Mrs E S Mabe, ANC, NA 3) Ms J Masilo, ANC, NA'
------------------------------------	----------------	----------	--

**RANCES BEFORE COMMITTEE**

inet / Minister: 0  
 cials from Government Departments and other Bodies: 60 persons  
 iamentary Officials: 6 appearances  
  
 Ms Dudu Lenzie, Parliamentary Legal Adviser (twice)  
 Mr Benny Nonyane, NCOP Table  
 Ms Jodi-Anne Borien-Niekerk, NCOP Table  
 Mr Kasper Hahndiek, Secretary to the National Assembly (twice)

:national visitors (Members of Parliament from the Somali Republic): 20 persons  
 :nding members of provincial legislatures: 18 visits by members of Provincial legislatures – see attendance  
 :ster of committee training (Feb 2005) and attendance register of 24 June 2005  
 | Society: 3  
 :utory Bodies: Commission on Gender Equality: 9  
 Salga: 2  
 :governmental organizations, individuals and groups: 12

**ATION WITH COMMITTEE DURING PROVINCIAL**

ates, local government officials): 238  
ances

R 18 256,70  
R 259 835,92  
R 0  
R 47 715,00  
R 28 558,00  
R 140 846,00

p to May 2005)

ig provinces

R 65 623,58  
R 544 330,00

irred for 2005/2006

R 478 706,62

liament of R 134 680 to the consolidated fund  
e. The committee expects to spend a substantial amount on

= R 65 623,58

2005



## National Assembly

### 1. Report of the Portfolio Committee on Transport on the Public Hearings on Annual Reports, dated 17 November 2005:

The Portfolio Committee on Transport having held public hearings on the Annual Report of the Department of Transport on 12 October and 2 November 2005, reports as follows:

#### A. Introduction

The Portfolio Committee on Transport was able to hold three public hearings on the Annual Report of the National Department of Transport and several entities reporting under the department – the South African Maritime Safety Agency (SAMSA), the Air Traffic Navigation Services (ATNS), the Railway Safety Regulator (RSR), Airports Company of South Africa (ACSA), the Civil Aviation Authority (CAA), and South African National Roads Agency Limited (SANRAL). Owing to constraints of time the Committee was unable to hold hearings on all entities falling under the Transport budget. The Committee accordingly made a strategic selection. The hearings were held in Parliament between the 12<sup>th</sup> October and 2nd November 2005.

The Committee notes with concern that the Road Accident Fund, the Cross Border Road Traffic Agency and the Road Traffic Management Corporation had not submitted their 2005 Annual Reports as of 31 October 2005.

#### B. Findings

##### 1. The National Department of Transport

The 2005 Annual Report of the DoT reflects ongoing progress in the restructuring of the department to more effectively respond to its diverse responsibilities. The Committee believes that this restructuring should enable the department to devote more focused attention to areas that had previously been relatively neglected – including maritime and aviation policy.

There are high vacancy levels within the department at senior management levels. This is partly related to new posts associated with the restructuring noted above. However, the Committee expresses some concern at the vacancy levels, and at a relatively high rate of turn-over at the senior staff level.

For the first time in several years the department received a qualified audit opinion from the Auditor General. There are several important matters that the Auditor General's report raises, including:

- ongoing uncertainty regarding the contract for the production of the credit card format licences. The Auditor General is awaiting the results of an investigation into this matter, and the Committee will also be tracking progress in this respect.
- instances of fruitless and wasteful expenditure, irregular expenditure and unauthorized expenditure. Officials from the department assured the Committee that each of these specific cases had been addressed and remedies applied.

In the Committee's view, the most important issue raised by the Auditor General is that memoranda of understanding between the department and the public entities under its control are not regularly updated and some were last revised in 1994. In most instances, performance contracts had also not been concluded. The Committee

agrees with the Auditor General that these instruments can play an important role in effective governance and oversight of these entities. The Committee is aware that subsequent to the time-period addressed in the 2005 Annual Report, the department has taken active steps to up-date and enhance memoranda of understanding and performance contracts with all relevant entities. The Committee will be monitoring progress in this regard.

The Committee raised concerns that there was under-expenditure in certain priority areas, including on Arrive Alive, the implementation of the National Land Transport Transitional Act, and overloading controls.

## **2. Air Traffic Navigation Services**

The ATNS has performed consistently well over several years, and the 2005 Annual Report accurately reflects continued achievements. The Auditor General's report is qualified, but the Committee is satisfied that this relates to a relatively minor technicality regarding the asset register of the ATNS. We are also satisfied that this has now been corrected, and no actual asset losses have been incurred.

## **3. South African Maritime Safety Authority**

SAMSA has experienced some leadership instability over recent years. The committee is concerned that SAMSA seems to lack a clear sense of its mandate focus. The Director General of the DoT confirmed this.

Part of this lack of clear strategic focus is reflected in the fact that SAMSA has a large assets to liability ratio. The DoT is insisting that SAMSA develops a proper budget to spend its surplus or forfeit it. The Committee supports this approach.

The Committee believes that these issues relate directly to the concern raised by the Auditor General regarding the need for the DoT to more regularly update its memoranda of understanding and performance contracts with entities such as SAMSA.

## **4. Airports Company of South Africa**

ACSA is another entity that has been performing well over several years, embarking on major infrastructural projects and generating significant surpluses out of its airport activities. ACSA plans to embark on further major airport upgrades and renovations with a likely significant impact on job creation and SMME development, ahead of the 2010 World Cup. To maximize its work in this area ACSA hopes to borrow at a 30% gearing ratio, instead of at its current 6,7% gearing which means its capital expenditure borrowings are more expensive than they might be. The Committee agrees that an appropriate regulatory framework in this regard for ACSA should be considered.

The Committee notes that the company's dividends have increased by 29% to R295-million for the year under consideration. While this is a welcome development, given the fact that the government is the majority share-holder the Committee is concerned that ACSA's legal status means that it is not subject to the oversight of the Auditor General. The Committee suggests that measures be developed to improve public scrutiny of ACSA finances.

The ownership profile of ACSA is another issue that requires further attention. The private sector share owned by Aeroporti di Roma has been sold back to ACSA and the projected

employee share-holding has never been implemented. Further discussion and policy-development in this regard needs to occur.

#### **5. Railway Safety Regulator**

For the period covered by the 2005 reporting year, the RSR was an embryonic entity. In July 2004 there was a CEO and only two full-time staff and three secondments. Given its very recent establishment there was not much to report for the year under review. Nevertheless the Committee deliberately invited the RSR senior management to the public hearings in order to establish whether there was any real progress. The Committee was relatively satisfied that indeed some progress is being made. A State of Safety Report is being compiled, and the RSR is now receiving occurrence reports. 134 Safety Permits have been issued to rail operators and a further 50 will be issued in the near future. The RSR concedes that it has very weak enforcement capacity.

The Committee notes that there are still no organized labour and Department of Minerals and Energy representatives on the board of the RSR as required by legislation.

The Auditor General has raised several matters relating to unutilized funds, budgeting, the leave system and the non-performance of the RSR's audit committee. The Committee will be monitoring these issues.

#### **6. Civil Aviation Authority**

The CAA continues to provide a high-level of technical capacity in aircraft inspection and accident and incident recording and investigation.

The Auditor General has queried a R60million investment with Old Mutual and Momentum Group Limited, and particularly commissions paid of R2,5 million in the absence of a clear investment policy. There is also a forensic audit under-way in regard to office accommodation. The Committee will monitor developments in this regard. Once again, the Committee believes that a more effective Memorandum of Understanding between the CAA and the DoT could help to improve governance in regard to issues of this kind.

The CAA raised with the Committee a concern that the aviation sector in South Africa required a champion to broaden participation and awareness of the sector amongst a wider section of South Africa's population, and there was no real clarity as to where this championing function should be centrally vested. The Committee accepts the point, and will be raising the matter with the DoT.

#### **7. South African National Roads Agency Ltd**

In the assessment of the Committee, SANRAL has proved to be a very dynamic promoter of road construction and maintenance. Largely as a result of this and of its professional and technical capacities SANRAL's road coverage has increasingly moved beyond its original national routes mandate. It was reported to the Committee that SANRAL's road coverage is now set to double from its original mandate, often as a result of agreements with different provinces. The Committee believes that this is probably a positive development. It is, however, occurring without a clear agency agreement in place on funding. This latter now becomes an important matter for greater clarity and policy development, especially as many of the roads now being taken over by SANRAL require major rehabilitation. Ongoing funding of

SANRAL's activities should also take into account the significant escalation in the price of bituminous products, which are directly related to the international oil price.

The Auditor General has qualified his report of SANRAL, raising questions in regard to the land asset register and the absence of quarterly audits. The Committee will monitor these issues.

### **C. Further recommendations**

Noting improvements in the number of timely Annual Report submissions of the various transport entities, the Committee urges the DoT to ensure a hundred percent compliance in future years.

The Committee had inadequate time to deal with all of the reporting entities and we were compelled to make a strategic selection. The September 30 deadline for Annual Report submissions also means that the Committee's own oversight and recommendations come too late for a more effective contribution to government's budget development cycle. We recommend an earlier deadline for Annual Report submissions, and more adequate time in Parliament for public hearings on these reports.

## **2. Report of the Portfolio Committee on Transport on the Public Hearings on the Proposed Gautrain Project dated, 16 November 2005:**

The Portfolio Committee on Transport having held Public Hearings on the proposed Gautrain Project on 18–19 November 2005, reports as follows:

### **1. Introduction**

The Gautrain project is intended to provide a rapid rail link between Johannesburg and Tshwane, with a branch-line between Johannesburg International Airport and Sandton. The project has been developed as a Public Private Partnership, involving national government, the Gauteng provincial government and a winning private sector consortium, Bombela. The prime objective of the project is to contribute to relieving the road congestion on the N1 Ben Schoeman freeway. Subject to national cabinet approval and the final negotiation of the respective contractual obligations of the participating parties, the construction of the project is due to begin in January 2006, with a target completion date of March 2010.

### **2. The role of the Portfolio Committee**

The Transport Portfolio Committee has followed the development of the project over several years, but we have not previously assumed any direct oversight responsibility. This has been due to the fact that the project has been run by the Gauteng province, as one of several Blue IQ projects. However, on the 25<sup>th</sup> October 2005 the Minister of Finance announced in parliament that the Gautrain project had a "national" status. The Minister of Finance said that it would be costing government an estimated R20-billion. It is in this context that the Transport Portfolio Committee held public hearings on the Gautrain on the 8<sup>th</sup> and 9<sup>th</sup> November 2005. The Committee had very little time to ensure an effective and detailed oversight process. This is a matter of considerable concern. In the brief time available, the Committee nevertheless believes that its public hearings have provided an important opportunity to achieve greater clarity and transparency around the project. The hearings have also helped to open up a broader national public debate on the merits of the Gautrain project.

### 3. Policy development and stake-holder participation in the project

The Committee is concerned that transparency and effective participation by key stake-holders in the policy development process around the Gautrain project have been inadequate. This is a view that appears to be shared by at least two of the three affected Metros, as became apparent to the Committee during recent fact-finding trips to the Tshwane and City of Johannesburg metros. *The City of Tshwane Integrated Transport Plan 2004-2009*, for instance, is explicit about several difficulties that it has with the Gautrain proposal. Section 7.6.2 of the ITP notes that the City of Tshwane Metropolitan Municipality (CTMM) Economic Development Department has committed itself to assisting with a successful implementation of the Gautrain project, but then adds: “*This undertaking was given despite the fact that the Department’s Transport Division was not proactively involved, or invited, in the feasibility and planning studies undertaken for the project by Gautrans.*”

### 4. The Gautrain budgetary spend relative to other sectors of public transport

The projected public budgetary cost of some R20-billion makes this the most expensive single public transport project ever undertaken in our country. According to the project leader, the Gautrain is projected to have an initial demand of 134,000 passenger trips per day. Dr Andrew Shaw of the Development Bank of Southern Africa provided the Committee with a slightly lower initial demand projection of 104,000 passenger trips per day. These estimates of passenger trips per day would translate into around 60–70,000 individual passengers per day. The projected R20-billion to be spent on some 60-70,000 individual passengers (which is itself possibly an optimistic estimate) should be compared with what is being spent on buses, taxis and the Metrorail system, which together transport some 7 million South Africans every single week-day. The 2005 Budget allocates R250 million, R315 million, and R320 million for each of the next three years for taxi recapitalisation. The same budget makes additional allocations for existing and ailing passenger rail infrastructure of R100 million for 2006/7 and R250 million for 2007/8.

The Committee acknowledges that the Gautrain project will be a completely new rail system and its construction costs therefore cannot be compared in a simplistic way with taxi recapitalisation, for instance, or with Metrorail infrastructure upgrading. Nevertheless, the very significant size of the estimate cost to the public sector of the Gautrain project and the relatively modest number of passengers it will carry do need to be weighed seriously against the back-drop of the bulk of our public transport systems which are in a dire state, with extremely high levels of public dissatisfaction (see, for instance, the National Department of Transport’s *National Household Travel Survey* conducted in 2003 and presented to Parliament in 2005). A decision to proceed with the project in its existing form constitutes, therefore, a considerable political risk for government.

### 5. The Gautrain and the 2010 World Cup Soccer Finals –

At the outset of its hearings, the Portfolio Committee expressed concern at what was felt to be an attempt to steam-roller its oversight function by public statements from the Gautrain project leader that the country “had a moral and legal duty” to the 2010 Soccer World Cup Finals to begin constructing the Gautrain in January 2006. It was suggested that South Africa would lose the right to host the World Cup if the Gautrain was not completed on time. In the early stages of

our public hearings, the Gautrain project leader once more alluded to these claims. However, the Committee was able to establish that South Africa's official *Bid Book* to FIFA contains no reference to the Gautrain project. In the course of further interaction, the Gautrain project leader conceded that there were no contractual obligations to FIFA in regard to Gautrain. It was also agreed that the merits and viability of the project should be de-linked from the 2010 World Cup Finals.

**6. Are projected construction time-frames realistic?**

The Committee does acknowledge that a completed Gautrain rapid rail system could be a positive asset in the context of the 2010 World Cup Finals. However, even if construction does start in January 2006, the Committee is concerned that a 2010 completion date may well be extremely optimistic. The Gautrain project leader repeated to the Committee an observation he has made several times in the public media, namely that preparation and construction of the project will be far ahead of the international norm. (See, for instance: "We have found that a project of this nature usually takes 14 years. We will do it in nine years", *The Star*, 25 June 2004). The Committee is uncertain of the grounds for this optimism. In March and April 2005 the major construction engineering groups associated with the two rival bids were reported to have warned that meeting the 2010 target would be "very difficult". "*Both construction companies have warned that the development of the rail link would be extremely challenging, as it would involve tunnelling through the hard rock beneath Johannesburg*", "*the size and complexity of the project...was immense*" (*Business Day*, 1 April, 2005). In assessing the feasibility of the current target completion date, the Committee recommends that Government factors in the possible impact of skills shortages and the availability of key material inputs like cement and steel. If construction does start in January 2006, we believe that completion by March 2010 is far from assured. If we fail to complete on time, the project may present 2010 with a construction site rather than a high-speed rail system.

**7. Cost escalation**

In its public hearings the Committee devoted some time to establishing the reasons for the dramatic escalation in estimated costs to government. While the final estimated costs still have to be settled in the contractual negotiations, the costs have risen from an estimated R7-billion to the R20-billion announced by the Minister of Finance in October 2005. The Committee was told by the Gautrain project leader that the R7-billion should, in fact, be compared with a new figure of R12-billion, because both were calculated as the estimated net present cost of the construction phase of the project. The R20-billion figure is the estimate of government's total exposure over the five-year construction period, including the cost of paying back on borrowing. As to the escalation from R7-billion to R12-billion the Committee was told that this was related, amongst other things, to the absence of VAT in the earlier calculation, and to the cost of re-alignments. The Committee did not find these explanations entirely persuasive. The Committee is concerned that as recently as July 2005 Cabinet was still being given an estimate of R7-billion, even though the VAT liability had been clarified long before this. We are also concerned that costs to government may continue to escalate if the project gets under-way.

**8. A high risk project**

These concerns were reinforced by the public submission made to the Committee by Dr Andrew Shaw of the Development Bank of Southern Africa. Significantly the DBSA is one of the major financial backers of the Gautrain project, and Dr Shaw expressed support, in principle, for the project. However, he characterised the project as "high risk". He told the committee: "I don't think that the project has done a serious risk analysis. I suspect we have been presented a picture

in which the risks have been substantially underestimated.” However, the project leader assured the Committee that the R20-billion figure was a fixed cost contract and there would be no extra cost. The Committee has not seen the contract and recommends that Government closely analyses possible risks of cost escalations that often occur in projects of this magnitude. The Committee also recommends that Government analyses the implications of any delayed completion penalties.

**9. Construction cost underestimation in similar projects internationally**

In the course of its public hearings, the Committee’s attention was drawn to a recent comprehensive international survey of 258 transportation infrastructural projects (Flyvbjerg, Holm and Buhl, “Underestimating Costs in Public Works Projects”, *Journal of American Planning Association*, Summer 2002). The main findings of this study are that in 80 percent of transportation infrastructure projects costs are underestimated. Rail projects are the worst in this respect, with actual costs on average 45 percent higher than estimated costs. The research finds that cost underestimation appeared to be a global phenomenon, but it was more pronounced in developing countries. In singling out rail projects as particularly liable to cost underestimation, the report finds that rapid rail and rail projects involving tunnelling were special culprits. The Gautrain project is a rapid rail project and some 12 kilometres of tunnelling are envisaged. The Committee appreciates that a statistically established global tendency for serious cost underestimation in projects of this kind does not prove that the Gautrain’s current R20-billion cost estimation is necessarily flawed. However, the survey’s finding that in its 258 world-wide project sample “cost underestimation cannot be explained by error and seems to be best explained by strategic misrepresentation” should not be lightly dismissed in this case.

**10. R20-billion a “sunken cost”–**

In assessing the likely cost of the project, the Committee also draws attention to the fact that the estimated R20-billion cost to government for the construction of the Gautrain infrastructure will be a “sunken cost”. In other words, unlike many of our current Public Private Partnership projects in road construction, there is no plan to recover this cost over a defined operating period of the project.

**11. Job creation and contribution to general economic growth**

The Committee notes that there is an expectation that the Gautrain will create some 93,000 jobs in the construction phase, coming down to 2,700 direct jobs in operating and maintenance thereafter. An infrastructure project costing R20-billion will also certainly have a broader impact on job creation and general economic growth. These important positives would need to be assessed in terms of the cost and of possible alternatives. However, without discounting these positives, the Committee believes that the project is not primarily a job-creation project, and it must be assessed primarily in terms of its contribution to resolving the transport challenges confronting the province.

**12. Alleviating road congestion on the N1**

The key strategic objective of the Gautrain project is to help alleviate road traffic congestion on the N1 Ben Schoeman freeway between Johannesburg and Tshwane. There is relatively serious congestion on this important arterial route, and the Committee has been told that traffic on the route is increasing by 7 percent per annum. The Gautrain project hopes to attract some 20 percent of existing car-users on the Ben Schoeman to use the rapid rail system instead. It should be noted that, given the 7 percent annual increase, a (possibly optimistic) 20 percent reduction

on the present car volumes would still leave the Ben Schoeman more congested in 2010 than at present.

**13. Many other congested axes in Gauteng**

It should also be noted that the Ben Schoeman is not the only congested road in the Gauteng province. In regard to the Gautrain's potential contribution to congestion relief, the City of Johannesburg's *Integrated Transport Plan 2003/2008 (Updated 2004)* notes: "Whilst major public transport initiatives such as Gautrain can be expected to attract private transport users, this attraction will at best only slow down the growth in private transport demand (i.e. private transport demand will continue to grow albeit at a marginally reduced rate" (Executive Summary, p.42). The COJ's ITP also notes that major congestion challenges are *not* confined to the N1: "The development of East/West linkages are just as important to the sustained growth of the City..." (ibid., p.39)

**14. Projected ridership figures**

In his public presentation to the Committee, Dr Shaw of the DBSA was particularly concerned about what he termed an "optimism bias" in the Gautrain's projected ridership figures. He noted that there was a high level of demand risk in the project because it is "extremely difficult to project demand for 'greenfield' development projects of this kind", and because "private car users are notoriously bad at leaving their vehicles at home." The authors of the international study on underestimation in construction costs referred to in paragraph 9 above, Flyvbjerg, Holm and Buhl, have found the opposite tendency when it comes to estimating demand. In a sample of 27 rail projects around the world, they found that actual ridership figures were more than 40 percent less than estimated in more than half the projects ("How accurate are demand forecasts for public works projects?", *Journal of American Planning Association*, Spring 2005).

**15. The risk of operating subsidies**

Passenger number forecasts for the Gautrain are important not just for estimating the relative contribution the project might make to alleviating some congestion on one of Gauteng's key arterial routes. Significant ridership levels are also important for the financial sustainability of the project during its operational phase. While the private sector participants will carry some risk in this respect, their patronage guarantee will be set at a level well below the patronage level required for the project to cover its operating costs. Beyond this lower level, the province and national will have contingent liabilities related to higher patronage guarantee levels up to the break-even mark. While all of these remain subject to final negotiation, and precise figures could not be provided to the Committee, the Committee is concerned that a significant part of the Gauteng province's public transport budget could be swallowed up in ongoing subsidies for the Gautrain at the expense of other priorities. The Committee is also concerned that the operating risks to the private sector would appear to be considerably less than those imposed on government.

**16. A relatively affluent target market**

The prime objective of the Gautrain is to attract a relatively affluent and a relatively modest number of car-users currently using the N1 between Johannesburg and Tshwane. Projected ticket-prices, the up-market location of the majority of stations, the high-speed rail-gauge and voltage use which are non-compatible with our current rail-lines, the proposed purchase of train-sets manufactured outside of South Africa (which places limitations on local job creation) – these and other features have all been deliberately chosen to provide an affluent sector of the

Gauteng community with a first-world public transport mode. The project will also be providing 250 new buses to shuttle its target market passengers from their places of work and residence within a ten-kilometre radius of the Gautrain stations. Park-and-ride facilities will also be laid on. However, the location of the rail-line is remote from most of the major townships of Gauteng, and there has been very little consideration of ensuring connectivity with the major modes of transport used by township dwellers in Gauteng. The Committee is also concerned that insufficient consideration has been given to the implication of new buses operating in areas already serviced by the minibus sector and existing bus services. The Committee further believes that insufficient attention has been paid to existing metro Integrated Transport Plans and related bus and taxi routes and ranks, and the Metrorail system.

**17. Fragmented public transport**

In a written submission to the Committee on behalf of the Gauteng Provincial Passengers Council, Dr Vaughan Mostert notes that the Gautrain's Feasibility Report published on its website makes many claims to being part of a transport system ("It must be seen as part of the larger provincial transportation network"; "It is part of a total holistic transport system in Gauteng", etc.). In Dr Mostert's view: "There is no holistic transport system in Gauteng or, for that matter, anywhere in South Africa. Formal public transport is fragmented, inadequate in terms of both route coverage and frequency, and has failed to develop in keeping with urban expansion. There is no integrated ticketing, scheduling, marketing or branding. Different operators offer different services under different sets of rules." Dr Mostert is also critical of the Gautrain project's claim that it is "in line with Government policy and legislation." Dr Mostert points out that Sections 4 and 5 of the National Land Transport Transition Act refer 13 times to "the need to co-ordinate, integrate and rationalise public transport." Section 4, he notes, "specifically requires public transport subsidies to be aimed at currently marginalized users and those who have poor access to economic opportunities." Section 10, he further notes, "requires Transport Authorities to be set up. Sections 19 and 28 require these Authorities to produce a variety of plans relating to transport in general and public transport in particular. These requirements have not been met." Dr Mostert concludes this part of Gauteng Provincial Passengers Council submission by asserting that "The Gautrain scheme will play no part in meeting the requirements or principles of the NLTTA. It is not aimed at currently marginalized users and will not assist those who have poor access to social and economic activity."

**18. The potential for existing bus services to act as feeders for the Gautrain**

In another section of the Gauteng Provincial Passengers Council's written submission to the Committee it is noted that the Gautrain project claims that "existing scheduled public transport services can act as feeders". The submission, however, notes that in much of the area to be served by the Gautrain (Sandton/Midrand/Centurion) "formal public transport is almost non-existent. A few peak-only trips are run to and from the townships, on routes that lack focus and are known only to the handful of passengers using them." The submission states that, in principle, the core bus services of Johannesburg and Tshwane might be expected to play a strong role in supporting the Gautrain. However, it notes: "in their present form they are in no position to make a contribution to the scheme. For many years, bus services in both cities have been crumbling steadily...In Johannesburg, heavy passenger losses have taken place, with a 40 percent cut in bus trips since 1988."

**19. Greater connectivity**

The Committee understands that some of these issues were raised in July by Cabinet when it gave an in principle commitment to the project. One of the preconditions for a go-ahead from

Cabinet was that greater connectivity between the Gautrain and other mass public transport systems in the province should be built-in and demonstrated. The Committee is aware that some feasibility work has been done on this, but at the time of our hearings no documentation or briefing was available.

20. **Assessing connectivity–**

It is impossible for the Committee to reach any conclusions about the prospects for building-in effective connectivity between the major mass modes of public transport in the province and the Gautrain. The Committee believes that connectivity needs to be critically associated with fare-prices and should not be confined to technical matters or to physical proximity of different public transport modes. If real connectivity, that begins to overcome the divide between the first and second economies, indeed, proves to be possible, then it will certainly enhance the social value of the project. We cannot assess the prospects of a revised project without much more information being available, but we are concerned that hurried attempts in this regard might result merely in a retro-fit approach that falls between two stools, undermining the objectives of the present first-world project while not adding anything serious to existing public transport challenges.

21. **Three options**

In the Committee's view there are three main broad options available to Cabinet in seeking to reach a decision on the Gautrain project:

- The project could be given a go-ahead, essentially in its present form. For all of the reasons elaborated above, the Committee believes that this would be both financially and politically a high-risk option and we would advise against it.
- The project could be revised to ensure greater connectivity to existing mass public transport modes, and to major areas of settlement, particularly the larger townships of the province. Without a great deal more information, the Committee is unable to assess the feasibility of such an approach. If Cabinet favours this second option, the Committee would advise adequate time be provided for a thorough assessment and for effective public participation in the process. This necessarily implies delaying any immediate implementation. The Committee recognises that delays may have financial implications and may complicate negotiations with bidders. We believe that these challenges are far outweighed by the dangers of proceeding hastily with a project that may prove to be financially unsustainable and may further divide rather than connect the first and second economies.
- The challenges of dealing with road-based congestion on many of Gauteng's major arterial routes, including the N1, could be dealt with in a more comprehensive, sustainable and integrated fashion rather than through a multi-billion rand, stand-alone, rapid rail system. This would require moving away from a single, flag-ship project approach to a multi-faceted strategy that aligns the Integrated Transport Plans of the three major metros, and that seeks to drive effective operational integration of all of the major existing modes of public transport in the province.

22. **The need for a comprehensive approach to transport challenges in Gauteng**

Whatever option is chosen, the Committee believes that the challenges thrown up by the Gautrain proposal underline the imperative of the rapid establishment of a single Gauteng

Transport Authority as envisaged in the National Land Transport Transition Act (2000). Such a Transport Authority should work closely with the Transport Authorities/Transport Departments of the three affected metros, in order to produce a comprehensive approach to public transport in the province, in which a sustainable basis is laid for improving existing public transport, integrating all public transport modes, addressing land use and spatial planning and aligning these with public transport plans and regulation. In the view of the Committee responses to the congestion challenges of the province can only be addressed in a sustainable manner in this way. Stand-alone projects are unlikely to achieve much. A precondition for the success of an integrated Gauteng approach to public transport is that the National Department of Transport should urgently facilitate much greater operational and financial devolution of public transport to the province and its three major Metros. This will affect the way in which transport subsidies are allocated including to current bus operators in the area, the operational responsibilities currently enjoyed by the South African Rail Commuter Corporation and Metrorail, and the National Department of Transport's approach to taxi recapitalisation.

### 23. Acknowledgments –

The Committee expresses its appreciation to Jack van der Merwe, Gautrain project leader, Dr Andrew Shaw of the DBSA, and Professor Romano del Mistro of the University of Cape Town for the presentations they made to the public hearings. The Committee thanks the officials of the Department of Transport and the National Treasury who contributed actively to the Committee's deliberations. The Committee further expresses its appreciation to the Gauteng MEC for Transport and his officials in the Transport Department, and to officials in the City of Johannesburg and Tshwane Metros who hosted us during study tours to learn about public transport challenges in the Gauteng province.

### 3. Report of the Portfolio Committee on Social Development on **Public hearings on the Older Persons Bill** [B 68B-2003], dated 09 September 2005:

The Portfolio Committee on Social Development having conducted public hearings on the **Older Persons Bill** [B 68B-2003], reports as follows:

#### Introduction

The Portfolio Committee on Social Development held public hearings on the Older Persons Bill [B 68B-2003] on 30 to 31 August 2005. This report encapsulates those written and oral submissions made on the said Bill.

The following organisations, and individuals, made submission:

#### Organisations

- ❑ Cape Jewish Seniors Association (CJSA)
- ❑ Ikamva Labantu
- ❑ Highlands House (The Cape Jewish Aged Home)
- ❑ Grandmothers Against Poverty and Aids
- ❑ Kerklike Maatskaplike Dienste Raad (KMDR)
- ❑ Church Council For Social Services
- ❑ Action on Elder Abuse South Africa (AEASA)
- ❑ SA Human Rights Commission
- ❑ NG Ministry of Caring
- ❑ NAWONGO

- ❑ A branch of NG Welfare, North West
- ❑ Pretoria Council for the Care of the Aged
- ❑ Alzheimer's South Africa
- ❑ Women's Legal Centre
- ❑ Department of Health - CT
- ❑ The Black Sash
- ❑ Joint Forum for Policy on Ageing
- ❑ RAPCAN
- ❑ Southern African Catholic Bishops Conference
- ❑ Alliance for Children's Entitlement to Social Security
- ❑ Law Society of South Africa
- ❑ South African Council of Churches
- ❑ Media Monitoring Project
- ❑ Commission on Gender Equality
- ❑ Action on Elder Abuse SA
- ❑ South African Association of Homes for the Aged
- ❑ The Body Corporate of La Belle Vie

#### **Individuals**

- ❑ Elizabeth M Xaba
- ❑ M.D.S Motshumi
- ❑ Thandiwe Joyce Mbongo
- ❑ Lucas Mangala
- ❑ Raliphi Master Push Xolelizwe
- ❑ HJJ Laubscher
- ❑ Peter Laubscher
- ❑ Mr FE Warner

#### **(A). GENERAL CONCERNS OR RECOMMENDATIONS SUBMITTED REGARDING THE OLDER PERSONS BILL [B68B-2003]**

##### **(A) Submitted by Action on Elder Abuse South Africa (AEASA)**

- One of AEASA's main concerns in regard to the Bill is that, like the 1967 Aged Persons Act that was aimed at protecting white older persons in residential care. It focuses on older persons in residential facilities, when the reality is that the majority of South African older persons live in communities, with their families or alone.
- The Bill does not take cognizance of older persons in rural areas, where the needs are great and services are minimal.
- While government has correctly indicated that the care of older persons should be the responsibility of their families and communities, AEASA says, the legislation does not support this.
- Parts of the current Bill are taken directly from the 1967 Act. The legislation must cover the rights of *all* older persons in South Africa.

##### **(B) Submitted by Commission on Gender Equality (CGE)**

Whilst the Commission lauds the objects of the Bill as far reaching, it however says the actual content of the Bill makes very little reference to many of the aforesaid objects. It dismisses the actual content of the Bill as being disproportionately focused on the regulation of institutions of care for older persons as well as mechanisms for dealing with the abuse of older persons. Whilst the CGE fully supports the principle of the Bill dealing with both these critical issues in respect of

the rights of older persons, it is of the view that in addition, the Bill should make adequate provision for other equally important issues in respect of aged persons.

The CGE proposes that the Bill refer to the fact that all of the constitutional rights are applicable to all older persons but in view of the specific needs of older persons, the application of certain rights may need to be specifically adapted in order to be responsive to the specific needs of older persons. It is concerned that this Bill only stipulates the rights of older persons in facilities, which ignores the reality that the majority of older persons live in communities.

It reckons that Bill could benefit from including a specific section at the beginning of the Bill that stipulates the rights of all older persons. It further wants the Bill to acknowledge the critical importance of older persons gaining access to sufficient information in order to know their rights and be able to exercise them. It suggests that the Bill should accordingly make specific provision for empowering older persons through ensuring them access to information which is both linguistically and culturally appropriate as well as accessible to older persons.

The CGE accepts that certain rights in respect of older persons are beyond the mandate of the Department of Social Development and it is accordingly not possible to deal with them comprehensively in this Bill. However, it is of the view that in order to do justice to the rights of older persons and for the Department of Social Development to fulfil its objectives in this regard, this Bill should, at a minimum establish mechanisms/structures in order to facilitate inter-Departmental collaboration in respect of older persons.

With the exception of the reference in section 2(1) of the Bill, that the Minister of Social Development may consult with any other relevant Minister to develop programmes, and support any person who runs programmes contemplated in subsection 2. CGE argues that no further reference is made in terms of securing the rights of older persons through collaborative inter-departmental initiatives.

CGE therefore recommends the following for **section 2(1)** “The Minister must in consultation with any other relevant Minister-”, as it expressly compels the Minister to consult. By making express reference to structures and mechanisms in order to facilitate inter-Departmental collaboration in respect of older persons, it says, the Bill will ultimately ensure that the needs and rights of older persons is reflected and infused in the wide range of legislative and policy measures of different departments, such as housing, health, education, justice and so forth.

The CGE is concerned that the Bill does not place a duty on the Minister in respect of the creation of new facilities and the maintenance of existing facilities. Section 6(2) compels the registration of a club; care or accommodation, on application can be made to the Minister in respect of a subsidy thereof. The constitutional rights of older persons impose an obligation on the Minister to create and maintain facilities for older persons. This obligation should be reflected in the Bill.

CGE contends that the Bill, in its current form reflects a disproportionate focus on institutional care. While the CGE is fully supportive of the need to regulate institutional care, it cautions against the assumption that institutional care is the primary means of support for older persons. The reality in South Africa, it says, is that many of the older persons receive family and community based care.

It says that the negative impact of the HIV/AIDS pandemic on the latter continues to increase the responsibilities of older persons. These responsibilities, it points out, include taking care of their grandchildren, and extended family members. Institutional Care, says CGE does not accommodate grandparents with young grandchildren, and other extended family members, and is therefore not an option available to these older persons, even if they wish to reside in institutional care. It only caters strictly for the single older person, CGE contends.

**Submitted by NAWONGO**

NAWONGO wants an Older Persons Act to be orientated to national policy. Such policy, it claims, does exist in different draft concepts, but it has not yet been finalized. The absence of such a policy, NAWONGO says, creates uncertainty amongst role players in finding a meaningful frame of reference and also interpreting some sections of the proposed statute. This is also expected to be a problem later, when the Regulations to the Act are published. The issue is furthermore complicated by the fact that the interpretation of policy is left to provincial departments and officials at area and local level, it says.

The policy as regards older persons, it suggests, should be orientated to a National Welfare Policy and a National Welfare Act. The finalization of a national policy and a corresponding statute should therefore receive the highest priority.

**Submitted by Grandmothers Against Poverty and Aids**

It requests that more social workers are appointed and special counseling services for the use of older persons. It also requests that older persons have their special clinics to address their needs and that older persons, who care for extended families be given priority in the allocation of affordable accommodation within the communities where they choose to live.

**Submitted by Body Corporate of La Belle Vie**

The Body Corporate alleges that the Bill appears to be directed exclusively to the requirements of institutions under the control of the Department of Social Development and thus ignores the many establishments in the country, which, provide for older and retired persons outside the control of the department. Such are established in terms of the Sectional Titles Act, Act 95 of 1986 and the Housing Development Schemes for Retired Persons, Act 65 of 1988. The latter two are said to be self-sustaining and do not call on the state for subsidies or special dispensations. They reportedly provide for their own autonomous management either out of their own internal resources or with the help of professional managing agents. They are directly exposed to financial pressures from outside and generally are constrained by the limited ability of the members and residents to meet such demands. While some such establishments may be fairly affluent, the majority is said to be less well off and are in need of protection from outside influences.

**Submitted by South African Council of Churches**

The Council sees the Bill as a welcome move away from addressing the needs of the older person purely from an institutional point of view. While it says, it acknowledges the need to address issues of care and protection, it says, it fails to deal with the need for a change of attitude toward ageing.

**Submitted by Alzheimer's South Africa**

Alzheimer reasons that while the government's emphasis has been on home-based care this Bill does not focus on this at all but concentrates on institutional care which accommodates a very small percentage of all elderly people in the country. In addition, it says the very frail who require the

institutional care the most in terms of the care they require, are completely excluded. It asks that this shortcoming in the Bill should be addressed as a matter of urgency.

## **(B). Section-by-section comments and recommendations**

### **1. Explanatory note**

#### **Submitted by Joint Forum for Policy on Ageing**

The Forum and is worried about the impression, it says, this explanatory paragraph before the Preamble it gives to the effect that the Bill will establish a “framework”. It says, this seems to imply that provinces will need to introduce their own legislation for older persons within this framework and, presumably, within their own financial and institutional constraints. It contends that this may conflict with the Parliament’s responsibility set minimum standards.

#### **Submitted by Pretoria Council for the Care of the Aged**

The Council while it feels that the stated object of the Bill is sound, it however says, this is merely a broad outline of policy and believes that the Bill should give direction to the implementation of these objectives in practice. Instead of this, the Council argues that the Bill concentrates almost entirely on institutionalized care with only limited reference to elder abuse. As such, it contends, the Bill fails to address the need to create an enabling environment for older persons and promote their status and well being as envisaged in section 3.

### **2. Preamble**

#### **Submitted by Joint Forum for Policy on Ageing; and South African Council For The Aged**

#### **Recommendation**

Joint Forum for Policy on Ageing and South African Council For The Aged suggest the replacement of the preamble with the following:

#### **(a). *Recognizing***

*Past injustices which older persons experienced. The sacrifices which older persons made towards the establishment of a democratic society. That the majority of older persons live in poverty, especially in rural areas and are without access to the essential support and services*

#### **(b). *Bearing in mind***

*The State must, in compliance with Section 7(2) of the Constitution, respect, protect, promote and fulfill the rights enshrined in the Bill of Rights. In terms the Bill of Rights the State may not unfairly discriminate against anyone on grounds of race, gender, sex, age or disability and everyone has inherent dignity and the right to have their dignity respected and protected, the right to be free from all forms of violence and the right not to be treated in a cruel, inhuman or degrading manner. In terms of Section 26 and 27 of the Constitution everyone has the right to have access to adequate housing, food and water, health care services and social security,*

#### **(c). *It is the purpose of this Act***

*l. To ensure that the rights, dignity and independence of older persons are upheld;*

*ll. To provide for the self-fulfillment, participation and care of older persons.*

### 3. Definitions

#### Submitted by Pretoria Council for the Care of the Aged

Whilst the Council acknowledges that an attempt has been made to incorporate all types of services in the scope of the Bill, and therefore in the definitions section in section 1, it however believes that many of the definitions overlap to such an extent that their interpretation in other sections of the Bill becomes problematic

#### Submitted by Alzheimer's South Africa

It is felt that not all the definitions in the Bill are adequate and represent the needs of all elderly, especially the frail elderly.

#### 3.1. Defining "Abuse"

#### Submitted by Southern African Catholic Bishops' Conference

The Bill defines abuse as follows:

Abuse means a single or repeated act or lack of action that causes harm or distress to an older person, including physical, psychological, financial or material harm or neglect, or sexual harm and includes the violation of an older person's rights enshrined in Chapter 2 of the Constitution.

While covering a wide variety of actions (or inactions), it is unclear as to what exactly is meant by terms like 'harm' and 'distress'.

#### **Recommendation**

In order to assist in the interpretation and application of the law, **Southern African Catholic Bishops' Conference** urges the committee to expand the definition of abuse.

#### Submitted by Women's Legal Centre

The Women's Legal Centre submits that whilst the definition of abuse is laudable in its aims and objectives it has not fully considered what would constitute abuse in terms of the different types of abuse and the type of harm suffered by older persons in particular. It also fails to distinguish between different perpetrators of abuse, such as domestic elder abuse, institutional elder abuse and self-neglect. Furthermore, it is preferable to define emotional abuse, physical abuse, sexual abuse and economic abuse separately, as has been done in the Domestic Violence Act (hereinafter the "DVA"), as this will also lead to a uniform legal approach to the issue. One also needs to distinguish between "*harm*" and "*abuse*" as an abuse will cause or result in harm to the older person. Neglect also has a different connotation and all these concepts have not been sufficiently separated and dealt with in terms of what constitutes abuse and what does not. An extensive definition is set out in the DVA and we suggest that this be followed and amended in order to take into account the specific context of older persons. Guidance should also be obtained from international trends in legislative reform.

In the first instance the definition of abuse should be amended so as to bring it in line with the approach followed in both South African law and other jurisdictions, so as to ensure maximum protection. It is also recommended that an expansion of the various types of abuse would be warranted in the South African Bill to as to ensure clarity and certainty. Whilst it may result in fairly lengthy definitions it would ultimately assist in implementation of the Bill.

**Recommendation**

The Women's Legal Centre recommends that a broad definition of abuse be particularized followed by sub-definitions of the specifics as has been done in the Domestic Violence Act. The following is suggested in this regard:

*"Abuse means any conduct including physical, sexual, emotional, verbal, psychological or economic abuse, neglect or abandonment) which harms or may cause imminent harm to the safety, health or well-being of the older person."*

Physical abuse is any act or threatened act of physical violence. The use of physical force may result in bodily injury, physical pain, emotional trauma or impairment of dignity. Physical abuse may include but is not limited to such acts of violence as striking (with or without an object), hitting, beating, pushing, shoving, shaking, slapping, kicking, pinching, and burning. In addition, the inappropriate use of drugs and physical restraints, force-feeding, and physical punishment of any kind also are examples of physical abuse.

Sexual abuse is any conduct, which humiliates, degrades or otherwise violates the sexual integrity of the older person. Sexual contact with any person incapable of giving consent is also considered sexual abuse. It includes but is not limited to unwanted touching, all types of sexual assault, such as rape, coerced nudity, and sexually explicit photographing.

Emotional, verbal or psychological abuse is a pattern of degrading or humiliating conduct towards an older person. It may include the infliction of anguish, pain, or distress through verbal or non-verbal acts. Emotional/psychological abuse includes but is not limited to verbal assaults, insults, threats, intimidation, humiliation, and harassment. In addition, treating an older person like an infant; isolating an older person from his/her family, friends, or regular activities and enforced social isolation are examples of emotional/psychological abuse of older persons.

Economic abuse includes the financial or material exploitation of an older person, the unreasonable deprivation of economic or financial resources to which an older person is entitled, or the illegal or improper use of an older person's funds, property, or assets. Examples include but are not limited to cashing an elderly person's cheques without authorization/permission; forging an older person's signature; misusing or stealing an older person's money or possessions; coercing or deceiving an older person into signing any document (e.g. contracts or will); and the improper use of guardianship, or power of attorney.

It is suggested that a definition of neglect and abandonment be included in the Bill in accordance with and in order to take into account the specific context within which older persons find themselves. The WLC also supports the contentions and submissions by the Human Rights Commission in relation to incorporating and defining frail older care as distinct from older persons.

Neglect means the refusal or failure to provide an older person with such life necessities as food, water, clothing, shelter, personal hygiene, medicine, comfort, personal safety, and other essentials included in an implied or agreed-upon responsibility to the older person.

Abandonment is defined as the desertion of an elderly person by an individual who has assumed responsibility for providing care for an elder, or by a person with physical custody of an elder.

Self-neglect is characterized as the behaviour of an older person that threatens his/her own health or safety. Self-neglect generally manifests in an older person as a refusal or failure to provide himself/herself with adequate food, water, clothing, shelter, personal hygiene, medication (when

indicated) and safety precautions. The definition of self-neglect **excludes** a situation in which a mentally competent older person, who understands the consequences of his/her decisions, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice.

By expanding upon the definition in the foregoing manner, one would also be bringing the Act in line with the definition of “care” as contained in the Bill since this definition clearly envisages a broader, more holistic approach in that “care” is defined to mean “*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.*” It further brings the Bill in line with the Domestic Violence legislation currently in place in the country and the proposed Sexual Offences and Children’s Bill in terms of abuse and violence as against vulnerable groups.

**Submitted by Action on Elder Abuse South Africa**

The Action on Elder Abuse SA contends that although this definition has been improved on by the NCOP, it still needs further improvement. It therefore suggests the term “**elder abuse**” be defined as follows:” Elder abuse means a single or repeated act or lack of action that causes harm or distress to an older person *occurring within a relationship where there is an expectation of trust*, including physical, psychological, financial or material harm or neglect, sexual harm and includes the violation of a person’s rights as enshrined in Chapter 2 of the Constitution”.

This will distinguish elder abuse from other crimes, AEASA reckons.

**Submitted by Joint Forum for Policy on Ageing**

The Joint Forum for Policy on Ageing notes the improvement in the definition of abuse by the NCOP but feels that it is now too wide.

**Recommendation**

It wants the current definition limited by adding the following words between “person” and “including” on line 27: “occurring within any relationship where there is an expectation of trust”. It considers this necessary in order to distinguish abuse from other crimes.

**Submitted by South African Council For The Aged**

The Council thinks the definition of abuse has been improved by the NCOP but it is now too wide. To limit it, the Council proposes an addition of the following words between “person” and “including” on line 27: “occurring within any relationship where there is an expectation of trust”. It considers this necessary in order to distinguish abuse from other crimes.

**Submitted by South African Human Rights Commission**

The Commission is of the view that the current definition is too broad and refers to all the rights contained in the Bill of Rights.

**Recommendation**

*The Commission suggests that the words: “... and includes the violation of an older person’s rights enshrined in Chapter 2 of the Constitution...” that appear in the current definition be removed. And the following words “...occurring within any relationship where there is an expectation of trust.”*

**Commission's proposed amended definition:**

"abuse" means a single or repeated act, or lack of action, occurring within any relationship where there is an expectation of trust that causes harm or distress to an older person, including physical, psychological, financial, material or sexual harm or neglect."

**Submitted by Alzheimer's South Africa**

Alzheimer suggests the following definition of abuse " *a single or repeated act or lack of action that causes harm or distress to an older person occurring with any relationship where there is an expectation of trust, including physical, psychological, financial or material harm or neglect, or sexual harm and includes the violation of an older person's rights enshrined in Chapter 2 of the Constitution*".

**3.2 Defining "Caregiver"****Submitted by South African Human Rights Commission**

The Commission raises a concern about the training that home based carers receive and the standard thereof. It expresses doubt on whether the carers were trained in all the necessary skills.

**Recommendation**

The Commission suggests an amendment of the definition of "care giver" by including the word "trained". It would also like to see the Minister making regulations regarding caregivers. It wants caregivers to be registered with the Department in order to ensure that there is a minimum level of service and also to check if their names appear on the register.

**3.3 Defining "Facility"****Submitted by Action on Elder Abuse SA**

The Action on Elder Abuse SA holds the view that currently trend is moving towards including services for older persons in multi-purpose facilities or centres and the definition therefore needs to include this.

"Within the Bill "facility" refers mainly to old age homes; service recipients are not necessarily residents of old age homes".

**Submitted by Joint Forum for Policy on Ageing**

Although it acknowledges the expansion of the definition of "facility" effected by the NCOP to cover private residential homes, the Forum still contends that some confusion remains over this definition and how it relates to that of "community based care and support services."

**Submitted by NAWONGO**

Nawongo reasons that the definition of "facility", read with section 5(1)(a), is still confusing and vague.

**Submitted by Alzheimer's South Africa**

Alzheimer says that "facilities" only includes residential facilities and residential homes where elderly people pay to stay, but does not include residential family homes, informal shelters or other facilities where elderly people may reside. It therefore suggests that there should be a separate definition for the primary or family home.

### 3.4 Defining “Financial Abuse”

Submitted by **ESKOM PENSION ASSOCIATION**

Eskom Pension Association feels that this should be specifically defined, particularly due to fraud, misrepresentation, taking advantage of older persons living with cognitive and neurological disabilities, unlawful commission deductions for willingness to convert a pension cheques to cash, and misappropriation of pension payments and social grants.

### 3.5. Defining “Frail Care”

Submitted by **NAWONGO**

Recommends the re-inclusion of a definition for “**frail care**”.

Submitted by **Action on Elder Abuse South Africa**

The Action on Elder Abuse South Africa says this definition was removed by the NCOP and wants it reinstated as, it says, frail care is the final stage in a continuum of care for older persons.

Submitted by **South African Council For The Aged**

This definition was deleted by the NCOP, as were all references to “frail” older persons in the Bill. However, in line with the community care approach, the Council would like to see the definition and references to “frail” with respect to residential care restored to the Bill.

### 3.6. Defining “frail person”

5.1 Submitted by **Action on Elder Abuse South Africa**

This is another example of a definition that the Action on Elder SA says was removed from the Bill and advances for its reinstatement on the basis that a frail older person, whether mentally or physically frail, has specific needs, which in turn require special skills and staff ratios.

#### **Recommendation**

The Action on Elder Abuse suggests the following definition:

*“A frail older person means a person, 60 years and older, whose physical or mental condition renders him or her in need of 24 hour continuous care.”*

Submitted by **Directorate Chronic Care Rehabilitation, Dept of Health: CT**

The Directorate contends that although “frail” does not only refer to older persons, in this bill, it should however refer to an older person. It says it is important to mention “frail person” specifically in the Older Person’s Bill as it has implications for the type of care, and resources needed e.g. equipment, adequately trained human resources, medication, rehabilitation etc.

#### **Recommendation**

The Directorate suggests that since the object of the Bill is the protection and the promotion of their safety, well-being and security etc, the term “frail person” as vulnerable and in need of care should be added in the definitions.

If the definition is not replaced, the Directorate threatens that, the need for frail persons to receive 24-hour continuous care might not be met and inadequate support could be supplied.

Submitted by **Joint Forum for Policy on Ageing****Recommendation**

The Forum recommends that in line with the community care approach and the vulnerability of the frail. The reinclusion and restoration in the Bill of the definition and references to “frail” with respect to residential care. It suggests that the definition should read: “frail person means an older person whose physical or mental condition renders him or her in need of 24-hour continuous care.”

The Forum urges the Portfolio Committee to consider at the situation of younger frail persons, numbers of whom are currently being cared for in residential homes. What are the implications for them of excluding them from this definition?

Submitted by **South African Human Rights Commission**

The Commission strongly argues for the reinclusion of the word “frail person” into the Bill based on the following grounds:

- Frail persons are your most vulnerable older persons. They need specific recognition.
- Frail persons have very specific needs, which are different from older persons who are not frail.
- Highly skilled and trained staff are needed for frail care. The ratio of residents to staff is far higher.
- Frail care represents the end of the spectrum of the continuum of care, Just as all other forms of care ought to be mentioned in the Bill, so too must frail care.
- If frail care is not mentioned in the Bill then what will the Department connect its Frail Care policy to?
- Old age homes are increasingly becoming frail care homes

Submitted by **Alzheimer’s South Africa**

Alzheimer strongly feels that the definition of the *frail person*, which was previously removed by the NCOP, should be reinstated.

It is suggested that the definition of *frail person* could be defined as:  
 “is a person over the age of 60 whose physical and or mental condition renders him or her incapable of caring for themselves and they require twenty four hour care.

**3.7. Defining “home based care”**Submitted by **Joint Forum for Policy on Ageing**

The Forum proposes the following definition replace the one in the Bill: “Home based care is the provision of health and personal care services rendered by formal and informal care givers in the home in order to promote, restore and maintain a person’s maximum level of comfort, function and health including care towards a dignified death” (Draft Frail Care Policy - World Health Organization).

Submitted by **South African Human Rights Commission**

The Commission is concerned that the definition excludes caregivers who are the spouse or family member of an older persons.

**Recommendation**

It suggests that a serious consideration and debate on whether home-based care should exclude family members. It says it may well be in the interests of the state in instances where people are not economically advantaged to provide some assistance in order that the older person remains with the family. By failing to assist the family, the Commission says the state may well be placed in a situation where older persons are presented for care at old age homes

**3.8 Defining “luncheon club”****Submitted by South African Human Rights Commission****Recommendation**

The Commission would like to see the word “luncheon” from the term ‘luncheon club’ removed and a new definition for ‘club’ created with the following key elements:

- It is a service which promotes the quality of life and general well being of an older person i.e. it is a form of care
- It promotes and maintains the independent functioning of older persons in a community – from definition of community-based care and support services

**3.9. Defining “maintenance”****Submitted by Eskom Pension Association**

The Association reckons that this should be specifically defined to make a legislative linkage with the relevant maintenance legislation and to express the legal obligation of spouses, brothers and sisters, children and grandchildren of paying maintenance to an older person who legally proves a need for financial support.

**3.10. Defining “Older Persons”****Submitted by Action on Elder Abuse South Africa**

The Action on Elder Abuse would like the definition of an older person to be “**any person, male or female, who is sixty years of age or older**”. The age variation, AEASA claims, is not only discriminatory but contends also would have a negative impact on accessibility to services for older men, the mandatory reporting of elder abuse and the admission to a care facility. It objects to the notion that this place an extra financial burden on the Department of Social Development saying that many men in the 60 to 65 year old age group who are frail, are already in receipt of or would qualify for a Disability Grant.

**Submitted by Black Sash**

The Black Sash is of the opinion that the definition of Older Persons in terms of this Bill differentiates between males and females between the ages 60 and 64years. This, it says, amounts to discrimination as the females enjoy legislative protection in terms of access to care facilities, protection against abuse and benefits from programmes, which males of the same age do not enjoy. This form of discrimination is presumed to be unfair in terms of section.9 (3) unless it can be established to be fair, it reckons.

Furthermore, Black Sash believes because of age differential that this Bill will make the Act impractical to implement and open the potential for litigation against the Department, the cost of which, it says, can be prevented and used to provide social security to older people.

**Recommendation**

It recommends that an Older Person in the Bill is defined as persons of the age 60 years and older.

**Submitted by Joint Forum for Policy on Ageing**

The Forum considers that it is not appropriate to apply different ages for men and women with respect to access to facilities and treatment. The Aged Persons Act, which this Bill replaces, referred to “debilitated persons” which it defined as any person over the age of 60. We seem to be moving backwards with respect to older men, contends the Forum.

**Submitted by Women’s Legal Centre**

The Women’s Legal Centre is of the opinion that, whilst in some cases it may be justifiable to differentiate between male and females and not treat different sexes the same, in the current context and in view of the purpose of this Act, as a protective measure, there is no reasonable and justifiable rationale for the differentiation, which in effect amounts to discrimination. Accordingly, it submits that an older person should not be defined so as to differentiate between men and women over the age of 60.

The rationale and basis for this Bill, it says, is one of protection and accordingly it would not be acceptable to increase the age to 65 for both men and women as this will be to the detriment of women and men and will not be in line with international trends and the South African Constitutional standard in terms of allowing the maximum protection available. .

**Submitted by South African Council For The Aged**

The Council does not consider appropriate to apply different ages for men and women, particularly with respect to treatment and access to facilities. Consideration needs also to be given to the effect of the present definition on facilities and services that are provided to a range of people, for example people with disabilities, who are frail but are not old. Many institutions who provide for such people depend on subsidies, and the effect of this definition could be prejudicial to them.

**Submitted by South African Human Rights Commission**

The Commission holds the strong view that older persons should be defined as persons older than **60 years** and that there should be no age differential between women and men. It feels that the present age differential between men and women is not only discriminatory but will also make the Act quite **impractical to implement**. It also warns that by keeping the age differential in the Bill, the Department of Social Development is potentially opening itself up to a plethora of litigation in that older persons across the country could challenge the actions of the Department in all its dealings with older persons where the age differential has an impact.

**Recommendation**

The Commission suggests the removal of the age differential from the Older Persons Bill. It supports the notion that an older person is a person who is over the age of 60 years.

**Submitted by Alzheimer’s South Africa**

Alzheimer feels that it is discriminatory to define the ages of men and women differently and suggests that the Bill define all older persons as those over the age of 60. Basic care

### 3.11. Defining “older persons with disabilities”

#### Submitted by Eskom Pension Association

The Association feels that this should be specifically defined to be able to highlight oppression, discrimination and abuse based on cognitive and neurological as well as physical disability, since older person living with these disabilities are the most vulnerable; that these should be dealt with under the Criminal Procedures Act, the Equality Act and to make a legislative linkage with the Mental Health Care Act, No 17 of 2002.

### 3.12. Defining “Manager” vs. “operator”

#### Submitted by South African Human Rights Commission

The Commission thinks the usages of these two definitions in the Bill appear **confused**. Furthermore it does not think it is legally tenable to give these duties to an employee (the manager) of an owner of a business (the operator). It argues that the responsibility needs to rest with the person who is ultimately in charge of the facility. It is open to the possibility that the operator may delegate the responsibilities, however it says, it must ultimately remain the responsibility of the operator to ensure that the statutory obligations created in the Bill are carried out.

It strongly argues that the Bill is creating a potential conflict of interest for managers. For example, what must the manager do if the operator fails to provide the manager with the necessary resources or equipment in order to carry out the statutory obligations? More concerning is Clause 8 - how will a resident’s committee ensure that a manager will carry out the duties contained therein. Surely, it is for the resident’s committee to consult with the operator on these matters. Finally, the operator must provide the reasons for a failure to admit an older person to a facility. If, for example, the reasons amount to a violation of Clause 9(1), then this could attract criminal responsibility, says the Commission. The Commission thinks the legal duty to provide these reasons ought to rest with the operator of the facility, as it is the operator who should take ultimate responsibility for managers and the decisions that they may take regarding admissions to the facility.

#### **Recommendation**

The Commission suggests that the word “manager” should be removed from the Bill and be replaced with the word “operator”. It wants all references to manager, except the reference in clause 22, be replaced with the word operator. It suggests that the definition of manager be removed and Clause 22 (4) be reworded by stating that any manager, *as defined in the Aged Persons Act 1967*, Alternatively, it wants the definition of manager to be replaced with a definition that makes reference to the definition of manager contained in the 1967 Aged Persons Act.

#### Submitted by South African Council For The Aged

The Council thinks the term “operator” is not legally tenable as it does not necessarily cover owners.

#### Submitted by NG Ministry of Caring

The Ministry does not see the difference between “operator” and “manager” and therefore suggests that the word “operator” be left out.

#### Submitted by Alzheimer’s South Africa

Alzheimer feels that the previous term of “manager” is more acceptable than the term “operator”..

### **3.13. Defining “Person”**

#### **Submitted by Joint Forum for Policy on Ageing**

The Forum reckons that this definition should be more holistic as it needs to cover other parties including Section 21 companies.

#### **Submitted by NAWONGO**

The definition of “**person**” is incomplete and insignificant. The use of the concept “operator” causes more confusion.

#### **Submitted by South African Council For The Aged**

The Council wants to see this definition more holistic and covering other parties including Section 21 companies

### **3.14 Professional health care provider**

#### **Submitted by Alzheimer’s South Africa**

It suggests that it should mean a person providing health services in terms of any law and who is registered with their professional association or legislative body.

### **3.15. Defining “shelter”**

#### **Submitted by Action on Elder Abuse South Africa**

The Action on Elder Abuse SA says this definition must include “safe beds. These, AEASA says, could be in residential facilities or within the community e.g. in rural areas.

#### **Submitted by Joint Forum for Policy on Ageing**

The words “including safe beds” should be inserted between the words “premises” and “maintained”.

#### **Submitted by South African Council For The Aged**

The Council suggests that words “including safe beds” should be inserted between the words “premises” and “maintained”.

#### **Submitted by Alzheimer’s South Africa**

Alzheimer says shelters are defined in the Bill but are not included in the Bill.

## **4. Proposed new definitions**

#### **Submitted by Joint Forum for Policy on Ageing and South African Council For The Aged**

The Forum and Council propose the insertion of the following definitions in the Bill:

**“assisted living”**

To be defined as “Assisted living is the provision of affordable, adaptable and secure accommodation which provides older persons with an environment that enables access to support services, food supplies, primary health care, a pension pay-point or bank, transport, recreational, educational and leisure activities”

**“basic care” (See Section 12(d))**

To be defined as “Basic care covers personal hygiene, adequate clothing and footwear, nutrition, toilet needs, mobility aids, rest and sleep and social and recreational needs.”

**“day care”**

To be defined as “Day care for adults is a service within a residential home or service centre which provides social, recreational and health-related activities in a protective setting to individuals who cannot be left alone during the day because of health care or social needs”. (Draft Frail Care Policy)

**Submitted by Action on Elder South Africa**

AEASA requests the following definitions to be included in the Bill:

**“assisted living”:** *“Assisted living is the provision of affordable, appropriate and secure accommodation that would enable older persons to remain independent and live in their communities within an environment that would provide access to support services”.*

**“day care”:** *“Day care for older persons is a service provided within a residential facility or service center which provides social, recreational and health related activities in a protective setting to older persons unable to be left alone during the day due to their social or health needs”.*

**“home based care”:** *“Home based care is the provision of health and personal care services rendered by formal and informal caregivers in the home in order to promote, restore and maintain an older person’s maximum level of comfort, function and health including care towards a dignified death.*

**Submitted by Alzheimer’s South Africa**

Alzheimer suggests the inclusion of the following new definitions:

**Basic care**

This covers personal hygiene, adequate clothing and footwear, nutrition, toilet needs, mobility aids, rest and sleep and social and recreational needs. Access to primary medical and psychiatric care should be included.

**Home based care**

This is the provision of health and personal care services rendered by formal and informal caregivers in the home in order to promote, restore and maintain a person’s optimum level of comfort, functionality and health, and enhance their quality of life and care.

**Day-care for adults**

Is a service within a residential home or service centre, which provides social, nutritional, recreational and health related activities in a protective setting to individuals who cannot be left alone during the day because of their health care or social needs.

**5. CHAPTER 1 – [PROGRAMMES FOR DEVELOPMENT OF OLDER PERSONS]**

**5.1 Title of the Chapter 1**

Submitted by Joint Forum for Policy on Ageing and South African Council For The Aged

**Recommendation**

The Forum and Council would like to see this chapter titled **Older Persons and Development**; since it considers the purpose of the Bill as not to develop older persons as a separate group but to involve and integrate them in development generally.

Submitted by South African Human Rights Commission

**Recommendations**

In line with the Madrid Plan, which speaks of Older Persons and Development as opposed to the development of older persons, the Commission suggests that the title of the chapter should be amended to **Programmes for older persons and development**. It argues that the title as currently worded implies that older persons themselves need development and views as paternalistic.

Submitted by South African Council of Churches

The Council, like the SA Catholic Bishops Conference, is of the view that the heading and contents of Chapter 1 are vague in their intention and arbitrary in their commitment. It further feels that older persons be not viewed as just subject to programmes and process but that the older person ought to be able to shape these programmes and processes. In order to give substance to the aims and objects of the memorandum, the Council suggests that the title be renamed “Programmes for development and the older person”.

Submitted by Alzheimer’s South Africa

It is strongly suggested that the title of this chapter should be changed to read: “Programme Development for Older Persons”

**5.2. Programmes for development of older persons**

Submitted by Action on Elder Abuse South Africa

**Recommendations**

AEASA suggests this chapter should read “Older Persons and Development” and should seek to integrate older persons into the community and development rather than to segregate them from the other age groups.

It further suggests that the word “may” should be replaced by “must” and “consultation” by “form partnerships”. Without intersectoral co-operation this chapter and indeed the entire piece of legislation, will be impossible to implement.

In **section 2. (b)** AEASA suggests that the meaning of “support” should be defined – as it stands it is too vague and would have a direct bearing on implementation.

In **section 2. (2)** AEASA reckons that the programmes as they stand in the Bill are little more than a wish list and merely pay lip service to the implementation of the Madrid Plan of Action.

AEASA suggests that an omission in the list of programmes is one that will address and prevent elder abuse, support and encourage older persons to stand up for their rights. This programme, it says, should target not only older persons but their families and caregivers as well.

The national forum for older persons, which has been initiated by the Human Rights Commission and the Department of Social Development, AEASA suggests that it be included in the Bill as a programme. The inclusion of this forum as a programme, AEASA reasons, would also insure that the Minister consults not only with stakeholders but, most importantly, with older persons themselves.

AEASA finally proposes that the needs of older persons in rural areas be researched and programmes developed accordingly.

Submitted by **Black Sash**

**Recommendation**

Black Sash urges the Department to include a programme/s under section .2 related to the impact of HIV/AIDS on Older Persons infected and affected by HIV/AIDS. The focus being the provision of information, social support and formal care for Older Persons who are infected with HIV/AIDS or care givers.

Referring to sub-section .2(2)(f) of the Bill, Black Sash registers its strong opposition to deductions of any nature at any point in the payment of grants by the State or the intended South African Social Security Agency. In the event of non-consideration of its objection to the above position on deductions Black Sash would like to recommend that such allowable deductions by the Minister should not exceed 10% of the grant amount for burial schemes and this should be stated in the Regulation concerned.

Submitted by **Pretoria Council for the Care of the Aged**

The Council says the list of programmes in section 2 cannot be regarded as sufficient.. As such, it says, the list is not sufficiently comprehensive, nor is it clear as to by whom or how they will be implemented and/or funded. The contents of the Bill, it holds, only address a limited number of the programmes

Submitted by **Cape Jewish Seniors Association**

**Recommendation**

The Association suggests the following additions:

- *“part of UN directive to create a data base” in **section 2 (k)** .*
- *“Seniors should no longer have forced retirement at 60 or 65 years of age” in **section 2 (l)** and also to include –“ seniors should be allowed employment to subsidize their pension without being penalized.”*

**Submitted by Joint Forum for Policy on Ageing**

The Forum proposes “consultation” be replaced by joint mechanisms or partnerships, with Social Development as the lead Department. The nature of “support” needs to be defined – as it stands it could not be costed. This will doubtless influence implementation.

The Forum wants the Bill to give more direction and substance to the programmes. The more precisely a service is described the more likely it is to be implemented. The Costing Report was unable to comment on legal and fiscal implications of the programmes because their extent is unclear. “Despite the aspirations of a Developmental Service Delivery Model, the absence of norms and standards makes it difficult to cost the Bill within the developmental paradigm”.

In the event, the costing was based on current services and programmes rather than costing the specific provisions of the Bill. The outcome was four categories of programme:

- Promotion and Protection of the Rights of Older Persons
- Integrated Community based and outreach programmes
- Residential Care
- Departmental Administration (including research and monitoring)

The shortcoming of the above categories of program, the Forum reckons, is that they overlook some of the programs listed in the Bill, in particular some of those which require collaboration with other Departments.

**Recommendation**

The Forum therefore suggests that the programs in this section be listed in order of importance and that priority be given to (a) (e) (h) and (j) .

It also suggests the following proposals on programmes in this Chapter (with amendments underlined):

- “public education on ageing, the rights of older persons and their social, cultural, economic and political contribution” The Forum proposes that this program be combined with (k) and read as follows “The formation of an national forum of older persons to advise the Minister, ensure the participation of older persons in decision-making and establish a national research plan and a communication network on ageing”
- “access of older persons to information, education and training, especially in rural areas”. This program, the Forum thinks, needs to be spelt out – as it may be covered by other programs
- ”The protection of older persons and the education of carers and communities on their rights and needs.” The Forum is of the view that the issue of control of companies selling funeral policies and loans is a burning issue for older persons, hence this programme.

The Forum reckons that, currently the distribution of existing facilities is very skewed. It feels that transforming them is not enough. It therefore suggests that new day care and residential frail care facilities be provided. The Forum does not consider the multi-purpose centres referred to in the Bill as an adequate option. It argues strongly that frail older persons are vulnerable and therefore need their own space.

The Forum further suggests assisted living housing for older persons (some frail) caring for orphans.

**Submitted by South African Council of Churches**

The Council says that notwithstanding the fact that the Department of Social Development met with various governmental and societal stakeholders and that such provided valuable information, the Bill still needs to reflect such participation further and later down the line. Such an approach, it says, would require the Minister to adopt an intentional plan with strategies to be spelt out enhancing the capacity and participation of the older person to address the vision of an inclusive society as envisaged by our constitution. It says it also suggests that action on ageing needs to be come mainstreamed into all the work of other Departments so that the process of developing a society that seeks to care for and protect its citizens is the responsibility of government and every citizen. It goes on to say that such a plan of action would then of necessity be worked out with all stakeholders such as government, civil society, not for profit organizations, faith based organizations and communities as well as with traditional leaders.

The Council therefore recommends that section 2 (1) read: ‘The Minister shall, in consultation with other relevant Ministers and representatives of older persons from various sectors of civil society establish a National Forum for Older Persons for the implementation of action on ageing’. The Council says such a Forum may add to and or amend the fifteen programmes identified under section 2 (2) (a-o) in the Bill, while giving consideration to an appropriate inter-sectoral mechanism or National Policy Framework

**Submitted by Directorate: Chronic Care Rehabilitation, Dept of Health: CT**

**Recommendation**

Referring to section 2 (2) (j), the Directorate suggests that the Bill should particularly address the development of policies and the implementation of those policies to prevent ill health among older persons. In particular, it says, the provision of infra structure to prevent the priority chronic diseases that are costly to manage and lead to increase in the burden of disease.

The Directorate further advances for necessary resources in terms of human resources, funding, equipment, training as well as the monitoring and evaluation structures.

The Directorate further suggests that programmes should:

- make provision for the development of self-help support and provide respite for patients, families and other carers.
- Promote public information about the symptoms treatment, consequences and prognosis of mental conditions.

Provide ongoing training to health care professionals in the detection and assessment of all mental disorders and of depression. The Directorate suggests that the provision of assistive devices including spectacles / and operations for the removal of cataracts for the prevention of blindness and dependency should be addressed according to Prevention of Blindness Strategy of the WHO. It is opposed to any form of discrimination practiced where older persons are concerned.

The Directorate suggests that the Bill should make provision for occupational health programmes for older persons.

**Submitted by Grandmothers Against Poverty and Aids**

It requests that programmes that promote intergenerational understanding and mutual respect be put in place.

**Submitted by Ikamva labantu**

It suggests that programmes:

- must be geared towards the development and enhancement of income-generating activities.
- need to include health promotion and prevention programmes, social and emotional support due to the impact of HIV/AIDS, orphans, unemployment, increased poverty and irresponsible behavior of individuals within the household.
- need to focus on the development of and sustainability of day-care centers for seniors.

**Submitted by NG Ministry of Caring**

In **section 2 (b)** – The Ministry says the participation of older persons in decision-making process should be at appropriate levels and taking account only people who are corpus mentis.

In **section 2 ©** - The Ministry wants the word “training” to be specified as “health related training”

In **section 2 (n)** – The Ministry does think the reported exemption cannot be done without a means test.

**Submitted by South African Human Rights Commission**

The Commission is concerned that the Bill does not provide for a central coordinating mechanism that would be responsible for overseeing and monitoring the implementation of this chapter. It fears that without such a body, the matters listed in sub-section 2(2) would not receive the necessary and prompt attention.

The fact that, should further programmes be identified in years to come, this would require amendments to the Act, also concerns the Commission. It therefore suggests that wording be added to the Bill that would allow the Minister to identify further programmes that may not at this stage be listed in sub-section 2(2).

It suggests that “may” in sub-section 2(1) should read “must”.

Referring to sub-section 2(2)(a) suggests that this programme should also refer to the religious contribution of older persons.

Referring to sub-section 2(2)(c) on the access of older persons to information, education and training, the Commission is calling for the ABET programmes to reflect the realities of older persons lives and for these programmes to be designed in a manner that would equip them with practical knowledge.

It further suggests that an intergenerational aspect be added to this programme as it believes that It is not only older persons who need information. It says their carers and family members also do.

On sub-section 2(2)(d), the Commission thinks that this programme was very broad and is suggesting that it be zoomed down to development and Older persons with a specific reference to the improvement of living conditions and infrastructure in rural areas; the alleviation of the marginalisation of older persons in rural areas; and the integration of older migrants within their new communities.

Regarding sub-section 2(2)(e) the Commission claims that this programme does not specifically reflect any of the Recommendations of the Madrid Plan. It is however pleased with its inclusion of this programme and regards it as important.

Referring to sub-section 2(2)(f) of the Bill, on the programme establishing norms and standards for companies selling funeral policies and extending loans to older persons, the Commission hails the specificity of this programme. It says the programme is justified and clearly needed in South Africa given the widespread reports of older persons being taken advantage of by some people who sell funeral policies and make loans.

#### **Recommendation**

The Commission suggests, based on what it terms the enormity of the problem and the concern, which people have on funeral policies and loans that there should be a programme concerning funeral policies and a separate programme concerning loans. Furthermore, it wants the programme to be reworded in order that the clause does not only refer to companies but to individuals.

In respect of the programme mentioned in sub-section 2(2)(g), the Commission welcomes it as specific and addresses the needs of South Africa.

The Commission argues the programme should not only focus on existing facilities but should also include the establishment of new facilities. This argument is based on the fact many existing facilities, particularly the ones that were built during Apartheid are based within white communities and are not located close to black communities. And also the fact that there are not many facilities in the rural areas, particularly the deep rural areas.

In relation to sub-section 2(2)(h), the commission welcomes the programme. It suggests it be expanded and made to address homelessness amongst older persons.

In sub-sections 2 (2) (i) and 2 (2)(j), the Commission is uncertain as to the potential scope of these programmes. Regarding health systems, participants stated that government should continuously seek to expand health services to the elderly. The Commission suggests the programme on health systems should also look into the provision of special discount health services.

In sub-section 2(2)(l), the Commission suggests that employment opportunities for older persons must be appropriate for the older person needs and abilities, in terms of age.

In sub-section 2(2)(o) the Commission welcomes the programme. It however suggests that public transport for the elderly should be free and subsidized. The commission further suggests that this programme should also look at safe transport. It also wants accessible transport to be interpreted broadly to include, among other things the inaccessibility of some busses and trains due to large steps, gaps and bus drivers pulling off before the elderly have sat down.

The Commission also wants bus drivers who transport dementia patients sometimes to be made aware and counseled in order that they are comfortable with their passengers and understand their behavior.

#### **Recommendations**

The commission the following additional programmes to section 2(2):

- Older persons forum
- Programme on HIV/AIDS and its impact on the elderly.
- Programme on education and awareness on elder abuse
- Programmes to address homelessness.

- A programme that includes traditional leaders in matters concerning the elderly.
- Adult Basic Education (ABET) programmes
- Programmes that address intergenerational solidarity
- Programmes on eradication of poverty.
- Programmes that address dementia and Alzheimer's, both in terms of education and awareness but also in terms of services to sufferers and their families and careers.
- More programmes to ensure an enabling and supportive environment for older persons.

**Submitted by Southern African Catholic Bishops' Conference**

The Conference reasons that in order for the value and contribution of older people to be fully realised, it is important to integrate them into the life of the community. This means, it says, that it is necessary to create and maintain a variety of programmes to encourage this integration.

**Recommendations**

**Section 2 (1)** of the Bill states that 'the Minister *may* ... develop programmes' and deals with the discretion that the Minister has in developing and supporting programmes for older people. As the Bill stands, the Southern African Catholic Bishops' Conference says, these programmes are left to the discretion of the Minister, without creating mechanisms to ensure and assess compliance. It urges the Committee to consider making the development of such programmes mandatory with the necessary mechanisms created to achieve results.

In order to maximise the success of listed programmes in this section, the Southern African Catholic Bishops' Conference suggests that the Minister be mandated to consult not only with other ministers, but with the many NGOs and CBOs that are active in this field.

**Submitted by CJ Janse van Vuuren, Manager, Luipaardsvlei Tehuis vir Bejaardes, A branch of NG Welfare North West**

Commenting on section 2. (e), (g) & (h) & (j), Mr van Vuuren says physically disabled adult persons (not necessarily older persons) were previously included in the category older persons, in providing accommodation, care, and so forth. He asks if they will now be excluded and wonders what will happen to the physically disabled adult persons currently residing in Care Facilities for older persons?

**Recommendation**

Mr van Vuuren proposes that the entire Bill for Older Persons should be revised to state clearly how to deal with adult physically disabled persons in facilities for older persons.

**Submitted by RAPCAN**

**Recommendations**

RAPCAN would like to see government of South Africa acknowledging the tremendous sacrifices that, it says, so many older people are making to keep their families together and to raise this country's future generations in the face of the HIV/AIDS epidemic. To ensure that these older caregivers are successful and that the children in their care have access to essential services as well

as the opportunity to develop fully, healthily and happily, RAPCAN says programmes must be implemented with that in mind. As such, it recommends that the following additions be made to Clause 2(2):

- the provision of subsidies and or other financial assistance to older persons caring for orphans; and
- the development and provision of support networks and opportunities to older persons caring for orphans to help them cope with their new and unique parenting roles.

Additionally, while RAPCAN applauds the inclusion of Section 2(2)(j) with respect to access to health care and support, it feels that it is necessary to include programmes to deal specifically with the HIV/AIDS crisis. Therefore, it recommends that the following objectives outlined in the Madrid International Plan of Action on Ageing<sup>1</sup> be taken into consideration:

- improvement in the assessment of the impact of HIV/AIDS on the health of older persons, both for those who are infected and those who are caregivers for infected and surviving family members; and
- enhancement and recognition of the contribution of older persons to development in their role as caregivers for children with chronic diseases, including HIV/AIDS, and as surrogate parents.

It further recommends the establishment of an intersectoral mechanism to coordinate and oversee the implementation of the programmes described above. RAPCAN also wants the Minister be granted greater flexibility in the identification and development of programmes currently not listed in the Bill. Such coordination and flexibility, it believes, will enhance to the best extent possible the ability of older persons to care for orphans and, as a result, will give these vulnerable children the best opportunity to grow and develop into happy, healthy adults.

**Submitted by Eskom Pension Association**

The Association is of the opinion that the retirement funds industry is set up inter alia to provide for the payment of pensions to persons who retired from retirement funds who had made contributions to the funds they were members of while in employment.

It believes that funds within the retirement funds industry could (subject to the Pension Funds Act and the fiduciary obligations of trustees in relation to investment decisions) be a possible source of development and investment funds for the types of programmes that section 2(b) contemplates.

The stakeholders to this Bill include retirement fund trustees, since they and pensioner associations (such as ours) are committed to promoting the interests of pensioners, who are also older persons.

**Recommendation**

In section 2(b) the Association believes that the programmes referred to should refer specifically to programmes that can be invested in by the:

- trustees of retirement funds registered under the Pension Funds Act, who by law must promote the interests of pensioners who obviously fall under the definition of “older person” in the Bill;
- employers who are participants in these retirement funds.

The programmes that they could invest in, the Association wants them to be mentioned in the Act and suggests the following:

- housing schemes for older persons;
- skills development and training initiatives for “community-based care and support services” and “care” and management and financial administration of a “facility”;
- skills development and training for self-help groups made up of older persons, to develop income-generating initiatives

Submitted by Peter Laubscher, Executive Director, Leprosy Mission Southern Africa

#### **Recommendations**

Mr Laubscher says the elderly disabled find it very expensive to travel and sometimes the cost of visiting a local health facility can be intolerable and proposes the following solutions:

- Reduced fares outside of peak hours on Metrorail and buses
- Designated compartments for the elderly/ vulnerable on Metrorail [this is practised in Asia]
- Taxis be required to offer discounted rates to the elderly disabled outside of peak hours

Submitted by South African Council For The Aged

#### **Recommendation**

##### **In section 2(1)**

The Council proposes that “consultation” be replaced by joint mechanisms or partnerships, with Social Development as the lead Department. It also suggests that the nature of “support” be defined – as it stands it could not be costed.

##### **In section 2(2)**

The Council wants the Bill to give more direction and substance to the programmes. The more precisely a service is described the more likely it is to be implemented, it says. The Council suggests that the programs in this section be listed in order of importance and that priority be given to (a) (e) (h) and (j).

It also suggests the following proposals on programmes in this Chapter (with amendments underlined):

- “public education on ageing, the rights of older persons and their social, cultural, economic and political contribution” The Forum proposes that this program be combined with (k) and read as follows “The formation of an national forum of older persons to advise the Minister, ensure the participation of older persons in decision-making and establish a national research plan and a communication network on ageing”
- “access of older persons to information, education and training, especially in rural areas”. This program, the Forum thinks, needs to be spelt out – as it may be covered by other programs
- ”The protection of older persons and the education of carers and communities on their rights and needs.” The Forum is of the view that the issue of control of companies selling funeral policies and loans is a burning issue for older persons, hence this programme.

**Submitted by Alzheimer's South Africa**

Alzheimer suggests that the following programmes should be included in this section:

- (p) The training of health care professionals to deal with the specific problems or complexities associated with dealing with the elderly.
- (q) The establishment of a National Forum on Older People
- ® The needs of carers need to be addressed to support them in their work.

**6. CHAPTER 2 – [ENSURING AN ENABLING AND SUPPORTIVE ENVIRONMENT FOR OLDER PERSONS]****Submitted by South African Council of Churches**

The Council believes that one way in which the Bill may be strengthened in order to promote an enabling and supportive environment might be to recognise the need for a continuum of care services for the older person including primary care, family and community based care, professional and rehabilitation, long term and palliative care. The Council therefore reckons that the Bill could be considerably strengthened if it included the following:

- *A community plan to conduct a needs assessment for planning locally based care and health services that involves the participation of the older person; and*
- *Regulatory mechanisms for such community and family based services as a continuum of care. Consultation with the Department of Health on this plan is essential, as with other programmes, that care for the older person needs to be mainstreamed into every relevant facet of government.*

**6.1. Facilities and services to comply with national norms and standards****Submitted by Action on Elder Abuse South Africa**

In this chapter, AEASA reckons that the Bill needs to focus primarily on community living where the majority of older persons live, rather than solely on residential facilities. Older persons, it says, need a continuum of care that can be outlined in three stages: independent living, assistance with daily living and finally frail care. This continuum of care can be provided in the community, including frail care, where possible.

**Recommendation**

AEASA suggests that the Bill focus on community based care as well as residential care. Many older persons, it says, are exploited due to a shortage of appropriate, affordable accommodation. It wants accommodation options explored where older persons can be accommodated in safety with their grandchildren where applicable.

National norms and standards for *all* residential facilities are imperative and all facilities should be subsidized on the cost of providing basic care. The registration and *regular* monitoring and evaluation of residential facilities by the Department of Social Development in conjunction with the Department of Health is vital to prevent and address elder abuse. It is of the utmost importance that this be included in the legislation. Facilities run by the State should be compliant with all legislation and not be exempted.

Service level agreements should be between the older persons as consumers of a service and the service providers, not between the consumers and the residents' committees in facilities.

**Submitted by CJ Janse van Vuuren, Manager, Luipaardsvlei Tehuis vir Bejaardes, A branch of NG Welfare North West**

Referring to Section 3. (1) - (2), Mr Van Vuuren explains that according to the Older Persons Bill under discussion, facilities and services are subsidised by a provincial legislature for the benefit and caring of older persons. He then raises his institution's concern in relation to the adult physically disabled persons already in residence in subsidized care facilities for older persons and wants to know whether this will constitute a contravention of the Bill?

**Submitted by Joint Forum for Policy on Ageing**

The Forum urges the Portfolio Committee to give consideration to the challenge of applying national norms and standards where there are wide disparities in resources and provision between and within provinces. It wants the level of subsidy to be based on the cost of basic care, taking account of various cost drivers.

**Submitted by NAWONGO**

In this section of the Bill norms and standards (Section 3(2)) are mentioned. Problems that are currently being experienced are:

- Conflicting standards set by the Department of Social Development and Department of Health.
- Medico-legal risks
- Astute standards and maintenance thereof in facilities, while private home care does not have meet the same standard.

NAWONGO wants to highlight the following as problems that it says are currently being experienced:

- In the Bill the capacity of older persons to act (or the loss thereof) is not dealt with.
- Also lacking are more comprehensive guidelines for the management of facilities.

The protection of the interests of both older persons and management in facilities, it argues, will be promoted by the availability of Codes and Procedures.

**Recommendation**

As in the case of the Labour Relations Act, NAWONGO suggests that perceived gaps in the Bill be filled with codes of good practice (as addenda to the Act). The codes could possibly deal with the following areas:

- Grievances and discipline in facilities
- Admissions and contracts with residents
- Management of facilities
- Transformation

As a way of alternative, NAWONGO says, the above could be set as prerequisites for registration.

**Submitted by Pretoria Council for the Care of the Aged**

The Council says that one of the main concerns in welfare is the current narrow and restrictive funding criteria, which are appropriated to fields of service. The modern approach, it goes on to say, is to encourage service providers to follow a multi-purpose approach and example, provide frail care to older persons, children with terminal diseases or every conceivable person in a terminal state of sickness or requiring frail care. Contrary to the modern approach, the Council then contends that

the proposed bill entrenches the narrow view of compartmentalizing the funding of service provisions.

It urges that the, Bill should not perpetuate the narrow formulation of the provision of social services for the older persons only. The Bill, the Council reasons, should prescribe the principles for the protection of the older person including criteria such a good governance, standards of care and generally the protection of older persons as underscored by the constitution, whether such services are funded by government or not, incorporating the principles annunciated in papers such as the Madrid Declaration, which was adopted by the Minister at the International Conference on Ageing in 2002.

The Council therefore, suggests that the reference to funding and the intended controls stipulated in the bill and reference to same in the proposed regulations should be omitted and instead, incorporated in a separate legislation dealing with the entire spectrum of funding for social services across the board. One alternative, it says, is to expand the current Social Assistance Act to incorporate funding for services for the full spectrum of social services.

If all issues regarding funding are removed from the Bill, the Council contends that the intended benefits articulated for the protection of the older persons will become more apparent.

The Council is of the view that services to older persons are also governed by other legislations. It maintains that this Bill, in its current form does not acknowledge these links and in many instances is in conflict with other such legislations. For example, it says, the Housing Development Schemes for Retired Persons Act 65 of 1988 regulates and controls retirement housing for persons over 55 years of age and as such prescribes requirements in this regard which are different to those contained in this Bill

#### **Submitted by South African Human Rights Commission**

The Commission welcomes this section. It is however uncertain about the content of the norms and standards, which, it says, are relegated to Regulations (Clause 21), which the Minister will draft after the passing of the Bill.

It also registers a concern that the Bill does not provide any time lines for the drafting of these norms and standards. It proposes that such a timeline should be included in the Bill. he clause demonstrates the drafters, possibly unintentional,

It says the title of this section and its wording refer throughout to ‘facilities and services’ and suggests that a more developmental approach would refer first to services and then to facilities. This, it says, would reflect the continuum of care, which older persons should have at their disposal.

It asks for norms and standards to be developed for home-based carers. It also wants home based care to be more formalized and home-based carers be paid some form of stipend by the State and that it should not be expected that these services be delivered for free.

#### **Recommendation**

The Commission suggests that a further section must be inserted providing that the Regulations for Norms and Standards must be drafted within one year of the coming into operation of the Act. It also wants the phrase ‘facilities and services’ be changed to ‘services and facilities’ throughout the Bill.

**Submitted by South African Council For The Aged**

The Council urges the Portfolio Committee to give consideration to the following:

- How can national norms and standards be applied over all provinces, given the disparities in resources? This was a major concern in the NCOP.
- Will norms and standards be established in consultation with stakeholders?
- Can facilities be compelled to meet national norms and standards where the State subsidies only cover a part of their costs?

**Submitted by Alzheimer's South Africa**

Alzheimer recommends that the norms and standards should also be made after consultation with other stakeholders, especially including those of older people. It wonders how prescriptive the Minister can be with the decreasing subsidies paid to homes that only cover a small percentage of the facilities costs.

**6.2. Conditions of use, withdrawal and refunding of subsidies****Submitted by Cape Jewish Seniors Association****Recommendation**

The Association suggests the following addition:

- *“thorough investigation first, only then followed by withdrawal of the subsidy in question after one month's notice of intention to do so”* in section 4 (3)

**Submitted by Joint Forum for Policy on Ageing**

This Section, the Forum says, is almost the same as Section 2A(1) of the Aged Persons Amendment Act. Under the Regulations of that Act, the Forum explains, subsidies were restricted to “residents who met the requirements determined by the Minister” and managers in receipt of subsidies had to allow inspections, report abuse and follow agreed accounting procedures. The last condition of the present Bill has now been amended by the NCOP by adding the requirement of a “register of assets bought with government funds”. It is doubtful if this is realistic. Substantial government capital funding of residential homes occurred under the previous regime when such registers were not required. Earlier attempts to uncover the whereabouts and extent of such “loans” have been unsuccessful.

**Recommendation**

The Forum would therefore like to recommend that “conditions for the use of a subsidy” be made part of a funding agreement between the state and the service provider.

The Forum considers the provision for the withdrawal of a subsidy after one months notice if any condition is not complied with too punitive a response. It argues that this sub-section must be made consistent with the Promotion of Administrative Justice Act with respect to time frames allowed for various steps taken in response to administrative actions. The Forum recommends that more graduated sanctions be provided for in the Bill.

The Forum would like to see this Section addressing the issue of “duty to support” by the children of persons in receipt of subsidies in order to reduce the burden of residential care on the budget.

**Submitted by NG Ministry of Caring**

In section 4 (3) – The Ministry thinks that “one month’s notice” is not a reasonable practice

**Submitted by Pretoria Council for the Care of the Aged**

It is the submission of the Council that where the state provides funding or a subsidy, the terms of the funding or subsidy should be formulated in a funding agreement, consistent with the principles espoused in the bill, as and when the funding is offered.

The Bill proposes that when a subsidy is paid, the Minister must prescribe the conditions of use of that subsidy, including conditions regarding the accounting for the subsidy so paid. A more flexible approach, depending on the organization, its circumstances, the level of funding, the services offered and the ability of management, the Council says, should be adopted and reflected in a funding agreement between the state and the facility or organization.

The Council recommends that private organizations without any state subsidy or state involvement should be excluded from certain of the provisions contained in the proposed Bill. For example, it says, it is unconscionable that the Bill prescribes for the establishment of resident committees for facilities if more than ten older persons reside in a facility irrespective of whether the organization is for profit or not subsidized by the state. It therefore wants private organizations without any state subsidy or state involvement to be excluded from such prescriptive provisions contained in the Bill.

**Submitted by South African Council For The Aged**

The Council would like to recommend that “conditions for the use of a subsidy” be made part of a funding agreement between the state and the service provider.

It considers the provision for the withdrawal of a subsidy after one months notice if any condition is not complied with as appears in sub-section 4 (3 too punitive a response. It would like to see this sub-section made consistent with the Promotion of Administrative Justice Act with respect to time frames allowed for various steps taken in response to administrative actions. If a subsidy is withdrawn so that the service can no longer be provided, it suggests that an alternative provision be made for the older persons receiving such a service. And recommends more graduated sanctions be provided for in the Bill.

**6.3 Prohibition on operation of unregistered facilities****Submitted by Joint Forum for Policy on Ageing**

The Forum reckons that this Section is taken virtually unchanged from the 1967 Aged Persons Act.

**Recommendation**

On Section 5 (7) the Forum is the opinion that, while it is appropriate that the owner of a facility facing closure should have to take reasonable measures to ensure older persons are accommodated in another registered facility, the Bill should expressly recognize that the State has the final responsibility to ensure these older persons are taken care of.

**Submitted by Pretoria Council for the Care of the Aged**

Section 7 (8) of the Bill requires the manager of the which immediately, prior to the date of the commencement of the section is being subsidized by the state, must register such facility within 12 months of the commencement of the section. By implication, the Council contends that a facility

which immediately prior to the date of commencement of the section, which is not being subsidized by the state, is not obliged to register. This anomalously, it reasons, defeats the objects of the bill and it submits, no reason exists for the distinction between facilities, which are subsidized, or not. It is its contention that all currently registered facilities should be regarded as registered in terms of this bill.

The Council further says that the Bill is unclear as to whether all types of facilities as defined in section 1 (10) should formally register. There is a contradiction between section 7 (1) and section 8 (1), as in the former section, all facilities should register whereas the latter only requires notification, not registration in respect of unsubsidized services.

The Council further contends that The forfeiture of all assets bought with government funds or donated with the specific intention to assist older persons to the state if the registration of the facility has been cancelled or the owner of the facility wishes to close down or transfer that facility, is unconstitutional. It says the Bill does not distinguish between assets, which may have been acquired partially by state subsidization and by the facility itself. On account of the potential for dispute, which may arise pursuant to the provisions of paragraph 9 of the Bill, the Council submits that a dispute resolution process or an appeal process to any decision made by the Minister should be provided for in the Bill. It wants it noted that in terms of the NPO Act, all NPOs are required to include a specific dissolution clause, which states that the assets must be transferred to another similar organization.

**Submitted by South African Human Rights Commission**

The Commission raises concern about the practical implementation of the section and how facilities that are based in poor communities would access the process and communicate with the department.

**Submitted by South African Council For The Aged**

Referring to sub-section 5(7), the Council argues that while it considers appropriate that the owner of a facility facing closure should have to take reasonable measures to ensure older persons are accommodated in another registered facility, it suggests that the Bill should expressly recognize that the State has the final responsibility to ensure these older persons are taken care of.

**Submitted by Alzheimer's South Africa**

Alzheimer asks about the criterion that is going to be used to register facilities under this section, and whether norms and standards will be the same as under section 3(2). It further asks if this is fair when they do not receive a subsidy from the state.

**6.4 Minister to be notified of provision of certain services**

**Submitted by Cape Jewish Seniors Association**

**Recommendation**

The Association suggests the following addition:

- “ *Community based service center*” in section 6 (1)

**Submitted by Joint Forum for Policy on Ageing**

The Forum welcomes the removal of private residential homes from this Section so that they will now be obliged to register under Section 5 like other facilities, regardless of the number of older persons accommodated.

**Submitted by South African Human Rights Commission**

The Commission says this section is too narrow. Whilst the title of the section refers to services, it says that services are then narrowed down to in the content of the clause to luncheon clubs and home based care.

**Recommendations**

The Commission proposes the following changes:

- Section 6 (1) should refer to the revised definition, as proposed earlier in the submission, and refer to clubs.
- Section 6(1) should refer to services and community based care and support services.
- Section 6(1) should state that a persons must notify, the Minister in the prescribed manner...”
- Additional sub-sections, similar to the sub-sections contained in clause 5 and 7 should be inserted with deal with the registration and granting of subsidies to services.
- The reference to accommodation in clause 6(2) is illogical as clause 6(1) only refers to luncheon clubs and home-based care. The word accommodation should be removed.

**6.5. Compliance for conditions for registration of facilities****Submitted by Joint Forum for Policy on Ageing**

The Forum argues that the addition of the requirement to hand over funds will conflict with the constitution of many institutions, which comply with the Non-Profit Organisations Act. This Act, the Forum says, requires that provision be made for assets of an institution closing down to go to another institution with similar aims.

**Submitted by South African Council For The Aged**

Commenting on sub-section 4 (1) the Council believes that the requirement to hand over funds will conflict with the constitution of many institutions, which comply with the Non-Profit Organizations Act. It therefore suggests that the Bill provides for assets of an institution closing down to go to another institution with similar aims.

**6.6. Establishment of residents' committees for facilities****Submitted by Joint Forum for Policy on Ageing**

The Forum says many services to older persons need to comply with other legislation, where requirements for corporate governance are specific and mandatory (for example Section 21 companies must comply with the Companies Act). These, the Forum contends, conflict with the powers of residents committees provided for in this section;

The Forum wants a distinction to be made between the obligations and liabilities of owners, management committees and residents committees. It is problematic for government to legislate on how management or residents committees are constituted. Nor is it desirable for the Bill to contain prescriptive measures regarding the composition of governing bodies. The Forum argues that this is the responsibility of the relevant service provider.

Differing financial and other resources of institutions affect what they can reasonably do. The interests of the State in ensuring that unfair discrimination is prohibited would be adequately protected by requiring that governing bodies be representative of the relevant community as far as is

reasonable and feasible. We understand that such provisions contained in funding agreements of the Gauteng Department.

The Forum wants consumers of any service to have some input into the conditions of provision of that service, and should have the right to obtain information regarding the service concerned. It says there should be a mechanism to enable older persons to obtain information, reasons for actions taken or not taken, and obtain recourse when they feel aggrieved. Again, a special protector or ombuds system would be appropriate here, the Forum reckons.

**Submitted by NG Ministry of Caring**

The Ministry is of the opinion that the screening procedures listed in section 8 (2) (a-c) are unrealistic and will make it impossible to admit older persons who are still physically and mentally able to serve on committees and make well-considered and meaningful resolutions.

**Submitted by CJ Janse van Vuuren, Manager, Luipaardsvlei Tehuis vir Bejaardes, A branch of NG Welfare North West**

**Recommendation**

Mr van Vuuren is of the opinion that when the Minister prescribes the composition of a “residents’ committee” for a Care Facility for Older Persons, it must be taken into account that, due to their physical condition, most of the residents will not be able to serve on a residents’ committee, and that their family members should represent them.

**Submitted by Pretoria Council for the Care of the Aged**

The Council reckons that the establishment of a resident’s committee for facilities in the Bill does not prescribe the role that such a resident’s committee should play and what powers it will have in the management or administration of a facility or organization. Without this essential information, it contends, it is not possible to consider the impact of such a clause on organizations.

It further reasons that the imposition of a resident’s committee for a facility or organization, which is established for profit or receives little or no state subsidy, is unwarranted.

**Submitted by South African Human Rights Commission**

The Commission submits it will be extremely problematic and difficult to comply with this section. It criticizes this section for what it calls subtle preoccupation with old age homes. Whilst the definition of facility refers to community based care and support services, it maintains that it is clear that the use of the word resident in this clause refers only to old age homes or residential care.

It sees it as impossible and illogical task for a community-based care and support service to establish a residents committee. These services may well have a transitory group of recipients.

**Recommendation**

The Commission proposes a revision of this section. It suggests a determination whether the clause is intended to apply to residential care facilities only. If so, it wants this to be stated. It also suggests a legal determination of whether the residents can in fact ensure that a manager carries out the functions set out in clause 8(3). It also suggests that an obligation to be created that older persons are entitled to be consulted on and participate in the decision-making processes concerning the matters contained in sub-section 8(3). Furthermore it proposes that a separate section should be inserted that refers to how older persons will be consulted and included in the decision-making processes in community based care and support services.

**Submitted by South African Council For The Aged**

The Council says that many services to older persons need to comply with other legislation, where requirements for corporate governance are specific and mandatory (for example Section 21 companies must comply with the Companies Act). It contends that these conflict with the powers of residents committees provided for in this section.

It suggests that a distinction be made between the obligations and liabilities of owners, management committees and residents committees. It considers it problematic for government to legislate on how management or residents committees are constituted and undesirable for the Bill to contain prescriptive measures regarding the composition of governing bodies. It sees this as the responsibility of the relevant service provider.

It also says that the interests of the State in ensuring that unfair discrimination is prohibited would be adequately protected by requiring that governing bodies be representative of the relevant community as far as is reasonable and feasible

**6.7. Admission to facilities****Submitted by Highlands House**

Referring to section 9 (1), the Highlands House, whose admission policy discriminates against all applicants who are not Jewish, is concerned that the specific punitive measures in the Bill will have other **unintended, and unconstitutional consequences** for facilities which, it says, legitimately operate for the benefit of members of a particular religion.

As an example, the only requirement that Highlands House says it takes into account in its admission policy is that the applicant for residence must be Jewish. It denies that a person's race does enter into the consideration. Forcing Highlands House to replace this primary consideration with a requirement to consider demographic representivity [in terms of section 9(2) of the Bill], Highlands House says, will violate the rights of it and its residents to religious freedom [in section 15(1) of the Constitution]; freedom of association [section 18 of the Constitution]; cultural life [section 30 of the Constitution]; religious practice [section 31(1)(a) of the Constitution]; and to form, join and maintain a religious association [section 31(1)(b) of the Constitution]. It further claims that section 9(2) of the Bill will also violate the rights of the current residents to dignity [section 10 of the Constitution]; property [section 25 of the Constitution]; access to existing housing [section 26 of the Constitution]; and access to existing health care services, food and water, and social security [section 27(1) of the Constitution].

Highlands House contends quite strongly that the Bill in its current form is unconstitutional on the basis that it constitutes a violation of rights contained in the Bill of Rights and such a violation, it says, is not "saved" by the limitations clause in section 36 of the Constitution.

**Recommendation**

The House suggests the following as ways in which, it says, such unconstitutionality can be cured whilst the purpose of the legislation is maintained.

- The concept of "unfair discrimination" in section 9(1) of the Bill should be defined to mean the same as its meaning in *Pepuda*;
- The requirement set out in section 9(2) of the Bill should be qualified. The requirement concerning the consideration for determining eligibility for admission to facilities contained

in section 9(2) of the Bill should only be operative when unfair discrimination based on race is involved; and

- In the alternative, the Minister should be granted the power under section 5 of the Bill to exempt any facility from the obligation to satisfy the requirements of section 9(1), read with sections 9(2) and 9(5) of the Bill.

Commenting on section 9 (4) the Highlands House says the Bill does not make it clear whether the punishment for contravention of this section in respect to a facility will be levied against the facility or the admitting officer.

The Highlands House also argues that there are a great many cases in which, it says, consent to their admission to a facility due to medical conditions such as Alzheimer's disease or senile dementia. It says it is neither practicable nor desirable that these individuals remain in their own homes. It says they require medical treatment and if left to their own devices, pose a significant danger to themselves and others due to the increased risk of (otherwise avoidable) accidents.

In these circumstances, Highlands House submits that legislation should facilitate, rather than hamper, the admission of these individuals to registered facilities.

The requirement for a Court order as a pre-requisite for admission, the Highlands House contends will strike a disproportionately heavy blow to the most vulnerable members of any community. The House says the difficulty in finding a facility which is prepared to admit a poor, senile individual will be compounded if that facility must first go through the potentially expensive process of attaining a court order.

Highlands House submits that the financial realities faced by facilities, whether private or public, will by themselves militate against 'forced' admissions. The House suggests that a distinction must be made between those older persons who are capable, and who are not capable of giving their consent to admission. The determination whether a person is capable of giving consent, it argues, can be made by a medical professional.

### **Recommendation**

In this regard Highlands House suggests that section 9(4) could be amended to read as follows: "No older person capable of consenting to his or her admission to a facility may be so admitted without his or her consent excepting in terms of an order of a court"; or section 5(5) could be amended to include a provision that a facility's registration will be withdrawn by the Minister if that facility is found to have admitted persons capable of giving their consent against their will.

### **Submitted by Joint Forum for Policy on Ageing**

The Forum welcomes the changes made by the NCOP to this Section, namely that written reasons be provided for refusal of admission and 9(4), which is new. It however contends that the obligation to give reasons should extend to all actions taken by providers of services, and the section should make it clear that the reasons must be substantive. Furthermore, it wants some avenue of recourse following the receipt of reasons to be provided for.

### **Submitted by CJ Janse van Vuuren, Manager, Luipaardsvlei Tehuis vir Bejaardes, A branch of NG Welfare North West**

Mr van Vuuren says that a facility that provides for the care and needs of older persons must have admission rules by which they can exclude the admission of mentally/psychologically disabled older persons. He further states that older persons suffering from dementia are not included in the

aforementioned category. He also maintains that most of the facilities that provide in the care of older persons do not have the facilities (accommodation) and trained staff to care for mentally/psychologically disabled older persons.

He asks if it is the appropriate Provincial Legislature that is going to pay the full required fee should an older person be ordered by court to be admitted to a facility

**Submitted by Pretoria Council for the Care of the Aged**

The Council submits that section 11 (3) and (4) are too widely stated. Many facilities as defined exists where the state makes no or only a small subsidy or contribution to the well-being of such facility and, under such circumstances, it argues that the state should not be able to prescribe criteria for admissions and tools to determine admission criteria. It is opposed to any situation where a state enjoys influence in facilities where it makes no contribution in order to promote private initiatives, provided that the facility complies with the requirements of the Bill.

**Submitted by South African Human Rights Commission**

**Recommendation**

The Commission proposes that this section should refer specifically to residential care facilities. It says that is justifiable, in light of a particular history concerning old age homes, that affirmative action measures are created in legislation to address the imbalances of the past. It further suggests if the intention for this section is to refer to community based care and support services then this should be stated clearly. It proposes that a separate section could be created to address discrimination in this context.

It suggests that a further section referring to recipients of community based care and support services should be added to the Bill.

The reference to manager in section 9(3), it says should be changed to operator.

**Submitted by South African Council For The Aged**

Referring to sub-section 9(3) welcome the changes made by the NCOP to this section, namely that written reasons be provided for refusal of admission and 9(4), which is new. The obligation to give reasons should extend to all actions taken by providers of services, and the section should make it clear that the reasons must be substantive. Furthermore, some avenue of recourse following the receipt of reasons should be provided for, which again highlights the importance of having a special protector or ombuds system (See motivation at the end of Chapter 3.)

**Submitted by Alzheimer's South Africa**

Referring to section 9 (4), Alzheimer thinks this has direct implications for elderly people suffering from dementia that have no contractual capacity and argues that due to their cognitive decline and the fact that their insight and judgment is impaired, they are not able to complete and or sign the application forms giving their consent. It says that those that are still able to communicate may express that there is nothing wrong with them and that they are capable of caring for themselves, when the reality is very different. It goes to say that getting a court order is an expensive and time consuming event that is not practical or financially possible in most situations. Often, Alzheimer says, it is in their best interests to be admitted to a facility as they are in need of nursing care and could be posing a danger to themselves or to other people. Under these circumstances, Alzheimer feels that the fact they cannot give consent should not mean that the person signing on their behalf is guilty of an offence as stated in section 5. Alzheimer reasons that if the person does not admit

them to a facility when they are needing care, they are likely to be guilty of a crime under section 13 – as they will be guilty of the abuse or neglect of an older person.

Alzheimer therefore recommends that this section read as follows:

9(4) “No older person may be admitted to a facility without his or her consent, a court order or where they would at risk if not admitted”.

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

##### **Submitted by Directorate: Chronic Care Rehabilitation**

##### **Recommendation**

The Directorate suggests that the Bill must include the Department of Health in monitoring or registration of homes for older persons as mandatory. It considers this essential. The Directorate claims that the Health act legislates that the department of health is responsible for health care. It therefore suggests that the Bill must make provision that the Department of Health ensures it has the capacity to monitor the care of Older persons in the various settings as well as Old Age Homes.

##### **Submitted by Joint Forum for Policy on Ageing**

The Forum wants monitoring provisions to apply to services provided in all facilities, whether registered or not, as well as services provided outside facilities..

For example, Section 43(1) of National Health Act requires the Minister to prescribe minimum standards for the provision of health services in locations other than health establishments, including schools and other public places. This must cover residential homes for frail older persons. However, the Health Department does not yet fulfil this oversight role here. The Forum wants the Bill to provide a mechanism, which is linked to the monitoring requirements in order to overcome this gap.

It would be helpful if the Bill specified the purpose of the monitoring system, linked monitoring to the quality of care provided to other persons, and provided for remedies where the results of the monitoring process show that norms and standards are not being complied with. There should also be an obligation on the monitoring body to inform affected institutions of the results and findings of any monitoring or investigation, with a corresponding right for any institution to respond or take remedial steps before other actions are taken as a result of the monitoring findings.

The Forum would also like this Section to give more emphasis to the monitoring role of “persons designated by the Director General” as it says many older persons’ perception of social workers is extremely negative, especially in disadvantaged communities

##### **Submitted by NG Ministry of Caring**

Referring to specifically to section 10 ©, the Ministry is of the opinion that social workers have limited knowledge of health care and might not be the appropriate discipline for this function.

##### **Submitted by Pretoria Council for the Care of the Aged**

The Council submits that the majority of abuse of older persons exists in the communities and not in facilities or organizations and a glaring omission from the provisions of the Bill is the ability of social workers to monitor older persons housed in private homes.

The Council contends that the Bill does not make provision for the inspector or social worker to make a report available to the facility or organization, which has been visited by the inspector, or social worker pursuant to the provisions of this paragraph. It further argues that the relevance of a social worker visiting or monitoring a facility or organization, interviewing any older or frail person or directing the person to submit documentation in the context of the Bill is not understood. It adds that the Bill does not prescribe what the director general should do with such reports or what the relevance of such reports would be to the director-general.

**Submitted by South African Human Rights Commission**

The Commission raises a concern that there are not enough social workers to carry out the duties that are created in this section.

**Recommendation**

The Commission proposes that term “places” in the title should also be reconsidered. It wants it be changed registered community based care and support services.

**Submitted by South African Council For The Aged**

The Council suggests that monitoring provisions should apply to services provided in all facilities, whether registered or not, as well as services provided outside facilities. It thinks it would be helpful if the Bill specified the purpose of the monitoring system, linked monitoring to the quality of care provided to other persons, and provided for remedies where the results of the monitoring process show that norms and standards are not being complied with. It also recommends that there should also be an obligation on the monitoring body to inform affected institutions of the results and findings of any monitoring or investigation, with a corresponding right for any institution to respond or take remedial steps before other actions are taken as a result of the monitoring findings.

**6.9. Report to Minister by managers of facilities.**

**Submitted by Pretoria Council for the Care of the Aged**

The Council reckons that the Bill assumes that all services for older persons are subsidized and Bill envisages using the subsidy for the basis to control institutions and enforce the government’s policy and directives.

It argues that the requirement for the manager of a facility to furnish a report within 60 days after the end of the financial year on compliance with the prescribed service standards and the prescribed measures with the prescribed service-standards and the prescribed measures to prevent and combat abuse of older person during the financial year is debatable. The inappropriateness of such a requirement, it says, is demonstrated by the proposed penalty contained in the bill, which prescribes that when the manager of a facility fails to submit a report, the Minister may withdraw any subsidy paid in respect of that facility.

It says that it should be noted that reports are already required in terms of the NPO Act and also by provincial departments in respect of financial service plans. In its opinion, should a further report be deemed to be essential, It says, it should contain meaningful information, and not merely be a repetition of information already supplied.

**Submitted by South African Human Rights Commission**

The Commission is concerned that the reporting requirements may overlap with the provisions contained in the Non-Profit Organizations Act, 1998.

**Recommendation**

The Commission proposes that section 11 should be placed immediately after section 4. It suggests that all reporting requirements should be contained in one section believing that the failure to do this may create confusion. It wants to see a determination of different reporting requirements for residential facilities versus community-based care and support services. This, it says, should be reflected in two different clauses.

**7. CHAPTER 3 – [PROTECTION FOR OLDER PERSONS]****7.1 General overview of the chapter****Submitted by South African Human Rights Commission**

The Commission registers what it says is a general concern that the chapter makes little provision for abuse that occurs in private homes and in the community. It says the chapter deals predominantly with abuse that occurs in institutions and provides mechanisms to address instances where such care is injurious to the older person or where the older person is taken advantage of (section 14 and 15).

It wants the Bill to reflect a community orientated approach to the care of the elderly and de-emphasize a facility-based approach.

The ordering of the clauses in the Bill, it says, should reflect the progressive developmental approach of protecting older persons in the community and provide protection mechanisms in the different forms of care which they may encounter during their ageing process. In other words the Bill should provide protection for persons in the community, thereafter for persons living in private residences and participating in community based care programs and finally, protections should be provided for older persons who live in institutions

**Recommendation**

The Commission suggests that this could be achieved if the sections were placed in the following chronological order:

Section 16 - Notification of abuse of older person

Section 18 - Older Persons in need of care and protection

Section 14 - Procedure for bringing person who accommodates or cares for older or frail person before magistrate

Section 15 - Enquiry into accommodation or care of older or frail person

Section 13 - Prohibition of abuse of older persons.

Section 17 - Keeping of register of abuse of older persons

Section 12 - Rights of older persons in facilities

**7.2. Rights of older persons in facilities****Submitted by Action on Elder Abuse South Africa**

AEASA is of the opinion that **Section 12** (Rights of older persons in facilities) should appear at the beginning of Chapter 2 and that **Section 18** (Older person in need of care and protection) should be brought forward to the beginning of Chapter 3.

**Submitted by NAWONGO****Recommendation**

Although section 12 does refer to the rights of older persons in facilities, NAWONG believes that an exposition of *all the rights of older persons* elsewhere would be of great value. This can be added, if deemed to be more practical, as a schedule to the Act.

**Submitted by Pretoria Council for the Care of the Aged**

Council contends that rights should apply to all older persons, not only those in facilities.

Council reckons that the right of older persons to be informed about the financial status of the facility and changes to management is vague and embarrassing. It wants to see provision made for residents of facilities or organizations to receive annual financial statements of such facilities or organizations and a notification of any change to management.

It further says that chapter 3 also introduces the rights of older persons in facilities to have access to basic care but argues that basic care is not defined in the Bill. It wants the reference to the word “basic” omitted.

**Submitted by South African Human Rights Commission**

The Commission remarks that it is clear that the rights identified in clause 12 refer to older persons who live in residential facilities. The section refers to transfer, discharge, keeping and suing personal possessions, reasonable access to visitation, etc. ... Clearly, the Commission considers it illogical that these rights could refer to older persons who are recipients of community-based services as are included in the definition of facility.

**Recommendation**

The Commission suggests that the section needs to state clearly in its heading that these rights are conferred upon persons residing in facilities.

- The right to dignity should be included.
- The right to privacy should be expanded.
- Clause 12(b) is worded clumsily. The word visitation is not the correct word to be used in this context. The clause should read: “... the right to receive visitors
- The have reasonable access to assistance should be a separate right. right to.....

**Submitted by South African Council For The Aged**

The Council proposes that this section be moved to the beginning of Chapter 2

**Submitted by Alzheimer’s South Africa**

Alzheimer feels that this section in its entirety should be moved to the start of Chapter 2. In addition, it feels that section 18(5)(a)(i) should be moved to the beginning of Chapter 3 as it thinks this would provide a definition of an older person in need of care and protection and should introduce the chapter.

### **7.3. Prohibition of abuse of older persons**

Submitted by South African Human Rights Commission

#### **Recommendation**

The Commission suggests a revision of definition of abuse order that it is clear what forms of conduct amount to abuse in terms of this clause.

Submitted by South African Council of Churches

The Council applauds the steps that recognize the criminalisation of older person abuse but questions whether the “naming and shaming” of abusers will produce significant prevention and awareness of older person abuse. It says other practical problems that arise are whether the removal of the victim from the place where he or she is abused will bring satisfactory justice for the victim or whether trauma may not be further exacerbated. Frequently, it reckons that the older person as victim may be further traumatized if she or he becomes the centre of attention within that family or community from whom she or he is removed. The Council enquires whether in such an instance of older person abuse, it may not be more appropriate for the alleged abuser or offender to be removed from the place of care and dealt with in terms of criminal law. A further point of concern is the message sent out by trying to deal with abuse primarily through the criminal justice system.

### **7.4. Procedure for bringing person who accommodates or cares for older person before magistrate**

Submitted by Action on Elder Abuse South Africa

AEASA claims that this procedure has largely been taken verbatim from the 1967 Act and considers it impractical.

#### **Recommendation**

AEASA suggests that the procedure needs to be made as user friendly as possible, yet at the same time ensure protection of the older person from even further exploitation. The training and sensitizing of staff in the Justice Department would be a key element in making this legislation easier to implement as well as provision being made for older persons to give evidence in camera, as this would reduce the fear factor that many older persons experience when being asked to testify in court, AEASA reckons. It also wants the Department of Justice to be sensitive too, to the reasons making older persons to frequently withdraw charges that they have laid due to dependency on or pressure from family members etc. and ensure that cases are not dropped before they have been fully investigated. In most situations older persons are dependent on their abusers whether it be financially or from a care aspect. Perpetrators who have become addicted to substances such as drugs and alcohol frequently abuse older persons to obtain money to fund their habits or become physically aggressive as a result of their addiction. Another problem area are adult children suffering from mental disability such as Schizophrenia refusing to take their medication and subsequently displaying aggressive and sometimes life threatening behaviour towards their older parents. Presently the Mental Health Act allows for the removal of these persons to a mental health facility for a few days, but they return home and the cycle of abuse begins again. AEASA suggests therefore that the legislation allow for the removal and rehabilitation of the abuser where necessary rather than removing the victim who is the innocent party.

**Submitted by Pretoria Council for the Care of the Aged**

The Council charges that the provision of section 14 of the Bill focuses only on the perpetrator and does not address the resultant needs of the victim. It is our contention that a direct reference to section 20 should be incorporated to ensure that the older person receives the required care.

**Submitted by South African Human Rights Commission****Recommendation**

Whilst the Commission agrees that these provisions remain in the Bill, it urges the Committee to make serious inquiries with the Departments of Social Development and Justice on the current use of these provisions, determine why they are not being used and thereby ascertain if further clauses are necessary to address these deficiencies.

It also proposes that:

- The Bill should provide for alternatives to such a formal procedure.
- The Bill should provide for education and awareness raising about abuse.
- The Bill should include provisions that provide for mediation with offenders, particularly family offenders where the abuse is not of a severe nature.
- Preventive measures against abuse need to be provided for in the Bill.

**7.5. Enquiry into accommodation or care of older person****Submitted by Cape Jewish Seniors Association****Recommendation**

Referring to section 15(5), the Association suggests that the enquiry is always held behind closed doors as it reportedly feels that this lessens the feeling of intimidation for the older person. In section 15 (8), the Association suggests the addition of “*social worker can also be asked to furnish a report*”.

**7.6. Notification of abuse of older persons****Submitted by Action on Elder Abuse South Africa**

AEASA says there are no **timeframes** given, for example, it is not specified that when the Director-General receives notification of the abuse of an older person, action must be taken within a certain period of time. AEASA fears that if timeframes are not specified, secondary abuse or traumatization can occur.

**Recommendation**

AEASA suggests that mandatory reporting should be confined to categories of abuse. While, it believes that older persons of sound mind are adults and as such their decision as to whether to report the abuse or not should be respected, it also argues that older persons who are mentally incapacitated, for example, those suffering from dementia, need the extra protection that mandatory reporting would provide.

AEASA also feels that mandatory reporting would, to a certain extent, be a deterrent, and could curb the amount of harm done to an older person.

AEASA strongly advocates for consideration of older people living in rural areas. It cites what the Act stipulates in **Section 16** that the Director-General must be notified –and asks - who represents the Director-General in the rural areas? It suggests that the role of the Traditional Leaders must be recognized in the legislation and protocols observed, for example, before an older person in an abusive situation is removed to a place of safety. In such situations, AEASA wants the Chief's permission be sought.

AEASA suggests that the term “**place of safety**” in place of “**hospital**” in Section 16 (2) (a). The reason for this, it says, being that not all abuse is of a physical nature, and this would be broad enough to cover rural areas where there are no hospitals. If there were physical injury to an older person, it says, a hospital would also be considered a place of safety.

AEASA is in complete agreement with the change made by the NCOP that the procedure should include any person who abuses an older person, not just those who care or accommodate them.

While, it acknowledges, it is common law that children have a legal and moral responsibility to provide for their parents if they are financially able to do so, AEASA suggests that this be included in the Bill as failure to do so is tantamount to elder abuse.

**Submitted by Southern African Catholic Bishops' Conference**

The Bill proposes mandatory reporting of abuse by ‘any person who suspects’ that an older person is the victim of abuse. The Conference wants this proposal carefully considered before it is implemented. Unlike children in abusive situations, the Conference holds strongly that older people are adults who are competent. By introducing mandatory reporting, it feels, this is being undermined and their right to autonomy may be violated.

Section 16 (2) (a) proposes that the Director-General must arrange ‘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. If enacted, the Conference thinks, this clause would have a number of ramifications. Firstly, it says there would have to be enough facilities to accommodate the elderly abused who are being relocated from their homes.

Secondly, it says that the removal of the older person is likely to be traumatic and, in a sense, is punitive. While the alleged abuser stays in the residence, the abused is removed from the situation. Taking into account the possible psychological trauma that may result, as well as the practicalities in relocating the older person, the Conference suggests that it is the alleged abuser that may need to be removed from the residence.

It further says that it is also necessary to look at the desirability of mandatory reporting on all people. While it is undeniable that there are certain categories of people who should have a legal duty to note and report suspected abuse (such as social workers or health care professionals), it feels that it is contentious to suggest that all people have this legal responsibility. It therefore asks that the Committee carefully consider this while deliberating on the Bill.

**Submitted by Peter Laubscher, Executive Director, Leprosy Mission Southern Africa**

Mr Laubscher says elderly people, especially those drawing pensions, are subject to high levels of crime and their safety is often in jeopardy. A related problem, he says, is that many of these patients are unable to sign for the pension payments as they do not have fingers and are unable to write or to give a thumbprint. They are dependent on ‘procurators’ to go with them to receive the payments and these assistants often steal some of the money.

Although she gives money to her family to buy groceries for her, Mr Laubscher says, she seldom has any supplies in the house, as the family steals the money.

**Submitted by South African Human Rights Commission**

**Recommendations**

In section 16(2), the Commission proposes that the words “where appropriate” should be added. It argues that not all cases of abuse warrant the removal of the older person to a hospital. It considers expensive, very onerous on the State and highly disruptive and further upsetting to older persons in some cases. Referring section 16(2), it says hospitals should not be the only permissible destination for older persons who are removed from the abusive situation. It wants the Bill should state the other options such as the following:

- Safe houses,
- Shelters,
- Old age homes,
- Step down facilities etc. ...

The Commission suggests that section 16 should compel the Director-General to initiate criminal avenues of redress when reports of abuse are received.

**Submitted by Alzheimer’s South Africa**

Alzheimer is concerned about this section as it says it places as much responsibility on the public as it does on Health Care Practitioners. It feels that the latter should be mentioned as in the Aged Persons Amendment Act No 100 of 1998 in order for them not to be an abdication of responsibility to the family and to secure that notification does not take place. Furthermore, it feels that the Director-General is inaccessible and not always a practical channel for reporting abuse and awaiting instruction.

**Recommendation**

It recommends that section 16(1) should rather read as follows:

“Every registered health care practitioner (medical practitioners, psychologists, dentists, social workers, occupational therapists, physiotherapists) or any other person who examines, attends to or who comes into contact with an aged person and suspects that an aged person has (a) been abused; or (b) suffers from any injury related to the abuse shall to immediately notify the Director-General or an organization designated by the Director-General for reporting abuse”.

It further suggests, in respect to section 16(2) that there should be a time frame for the arrangement of necessary treatment and a response from the Director-General as we are dealing with vulnerable older people who have been abused, and that the notification needs to be responded to urgently and not have to go through bureaucratic channels in order to be able to assist the elderly person.

**Submitted by Pretoria Council for the Care of the Aged**

The provisions of section 16 (2) (b) of the Bill provide that the director general must arrange that the older person receives the necessary treatment. The Council charges that the Bill does not prescribe who the director-general may order to pay for such treatment or determine under any circumstances who is liable for the costs of such treatment the older person is obliged to receive.

The Council says it is often difficult for older persons suffering such abuse to escape an abusive situation because of financial and other dependence and suggests that practical alternatives such as the removal of the abuser, rather than the older person, should be provided. Whilst it welcomes the

extension of the obligation to notify abuse to all persons who witness abuse of older persons the Council thinks this section of the Bill should include an obligation on the Director General to investigate allegations of abuse. It suggests that the section should also provide for the identification and use of safe beds, to which older persons could be removed.

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

##### **Submitted by Pretoria Council for the Care of the Aged**

The Council reckons that the Minister should not be obliged to keep a register of all notifications in terms of section 17(1) in circumstances where no finding of guilt was made pursuant to a notification referred to in Section 17(1) of the Bill. In other words, the Minister must distinguish between notifications where a finding of guilt is made, as opposed to notifications where no finding of guilt is made.

##### **Submitted by Southern African Catholic Bishops' Conference**

Section 17 proposes that the Minister must keep a register of people convicted of abusing an older person and that this must be accessible to the public.

When looking at the question of registers, the Conference thinks, it is necessary to have clarity on what the purpose of the register is and how the information contained therein will be used. It further says that it is also important to know what information will be in the register and who will compile and maintain it. Establishing a register, it says, also poses the question of how long an offenders' name will be on the register. In addition to this a register is not always easily accessible to the public and those who need to have access to it.

The Conference holds a view that a register, as conceived in this section, may be limited in effectiveness and may create a false sense of security. It contends that only a small number of people are convicted of abuse, which means that the information contained in the register will only represent a very small number of those guilty of abuse and is by no means an extensive list. It also wonders whether this section will also apply to people who are convicted of abuse under other pieces of legislation, such as the Domestic Violence Act.

##### **Submitted by South African Human Rights Commission**

#### **Recommendations**

The Commission thinks section 17(2) is too narrow, and suggest that the word facility should be replaced with residential facilities and any community based care and support service. Furthermore it suggests that persons convicted of abuse should not be allowed to work in community based and especially home-based care services.

It further proposes that the register must include the names of offenders who are convicted of offences in which the victim is an older person. In this manner, it says, it will ensure that more offenders' names will be placed on the register. It is possible that offenders will not be prosecuted in terms of the Older Persons Bill but rather in terms of other common law or statutory criminal offences. It says more clarity is needed in the Bill on the Register. It wants this to be spelt out more clearly in the Bill. Some of these issues include:

- We need to consider what is the purpose of the Register?
- How will it be used?
- What information should be recorded on it?
- Who will compile it?
- Who will have access to it?
- How long will a perpetrators name be on the register, it cannot be on forever surely?

- How will perpetrators be rehabilitated?
- What about persons who abuse the elderly and are convicted of more serious crimes (e.g. rape), in terms of the present legislation their names would not appear on the register as the charge would not be abuse in terms of the Bill but rather common law rape.

Submitted by Alzheimer's South Africa

While in principle, Alzheimer feels that this is important and needs to be implemented; it argues that the practicalities are not that clear. It suggests that the **record of notification**, which was previously removed by the NCOP, should be reinstated into the Bill.

In respect of section 17(2), Alzheimer says that while there is agreement that peoples whose name appear in the register should not work with the elderly, it is concerned that this only applies to them working in facilities, which means that they could still be employed to work with the elderly in the community (e.g. providing home-care services).

**7.8. Older person in need of care and protection**

Submitted by Action on Elder Abuse South Africa

AEASA is not happy with the fact that the time frames are not specified, and once the report has been made to a social worker, there is no "spur" for action to be taken. It alleges that the fact that there is a reported shortage of social workers in the Department of Social Development and in many other organizations, this will place a significant pressure on these staff members to attend to cases involving children first and foremost, which means that the abused older person might not be assisted.

In **section 18 (5) (d)**, AEASA is also greatly concerned over homelessness amongst older persons. It does not understand why a shelter" is defined but not utilized in the Bill.

Submitted by South African Human Rights Commission

The Commission says the section places too much responsibility on social workers that, it says, are currently stretched in terms of the amount of work that it is expected of them. The ability of social workers to cope with this additional workload, the Commission, will determine whether the section will be used and adequately implemented in order to achieve its objectives. The Commission alleges that this section fails to give older persons a voice as it does not provide for them to report incidences of abuse of which they are the victims. The Commission stresses the importance of recognizing, encouraging and empowering older persons to have their own voice and where possible to report abuse that they suffer themselves. It also claims that the section fails to provide for an intersectoral inter departmental and inter organizational coordinating structure that will ensure the holistic and adequate implementation and realization of the Bills stated objectives and duties that it is imposes.

**Recommendations**

The Commission proposes that section 18(3) should be amended as follows: "The Director-General, social workers, or investigator recognized by the Department and working under the supervision of a social worker, to whom a report has been made must investigate the matter."

It further proposes that section 18(2) could be amended as follows: Any person, including an older person, other than a person in subsection (1) who is of the opinion that an older person, or himself or herself, is in need of care and protection may report such opinion to a social worker.

## **8. CHAPTER 4 [GENERAL AND SUPPLEMENTARY PROVISIONS]**

### **8.1. Delegation**

#### **Submitted by South African Council For The Aged**

The Council thinks it is important that norms and standards established under the Bill are national. It therefore wants the delegation provisions to recognize this. It is opposed to idea of the establishment of norms and standards being delegated to provinces. Furthermore the Council suggests that the delegation provisions should also be compatible with the constitutional powers of and relations between national and provincial spheres

#### **Regulations**

#### **Submitted by South African Council For The Aged**

The Council suggests that some provision should be made for the funding of compliance with regulations, especially under minimum norms and standards for admission to facilities, the use of subsidies and service standards. It also wants to see broad consultation with stakeholders where regulations are made.

## **4. Report of the Portfolio Committee on Health on the Annual Report of the National Department of Health 2004/2005 and for it's entities the Council for Medical Schemes and the Medical Research Council, dated 15 November 2005:**

The Portfolio Committee on Health, having considered the Annual Report of the National Department of Health 2004/2005 and for it's entities the Council for Medical Schemes and the Medical Research Council, referred to it, reports that it has concluded its deliberations thereon.

The Committee further reports as follows:

### **1. Background information on submitting annual reports of the Departments and entities reporting thereto to Parliament**

On the 30<sup>th</sup> of September 2005 the National Assembly referred the Annual Report of the National Department of Health 2004/2005 and it's entities the Council for Medical Schemes and the Medical Research Council, Department to the Portfolio Committee on Health. The Committee decided to call upon these entities for extensive hearings on their Annual Reports, Financial Statements, and the report of the Auditor General.

In terms of current National Assembly processes, all Parliamentary Portfolio Committees are required to consider and report on the annual reports of Departments and public entities after they are tabled in Parliament. The objective for consideration of the annual reports is to assess the performance of the department and public entities that report to the Department against the targets set in the previous financial year.

Furthermore, the purpose of processing the annual reports from both the National Department and entities reporting thereto, is to ascertain whether the strategic plan, budget and business plan are in line with the requirements of section 654 (1) of the Public Finance Management Act (PFMA).

The Committee, having oversight over the Department of Health together with entities that report to the Department, in terms of fulfilling its functions, has to report to Parliament on the Annual Reports, which cover all activities that the Department has done during the year ending on 31 March 2005. This also applies to the financial statements that that Department must submit.

The Committee having heard and considered evidence on the Annual Report of the National Department of Health 2004/2005 and its entities the Council for Medical Schemes and the Medical Research Council presents its report thereon.

## **2. Overview of presentations on the Department of Health and its entities**

### **2.1 Department of Health**

The Director General for the National Department of Health, Mr T Mseleku together with the Chief Financial Officer of the Department, Mr G Muller presented the 2004/05 Annual Report and financial statement for the National Department of Health. The main focus of the presentation was on legislative mandates, administration, strategic health, health services delivery programmes and challenges

#### **2.1.1 Legislative mandates**

The legislative mandates for the departments are the Constitution of the Republic of South Africa, National Health and Care Acts, Public Finance Management Act and Medicines and Related Substances Act as well as the Medical Schemes Act.

Mr Mseleku briefly gave an overview of the priorities of the Department from 2004 to 2009. Amongst the priorities of the Department the following were identified:-

- Improving governance and management of the National Health Services;
- Improving of management of communicable and non-communicable disease through strengthening of primary health care, emergency services and hospital delivery system; and
- Contribute towards human dignity by improving quality of care and promotion of healthy lifestyle

#### **2.1.2 Programme Administration**

The programme presented by the Director General, provides improved integrated planning with provinces and districts as well as packages of care for primary health care, district hospitals and tertiary care. The administrative side of the Department also focussed on the review of annual reports of the provinces.

#### **2.1.3 Programme 2: Strategic Health Programmes**

This programme focussed on how provinces should work with the National Department in terms of integrating all activities within health care like telemedicine facilities, offering of VCT and PMTCT to patients. In their strategic programme the Department has managed to monitor 74 NGO's, that have been funded, issuing of licences to pharmacist, TB related issues have also been intensified.

### **2.1.4 Programme 3: Health Service Delivery**

This programme covers guidelines to improve management for hospitals, which has been improved by 60%. Through its service delivery processes the Department had managed to improve employer relations with the National Department of Health and 55% of grievances have been solved internally.

The Department also touched on improving hospital revitalisation programmes

### **2.1.5 Challenges**

The challenges faced by the Department were:

- TB control and campaign intensifications;
- improvement of services in public hospitals;
- retaining of and recruitment of health professionals; and
- improvement of emergency medical services.

The Committee deliberated on the Report and raised the following concerns:

- limited operations for 2004/05 in regard to South African Aids Trust;
- concern about appointment of 5 trustees instead of 7 on South African Aids Trust;
- failure by the Department to take the resolution taken by SCOPAs report on management;
- issue of the slow pace of hospital revitalisation especially in KwaZulu-Natal;
- non-availability of business plans from 2 provinces for HIV and AIDS;
- late submission of reports and incomplete information on reports; and
- lack of reconciliation and monitoring between the National Department and KwaZulu-Natal on expenditure

The Committee then RESOLVED to ACCEPT the Report by the national Department of Health

## **2.2 Report by Council for Medical Schemes**

### **2.2.1 Background Information on Council for Medical Schemes**

The Council for Medical Schemes is a statutory body established by the Medical schemes Act to provide regulatory supervision of private health financing through medical schemes. The governance of the Council is vested in a board appointed by the Minister of Health, consisting of a Non-executive Chairman, Deputy Chairman and 13 members.

The Executive Head of the Council is the Registrar, also appointed by the Minister in terms of the Medical Schemes Act. The Council determines overall policy, but day-to-day decisions and management of staff are the responsibility of the Registrar and the Executive Managers.

### **2.2.2 Overview of presentation on Council for medical Schemes**

The main focus of the presentation by the Council for Medical Schemes was

- Functional activities of the Council
- Annual Financial Statements
- Challenges

### **2.2.3 Functional activities of the Council**

Activities that were indicated in a report by the Council for Medical Schemes were the monitoring of solvency and financial soundness of medical schemes, control and co-ordinating the functioning of medical schemes in a manner that is complementary with the national health policy, investigating complaints and settling disputes in relation to the affairs of medical schemes.

The Council also collects and disseminates information about private health care in South Africa, make rules (that are in line with the Medical Schemes Act) with regard to its own functions and powers, and makes recommendations to the Minister of Health on criteria for the measurement of quality and outcomes of the relevant health services provided for by medical schemes.

The Council was also involved in a project that focussed on investigating causes of governance failure and possible solutions in a number of schemes that included Prosano, Protector Health and Commed.

In regard to valid complaints against medical schemes the Council had received 1848 complaints and was able to solve 91% of these complaints as well as 20 appeals against decisions of disputes.

### **2.2.4 Annual Financial Statements**

The Council indicated that the operating budget expenditure for the Council for 2004/05 was R34, 889.976 billion from a budget of R35, 751 848 billion and this was covered by an income of R29 644,910 plus a surplus of R6 million. In terms of audit reporting the Auditor General stated that the Council's financial statements comply with requirements of Generally Accepted Accounting Practice (GAAP) and other applicable laws.

### **2.2.5 Challenges**

**Apart from the work that the Council was doing there were challenges that the Council was faced with:**

- (a) to ensure that more people could afford to join medical schemes;
- (b) the issue concerning the high cost of private hospital services remains a challenge to the Council; and
- (c) the continuance of pursuing fair treatment of members by the medical schemes

The Committee deliberated on the Report and raised the following concerns:

- the decline of General Practitioners in terms of total benefits paid;
- the issue of broker fees which seemed to have increased by 206,4% was raised by the members;
- 600 unpaid accounts which rose by 35,71%;
- the increase of months for claims from 4.2 to 5.7 months; and
- complaints from the clients that have not been resolved.

The Committee then RESOLVED to ACCEPT the Report by the Council for Medical Schemes

## **2.3 Medical Research Council**

### **2.3.1 Overview of presentation on Medical Research Council**

The Medical Research Council is a statutory Council established under Act 589 of 1991. The objectives of the Medical Research Council are to promote the improvement of the health and quality of life of the population of South Africa through research, development and technology. The Medical Research Council performs its functions as may be assigned to by and under the Act.

The Council interacts with the National Department of Health, Department of Science and Technology together with 9 Health Science Councils and Non-Governmental Organisation as well as the Portfolio Committee on Health

### **2.3.2 Functional activities of the Council**

The Medical Research Council is engaged in research translation through policy, practice, promotion and product. The National Department of Health is the principal channel, through which the MRC research can improve the health of the nation as the National Department of Health develops national health policies to be tabled in Parliament, in conjunction with the 9 provinces.

The Medical Research Council is also involved in research through practice by interacting with other stakeholders such as health care professionals, social workers and other professionals.

The research that is done by the Medical Research Council through health promotion creates a healthy environment for South Africans because health choices that people can make protect their health and well being. The Medical Research Council is involved in identifying the determinants underlying the behaviours that lead to disease determinants such as poverty, lack of education or gender power imbalances.

The Medical Research Council was also involved, through its functional activities in developing products such as patents for new drugs and vaccines, medical devices and disclosure of new biomedical or public health processes such as training programmes for lay health workers.

Other functional activities that the Medical research Council embarked on are:

- Research strategy and business plan
- New opportunities for research
- Capacity building (training off scientists particular black scientists)
- Developing of new drugs within 3 years

### **2.3.3 Annual Financial Statements**

The Council indicated that the operating budget expenditure for the Council for 2004/05 was R350 million. R180 million was a budget from Medical Research Council and R170 million was an amount from external income. The amount is reliably sustainable year after year.

### **2.3.4 Challenges**

Challenges that are faced by the Council are:

- R403 million which would be needed for the next three years. This amount would be needed in terms of facilitating more research projects for the Council; and
- Telemedicine facilities –That the Council was experiencing challenge in terms of not having a policy governing telemedicine.

The Committee deliberated on the Report and raised the following concerns:

- the budget of R180 million was not enough taking into account the amount of work that was being done by the Council;
- lack of skills in operational research capacity both in South Africa and the South African Development Countries;
- preparedness of Council in terms of dealing with the avian flu; and
- non-compliance with laws, rules and regulations in that the Council has failed to institute a fraud prevention plan as required by Treasury Regulation 27.2.1.

The Committee then RESOLVED to ACCEPT the Report by the Medical Research Council.

## **5. The Portfolio Committee on Public Service and Administration Provincial Oversight Visit Report to: KwaZulu-Natal, Limpopo, Eastern Cape and North West, 31 July to 12 August 2005, dated 16 November 2005:**

The Portfolio Committee on Public Service and Administration undertook a provincial oversight to KwaZulu-Natal, Limpopo, Eastern Cape and North West. The visit emanated from the Special Report No. 19 of the Public Protector 2002 to establish facts as to the validity of the claims that delays in communication, lack of co-ordination or the breakdown thereof, impacts negatively on service delivery.

**Group A**  
**1- 12 August 2005**  
**KZN-Eastern Cape**

PJ Gomomo - Delegation Leader - Chairperson  
Mr. NE Gwabaza (ANC)  
Ms. HC Mgabadeli (ANC)  
Mr. RS Ntuli (DA)  
Dr. U Roopnarian (IFP)  
Mr. R Sikakane (ANC)  
Ms. Sheilla N. Mninzi (Stand-In Committee Secretary)  
Mr. Victor Ngaleka (Parliamentary Reseracher)

**Commissioners from the Public Service Commission:**  
Commissioner Mxakato-Diseko (PSC)  
Commissioner M Msoki (PSC)  
Commissioner PM Tengen (PSC)  
Ms. Shamiela Abrahams (Ministry DPSA)

**Group B**  
**1-12 August 2005**  
**North West – Limpopo**

R Baloyi – Delegation Leader  
Mr. B Mthembu (ANC)  
Mrs. L Maloney (ANC)  
Mr. WW Skhosana (ANC)  
Mrs. Mashangoane (ANC)

Commissioner K Mokgalong (PSC)  
Commissioner RR Mgiijima (PSC)  
Commissioner JDS Mahlangu (PSC)  
Commissioner KE Mahoai (PSC)  
Mr. Lewis Rabkin – Ministry DPSA

**CONTENTS**

Chairperson's Remarks	2
1. Introduction	3
2. Purpose/Significance of the Oversight Visit	3
3. The Construction of Classrooms/Schools	5
4. Unannounced School Visits	8
5. Water Service Provision	10
6. Housing Delivery Services	13

7. Social Security Provision	15
8. Unannounced Hospital Visits	16
9. The Way Forward	17
10. Recommendations	17
10.1. The building of schools, classrooms and clinics	17
10.2. Delivery of Water Services	18
10.3. Delivery of social security services	19
10.4. Housing Services	20
10.5. Compliance with Batho Pele and Managing Discipline	20
11. Conclusion: Towards Effective Oversight	21
12. Action Plan	22
13. Note of Appreciation	22

## **1. CHAIRPERSON'S REMARKS**

The Portfolio Committee on Public Service and Administration embarked on Provincial visits to the Eastern Cape, KwaZulu-Natal, Limpopo and North-West, from 31 July to 12 August 2005. Upon this undertaking, the Committee managed their programme in terms of detailed communication and organisation.

## **2. SCOPE AND METHODOLOGY OF THE OVERSIGHT VISITS**

This fact-finding mission of the Portfolio Committee on Public Service and Administration was influenced and guided by the Public Protector Special Report number 19 of 2002 which revealed that delays in communications in the Public Service have a negative impact in service delivery. The directives of other reports were also considered as guiding the scope of the oversight visits, such as the following reports of the Public Service Commission. These are the:

- ◆ Report on Remunerative work outside the Public Service,
- ◆ The State of the Public Service Reports of 2003 and 2004.

The Committee decided to get more information on the mission by way of interaction and interviewing officials and the Executive authorities of the National, Provincial and Local Government Departments or institutions, parastatals, other service delivery agencies and individuals, particularly those that are linked to one or another in the delivery of services in the following areas:

- ◆ The construction of classrooms/schools
- ◆ The supply of water
- ◆ The delivery of houses
- ◆ The delivery of social security services; and
- ◆ The Management of discipline and compliance with Batho Pele standards.

### 3. ACKNOWLEDGEMENT

The Portfolio Committee appreciates the special support function rendered by the various Departments, the Public Service Commission and the Minister's Office of the Department of Public Service and Administration, for the role they played in the planning of and during the oversight visits.

Chairperson: -----  
P J Gomomo

Date: -----

## **PORTFOLIO COMMITTEE ON PUBLIC SERVICE AND ADMINISTRATION**

### **REPORT ON PROVINCIAL OVERSIGHT VISITS**

The Portfolio Committee on Public Service and Administration, having undertaken fact-finding visits to provinces, reports as follows:

#### **1. INTRODUCTION**

- 1.1 The Portfolio Committee on Public Service and Administration embarked on provincial oversight visits to the provinces of the Eastern Cape, KwaZulu-Natal, Limpopo and North-West, from the 31 July to 12 August 2005.
- 1.2 The decision on which the Portfolio Committee initiated this fact-finding mission was guided by the Public Protector Special Report number 19 of 2002, which revealed that delays in communication in the Public Service impacted negatively on service delivery.
- 1.3 In finding practical ways of pursuing and responding to the recommendations made in the Public Protector's Special Report, the Portfolio Committee interacted with national, provincial and local government departments and institutions, parastatals and other agencies in the delivery of services. The oversight visits of the Portfolio Committee was concerned with and focused on five service delivery areas namely:

The construction of classrooms/schools  
The supply of water  
The delivery of houses

The delivery of social security service, and  
The management of discipline and compliance with Batho Pele principles.

## **2. PURPOSE/SIGNIFICANCE OF THE OVERSIGHT VISIT**

- 2.1 The purpose of the study was to investigate and gain an understanding of progress that was being made to improve service delivery by the public service. In particular, the Committee wanted to assess the impact of communication in service delivery and establish facts as to the validity of the claim that delays in communication, lack of co-ordination or the breakdown thereof, impacts negatively on service delivery.
- 2.2 The Committee was divided into two multi-party groups, Group A and Group B, with each group covering two provinces simultaneously over the period of two weeks. Group A concentrated on KwaZulu-Natal and Eastern Cape while Group B focussed on Limpopo and North-West. However, the Committee emphasised that the visits were a fact-finding and not a fault-finding mission.
- 2.3 Having considered the Public Protector Special Report No. 19 of 2002, the Portfolio Committee on Public Service and Administration decided to embark on oversight visits to selected Provinces with a view to establish facts about a finding that delays in Communication, or a breakdown thereof, impact negatively on service delivery. The Committee thus voted that it would be necessary to select areas of focus where it could be established that there is a Communication link either internally in a particular Department, between Departments, between the Public and Government Departments.
- 2.4 In the delivery of housing, for example, the Department, does not necessarily rely on the activities of other Departments, but there has to be very active Communication between the Department and various Developers, Contractors and suppliers of materials. In cases where there is no such communication, the housing projects are often at serious risk of not being completed, and when that happens, it is the governments' targets that get compromised.
- 2.5 It is a known fact that there is an inter-sphere communication link in the delivery of water services between the Local (Category B) Municipalities, the District (Category C) Municipalities, and the Department of Water Affairs and Forestry, such that where a gap exist, the delivery of the services may be further compromised.
- 2.6 For the effective roll-out of the Social Security Services, the Department of Home Affairs plays a complimentary role to that of Social Development, and so is the Department of Health in dealing with the processing of applications for disability grants.
- 2.7 Whereas the Government has predetermined a time-period for the acquisition of documents as identity documents and the waiting time between applications for registration as beneficiaries of various categories of Social Grants, we may not say for certain that all is well. Where such anomalies occur, the impact is that the rendering of such services are affected negatively. The prevalence of this tendency may be due to a Communication gap between the applicants and the Departments concerned.
- 2.8 In the construction of classrooms, we see a communication link between the Department of Education and that of Public Works. The Committee's decision to focus on these issues is due to the fact that anyone of the two Departments, may fail to reach their target, simply because the other one of them is not exerting enough effort to get things done according to the laid down communication.

- 2.9 The Public Protector's report also made a finding that there are problems related to the general compliance with Batho Pele and that the Management of discipline in the Public Service is a point that needs attention. Accordingly, the Portfolio Committee will visit some hospitals and schools.

### **3. THE CONSTRUCTION OF CLASSROOMS/SCHOOLS**

- 3.1 The Department of Education in the Eastern Cape is servicing about 6 642 schools, with 2,1 million learners. It has a backlog of about 21 248 classrooms; a significant number is in the Transkei region. About 1 487 schools have no toilets, 1 972 schools have no water supply, 4 333 schools have electricity and 90% of the schools do not have laboratories or libraries.
- 3.2 The Department has incurred a deficit of R600 million. The huge deficit impacts negatively on the functionality of schools. The Department does not have funds to employ the necessary administrative workforce as backup support to schools and as a result a 60% vacancy gap exists within the department.
- 3.3 The Department was resistant to the Interim Management Team IMT due to undue influence and strained labour relations with the South African Democratic Teachers Union (SADTU) and the National Education and Health Workers Union (NEHAWU). It saw the influence as interference in the work of the Department. The issue of undue influence by trade unions in the administration of the Department is an issue that needs urgent resolution at a political level.
- 3.4 The performance of the Department of Education in KwaZulu-Natal has significantly improved over the last five years as demonstrated by the results of senior certificate candidates, which increased from 49% since 1999 to 73% pass rate in last year's results.
- 3.5 While the Department of Education in the Eastern Cape is faced with strained relations with labour, the Department in KZN enjoys good and normalised relations with organised labour to the extent that there is greater willingness on the part of the both parties to cooperate in resolving differences and in the provision of services.
- 3.6 The Departments of Public Works in Limpopo indicated that the function of construction of classrooms is carried out on request by the Department of Education. In other words the Department should indicate to Public Works where schools should be built and how many classrooms should be built. In spite of such problems, the Department of Education in Limpopo managed to reduce the backlog to 11 000 classrooms.
- 3.7 In some cases in the province of Limpopo, it was found that the learner-ratio was reasonable enough for a particular school but due to failures in the school management plans, timetables and others, learners were then found studying under trees.
- 3.8 The Limpopo and North-West departments of Education were worried about over-crowding in schools.

They reported that this is mainly due to the mobility of communities from rural areas to migrate to and settle in urban areas. Related to this, was the case of farmers turning their farms into game farms. Affected farm workers consequently move to urban areas and settle into Reconstruction and Development (RDP) houses. In itself this is a problem as it indicates cases where these RDP houses are being sold for profit. The mobility of people to urban areas leaves

farm schools standing empty while in the urbanised areas this inevitably leads to over-crowding of classrooms in schools. In the North-West, for instance, farm owners refuse to sign contracts because they want exorbitant rental from the departments. The other problem is that of ablution facilities at schools with toilets often collapsing or getting filled too quickly.

- 3.9 The North-West Education department explained that, amongst others, there is no redress for infrastructure i.e. there is not enough money available (e.g. backlogs of about R6.8 billion). The province intends to build more schools, one per region; however, mobile classrooms with toilets are currently being used to ease the problem of overcrowding at some schools. These mobile classrooms will be moved to other needy areas as soon as classrooms have been built.
- 3.10 All the departments of Public Works in the provinces visited complained of shortages of appropriate skills in many areas such as land and quantity surveying, engineers, etc. Another area of concern was on lack of clarity on who is having the legal responsibility to maintain schools. In this regard, it surfaced that lack of co-ordination between the Department of Public Works, Department of Education and Municipalities was emerging with regards to the erecting of schools and servicing of water and electricity.
- 3.11 The other general challenge facing the visited provinces was in the area of libraries, laboratories and ways of addressing the shortage in furniture.
- 3.12 While the depth and intricacy of challenges differ by province, major challenges are in the areas of:
- ◆ Temporary Teachers - The question of temporary teachers keeps on haunting the Departments. The question is whether there is a possibility to overcome this problem at some stage. Of course, it is just normal to expect that whenever vacancies occur, such should be used to accommodate the temporary teachers, but the departments argue that this is not always the case, because the School Governing Bodies may prefer to appoint a totally new applicant than absorb a temporary teacher and others like the Eastern Cape reached agreements with organised labour in that educators in excess must first be absorbed before the temporary ones can be absorbed.
- 3.13 The utilisation of inherited "school inspectors". This category of employees are posing a serious threat to performance, either due to allegiance to the old order and resistance to change, or they have just reached a stage where they cannot learn or adjust to new strategies. The departments called on the Portfolio Committee to assist in the development of an audit plan.
- 3.14 While both the Departments of Public Works and Education in the four provinces visited are signatories to a service delivery agreement in the area of classroom construction, there are nonetheless reports of strained relations with each other and relations vary from fairly good to very bad. On the one hand the Department of Education blames the Public Works department for taking too long to put up infrastructure and for allowing already existing infrastructure to degenerate, while on the other hand the Department of Public Works complains that it experiences problems with Education with late submission of request and lists of school requirements, thus not allowing it enough time to adhere to its forward planning approach.
- It surfaced that the Departments of Public Works and Education have a generally volatile relationship that regrettably often leads to adverse points of contention in the critical area of classroom construction.
- 3.15 However, the overwhelming majority of provincial departments concerned are currently putting up interventionist measures to resolve the disagreements. The Committee views this common

issue as an indication of the wider challenges that exist between the two provincial departments and that corrective measures need to be in place to find practical ways of dealing with these disputes in order to minimise and eradicate factors that act as obstacles in the delivery of service and particularly in the construction of schools. This situation is coupled by poor integrated planning between departments, parastatals and the private sectors.

- 3.16 In relation to Black Economic Empowerment (BEE), all the four provincial departments of Public Works visited complained that the BEE imperatives have to be consulted when awarding tenders and warrant them to support emerging contractors. They indicated that in considering BEE the departments have experienced problems with BEE contractors being slow to deliver as a result of various factors such as finances. Some BEE contractors often leave projects incomplete because of lack of financial management skills.
- 3.17 When the Department of Public Works in North-West was asked what plans they have to attract experienced and renowned contractors. The department responded that if a contractor shortens the construction period but still produces quality buildings, this will be added into a database for profiling and such contractors would stand a good chance in future tendering.
- 3.18 Concerning learners who travel long distances on foot to school, the MEC in North-West indicated that the provincial department of Transport and Roads has requested Education to indicate the number of learners involved in this category and what mode of transport it required but it took senior management +/- 18 months to provide this. The matter is, nonetheless being pursued further.

The Committee wishes to note the positive reception from the department of education in KZN. The Committee was further overwhelmed by progress in the province regarding compliance with laws and policies like poverty alleviation, strategic plans, performance management and others. What emerged, was a sense of urgency and commitment. However, skills issues need to be improved and the need for appropriate learners support material is an issue for concern.

#### **4. UNANNOUNCED SCHOOL VISITS**

- 4.1 The purpose of the visits was to look at issues of management of discipline and support services to the schools, which emanates from the report of the Public Protector. The Committee visited Wongalethu High in Mdantsane, in the Eastern Cape, Sejkankabo High in North-West and Gija-Ngove High School in Limpopo.
- 4.2 The Committee discovered that Wongalethu High School in Mdantsane has been consistently under-performing with a 13% senior certificate pass rate last year. Moreover, in the past two years, the school operated without a school Principal and a new Principal started at the beginning of this year replacing the caretaker acting Principal.
- 4.3 Lack of discipline was a prominent feature in the schools visited and this was demonstrated by late coming from both learners and educators. At no time for instance has Sejkankabo High in North-West enjoyed 100% attendance or presence of educators and learners in the year.
- 4.4 While Gija-Ngove High school in Limpopo has been obtaining 100% senior certificate passing rate for the past few years, lack of parental guidance or involvement was seen as the major contributing factor to problems of discipline, as parents are mainly migrant labourers. This led to schoolgirls falling pregnant and increasing the volume and degree of teenage pregnancy and child support grants for the province. This is further coupled by learners using drugs and drinking alcohol even during school hours.

- 4.5 Gija-Ngove High in Limpopo has 1094 enrolment with 40% of learners not paying schools fees resulting the school being turned into and given section 20 status and has about 25% late coming rate. The school is currently sitting with a debt of about R11 000 for installation and servicing for machines. The school has a fairly good relationship with the SGB and communication with circuit is very good and effective. However, all parents want to be exempted from paying school fees whether they qualify to be indigent or not. The school is coincidentally located near shebeens and drug-infested area. The school is also faced with problems of facilities, where a class of 60 learners is equipped with only 20 chairs.
- 4.6 Wongalethu High in the Eastern Cape was also characterised by a lack of co-operation between the Principal and the rest of the school management team. This was clearly demonstrated by the failure of the deputy Principal as one of the managers in the school management team to submit quality test assurance or assessments of the pupils on the last quarter, resulting in prejudice to the learners final year marks.
- 4.7 The Committee was further alarmed by information that the schools visited are not the only ones encountering such problems as mentioned above in 4.6 and in fact about 18 of other schools might possibly be experiencing such problems. The Committee feels strongly about pursuing this issue.
- 4.8 The Committee was surprised to learn of section 21 schools as the establishment of such provisions were never explained to it and forwarded to its attention by relevant departments. The Committee wants to determine whether the issue of section 21 schools points to gaps in legislation.
- 4.9. The other problem that troubled a significant number of schools visited relates to the agreement with the teachers union where the educators in excess must first be absorbed before the temporary ones can be absorbed. Hence in Limpopo some of the best teachers at the schools are temporary teachers and the affected schools may lose them at the end of the year.
- 4.10 Sejankabo High School is faced with a decline in the enrolment of learners. There is also a high rate of vandalism of the school. The passing rate has declined from 85% in 1996 to 29.8% in 2003; absenteeism remains a problem and proper school uniforms are not being worn by learners.
- 4.11 When asked about the school success rate despite the challenges, the Gija-Ngove teachers explained that good relationships between the staff and the School governing body (SGB), a no-nonsense approach by the school management team, no tolerance to absconding from study and attendance have been the key factors behind the school's success. Educators are made to feel ownership of the school by allowing them to make suggestions on the running of the school.
- 4.12 When asked about learners who perform below expectations, the school responded that parental consultations take place regularly in order to deal with learners who are under-performing. Learners are urged to be at school even during examination times while not writing any paper and that peers and prefects monitor other learners.
- 4.13 When asked whether Learner Support Materials (LSMs) are received on time, the school explained that the problem with LSMs is that they are not allocated to specific learners. Therefore, LSMs are always insufficient when compared with the demand. In most cases there is either under-supply or over supply of books.

- 4.14 The Portfolio Committee feels that the failure of the Deputy-Principal to submit the quality test assurance needs to be taken up with the Department of Education. It views this as an example of gross misconduct on the part of the educator.
- 4.15 The Committee appreciates the teacher-learner relationship in the province, however, notes that teacher deployment in the Eastern Cape province is not complemented with other packages.
- 4.16 The lack of discipline on the part of educators and learners is a matter that needs urgent measures to reverse the decline in the case of Wonga-Lethu and the other 18 schools mentioned in 4.6 and 4.7.
- 4.17 It was noted with concern that generally across provinces learners are taught in the vernacular languages whilst they would be examined in English. The issue of the educators' proficiency in English needs to be addressed.

## **5. WATER SERVICE PROVISION**

- 5.1 The Portfolio Committee interacted with the representative of DWAF, and District and Local Municipalities, which are government structures concerned with the provision of water services.
- 5.2 Amatole District Municipality in the Eastern Cape is a coastal district municipality situated in the eastern mid-section of the Eastern Cape Province with a population size of approximately 1.6 million and estimated land extent of 23 675 square kilometers. There are eight local "B" municipalities (Mbashe, Mquna, Great Kei, Buffalo City, Amahlathi, Ngqushwa, Nkonkobe, and Nxuba) to which Amatole is the water service provider. Located within its boundary is the Buffalo City, which is a secondary city, providing its own water to citizens.
- 5.3 Prior to 2003, the Department of Water Affairs and forestry (DWAF) was the sole provider of water services. Since the introduction of the new system of local government, local municipalities have assumed responsibility for the provision of water, whilst the department remains the regulator. The process of changing the function of municipalities to service providers depends on resources and the competence and capacities of staff. It is recognised that some of the municipalities lack capacity but the district municipality has plans to augment the funding and capacity where there are shortages.
- 5.4 The Amatole District Municipality as the regulator has developed policies and by-laws, which have been gazetted. However, the challenge faced by the municipality is to enforce these by-laws.
- 5.5 The municipality is committed to the national targets as set out in the government's Plan of Action to ensure that communities have access to clean running water by 2010. It faces huge challenges in the Transkei to provide and develop sources of water.
- 5.6 Institutional relationships with local municipalities in terms of section 83 of the Structures Act to provide support to local municipalities appears to be inadequate as it puts the sole emphasis on political responsibility. There is hope that the Intergovernmental Relations Framework Act (IGRFA) will positive outcomes in this regard.
- 5.7 The Committee believes that in the delivery of water related services, strong communication and co-ordination links between local municipalities, district municipalities and DWAF must be maintained and where they do not exist needed to be initiated.

- 5.8 The Mopani District Municipality reported that in the period 1996 to 2001 it experienced increased figures for non-access for water-related services due to population increases and migration trends.
- 5.9 The district municipality further reported that the policy of prioritising water provision has resulted in budgetary decreases in other areas of services.
- 5.10 Again regarding the devolution of water services to local municipalities: the part to Mopani District Municipality was not ready to deliver services to the people due in capacity constraints.
- 5.11 It was also reported that DWAF is not responsive to the needs of municipalities despite existing service level agreements. DWAF appears to be refusing to refurbish the schemes before transferring them to the municipality. Moreover, DWAF transferred the scheme to BaPhalaborwa without transferring cost recovery infrastructure and as a result BaPhalaborwa owes the Water Board R90 million.
- 5.12 The Greater Giyani and Greater Letaba Municipalities have been identified to be part of Project Consolidate and hopes to benefit greatly from the project.
- 5.13 The overwhelming majority of government structures concerned with water provision indicated that the economic status of the users impact on their ability to recover costs. 80% of the workforce of BaPhalaborwa municipality has been retrenched from the mines. However, where supply of water is consistent, payment is normally not a problem.
- 5.14 The Committee discovered the following:
- ◆ There are fears that the transfer of staff from the Department of Water Affairs and Forestry (DWAF) municipalities may result in overstaffing at local level.
  - ◆ The capacity of DWAF schemes are designed to service the reconstruction and Development Plan (RDP) housing schemes in areas and not other informal settlements.
  - ◆ Some villages are receiving water for only 4 hours per day. Others have no electricity and water supply due to various problems.
  - ◆ There are delays due to municipalities having to redesign the scheme.  
There is poor communication between DWAF and the District Municipalities that result in the under-spending of funds earmarked for water supply.
  - ◆ DWAF transferred funds (allocated mostly to capital projects) to District Municipalities as Water Services Authorities for 2003/2004 financial year. These funds were not spent.
  - ◆ Funds collected by the local municipalities do not always end up being reimbursed to DWAF for operating the scheme.
  - ◆ There is a Service Level Agreement (SLA) between the District and DWAF but it is difficult to enforce.
  - ◆ There is a capacity problem within the municipalities to carry out cost recovery of services delivered.
  - ◆ Sometimes Municipalities appoint contractors who are not qualified to do the job without any documentation. This leaves DWAF with no option than remaining silent on problems with construction.
  - ◆ There are different service delivery standards between different government departments. There are, for example, no unified standards detectable between sanitation facilities built by the Department of Public Works and those provided by DWAF.

- ◆ Communication and co-ordination: Provincial departments are not communicating and not co-ordinating when they proceed with the transfer of functions.
- ◆ There is an Energy Forum but it has problems because ESKOM changes electricity units without consulting the Energy Forum. Free Basic Electricity is therefore also a challenge to act on and deliver to those who needs it most.
- ◆ Allocations of free basic water and electricity, based on the number of indigent people in areas are problematic in instances where the area is constituted of people with mixed income levels.
- ◆ The Environmental Impact Assessment made by the Department of Environmental Affairs delays project implementation.
- ◆ Technical reports have to be approved by DWAF and they further delay project implementation.

## **6. HOUSING DELIVERY SERVICES**

- 6.1 The Portfolio Committee in the Eastern Cape met with the provincial Department of Housing. The strategic objective of the Department is to support the capacity of local government in its plans of building affordable houses that meet the special needs of the most vulnerable in our society through an integrated infrastructure development.
- 6.2 The plan of the Department is to address the backlog focusing on both rural and urban areas. The two urban areas identified are Soweto on Sea in the Nelson Mandela Metropolitan Municipality and Duncan Village in Buffalo City Municipality. The Department of Housing in the Eastern Cape faces the challenge of meeting the Millennium Goals of clearing slums by 2014 and offering sustainable human settlement to all our people. There are problematic areas regarding a working relationship with traditional leadership in the province but these are less pronounced than in KwaZulu Natal (KZN).
- 6.3 The Department of Housing in KZN claimed that it was unaware of the visit by the Portfolio Committee and was, therefore, not in a position to meet it. After persuasion, the Head of the Department, reluctantly, agreed to meet and arranged discussions with the Portfolio Committee on challenges facing housing delivery in the province.
- 6.4 The Committee notes with regret that the department in KZN was not prepared to receive the Committee. The Committee, however, is of the view that such occurrences appear to point to key flaws within the communication structures in the department.
- 6.5 One of the major challenges facing housing delivery in the KZN arises from the strained relations between the traditional leadership and elected leadership. This relationship needs the intervention of politicians on a continuous basis to clarify the distinct roles and functions of the traditional and elected leaders.
- 6.6 In Limpopo, service delivery standards have been developed. There are policies for service delivery, but there are challenges with the implementation thereof.
- 6.7 The absence of a centralised call centre in KZN was noted with concern. For the period 1994-1999 the housing development process was performed by the Department, which played a role as one of the structures in the delivery chain, but with effect from 1999, the Department is playing the role of a developer. Municipalities draw priority lists and identify beneficiaries for housing projects that are forwarded to the provincial housing department. Acts of corruption have been identified.
- 6.8.1 In dealing with Municipal Infrastructure Grant Projects (MIG) the department in Limpopo noted a serious delay in developing plans by municipalities. Defaulters in the management of projects are dealt with according to the nature of the default, e.g. blacklisting for non-payment.

- 6.9 The **Matlhoks** project was mentioned as a typical case of projects that are affected by communication and co-ordination problems. It was noted at the meeting that there is a need for this project to be followed up.
- 6.10 The department of housing in the North-West province indicated that for the 2003/2004 financial years it under-spent to an amount of R142 Million and are currently sitting with +-R610 Million for housing. It was further pointed out that in an effort to address the deficiencies, a program has been put in place to visit all 21 municipalities to empower them as developers so that the funds can be used.
- 6.11 When asked as to why the department has a housing backlog whilst it claims to be sitting with R610 million, the Chief Director responded that the transfer of monthly funding by the National Department of Housing is not done within the allocated time period. This results in material being bought on credit and the department failing to pay on time with the results that suppliers are reluctant to deliver material. Construction workers who have not been paid also abandon projects.
- 6.12 When asked what is being done with municipalities that fail to deliver, the response was that such municipalities are required to return the responsibilities to the department.
- 6.13 Responding to what action the department utilise when the National Department fails to transfer monthly funding in time, the North West provincial department indicated that it is co-ordinating well with its national counterpart. This is evidenced by the local department being a member of all the task teams of the national department concerned with housing delivery.
- 6.14 The Portfolio Committee further wanted to know whether skills transfer programmes between the department and contractors are taking place. The department stated that this is being dealt with through tripartite agreements between the department, municipalities and contractors.
- 6.15 On the subject of the role of the Housing Corporation in housing delivery, the department revealed that the entity in question was inherited from the past regime and its role was mainly to provide rental housing e.g. flats but does not have a role in the new dispensation on housing delivery.
- 6.16 When the Committee enquired about the extent of progress regarding the eradication of bucket system along the Millennium aims. The department indicated that R1 Billion to R5 Billion is required for rural sanitation in order to eradicate the bucket system from our society. Funding is thus the main problem as some municipalities are not able to counter funds because they have very poor revenue bases.
- 6.17 Unfortunately, because the Provincial Housing Department's Chief Directorate has just recently been staffed, the Portfolio Committee could not get a detailed account of what caused backlogs in the past years.

## **7. SOCIAL SECURITY PROVISION**

- 7.1 The Portfolio Committee met with the provincial Departments of Social Development and the Regional Offices of the Department of Home Affairs.

- 7.2 The Department of Social Development in the Eastern Cape has two components, the Social Grant and Development components. The Social Grant component is in the process of being transferred to the new Social Security Agency (SASSA). The target date for the new Social Security Agency is 6 April.
- 7.3 The objective of the Social Development component will be to provide protection to the most vulnerable and reducing dependence on social grants. It wants to ensure that areas of social protection are focused.
- 7.4 The department is to focus on income generation projects. It will also address issues of children in conflict with the law and the protection of the elderly.
- 7.5 Communication in the Department was found to be a problem area. The Social Services department in KZN has experienced an increase in litigation over the last few years. The litigations are in connection with non-approval of applications for social grants or their termination. Because of problems it encountered with the State Attorney, it opted to acquire and use the services of private practitioners. This is a case that the Portfolio Committee wants to raise with relevant structures and such as the Department of Justice and Constitutional Development.
- 7.6 The Department in KZN has opted for a single service provider to pay out social grants to beneficiaries for the whole of the province. This is also a matter the Portfolio Committee feels should be examined. In particular, the Portfolio Committee wants to investigate the issue of whether it is appropriate that the service of actual payments of social grants should be privatised.
- 7.7 The Portfolio Committee commended the Department on pay-points specifically with regards to the provision of shelters and chairs for the beneficiaries. It felt, however, that there should be a more effective regulation of traffic, hawkers and moneylenders in the vicinity of the pay-points. In view of the fact that the beneficiaries are elders, disabled people and children arrangements should be made with the local clinics and day hospitals for paramedics, nurses and, or a doctor to be on standby for cases of emergency.
- 7.8 In the Limpopo Province, the Portfolio Committee was able to meet both the department of Social Development as well as a social security pay-point in Ngove. The relevant recommendations regarding these are made in the sections detailing recommendations.
- 7.9 The Committee notes with regret that the department of Social Development in KZN has enormous backlogs of unprocessed applications and this issue needs to be followed up on.
- 7.10 The Portfolio Committee noted the outsourcing of social services to private contractors performing the function on behalf of the department in KZN.
- 7.11 There appears to be slow progress in Msinga in the past 7 years because of infrastructure not properly exploited due to the unwillingness of traditional leaders. The Committee feels that traditional leaders in the province have to adapt to the social structure of the wider society. The traditional leaders in the province appear to be blocking progress.

## **8. UNANNOUNCED HOSPITAL VISITS**

- 8.1 The Portfolio Committee made unannounced visits to hospitals as part of observations to determine compliance with the Batho Pele Principles. Visits were conducted in the Giyani

Health Centre, Cecelia Makiwane, and Grey's Hospital, North Dale Hospital and Bophelong Hospital.

- 8.2 The Portfolio Committee made an unannounced visit to Cecelia Makiwane Hospital in the Eastern Cape. It spoke to the medical staff, from doctors to nurses and general workers. It also to patients in the maternity wards, it visited paediatric and the psychiatric wards.
- 8.3 The hospital showed clear signs of debilitation. However, it was kept clean. The Portfolio committee was very impressed by the commitment and passion by employees to the provision of quality service. The overwhelming majority of the hospitals visited raised common issues relating to staff retention, shortages and resources.
- 8.4 The North-Dale Hospital in KZN is a district hospital, which services communities from Umgungundlovu, Uthukela, Umzinyathi, Ilembe and Sisonke. Northdale is a referral hospital that receives patients from the Primary Health Clinics and Community Health Clinics.
- 8.5 The Hospitals visited in the province appear to be struggling on staff retention, which point to a need for improved conditions of work.
- 8.6 The Hospital just like the other rural municipalities visited would like to see the hospital re-categorised from a small district hospital to take into account the geographical area it covers, and additional funding that goes with re-categorisation.

## 9. THE WAY FORWARD

There is need for:

- ◆ A national co-ordinating structure to deal with local issues of service delivery e.g. the housing delivery, and deal with problems in traditional leadership areas.
- ◆ Regarding the flight of skills from hospitals, led by the PSC and other appropriate state organs: A structure need to be established at the national level which, in terms of the Committee's observation, emanates not only from conditions of employment but also from our policy framework.
- ◆ Provinces need to be provided with a copy of the report before the following up on issues to afford them the opportunity of studying the findings and recommendations of the Committee.
- ◆ A review of the issue of functions as they relate to the Department of Public Works, Education and local government structures (municipalities) in the area of classroom construction and maintenance thereof should take place.  
Initiate bilateral meetings with SADTU and others in the Eastern Cape around IMT-related issues.

## 10 RECOMMENDATIONS

In this section, recommendations are grouped under appropriate numbered headings. Please note that each specific recommendation is bulleted.

### 10.1. The building of schools, classrooms and clinics:

1. The Committee recommends the following:

- ◆ There is a need for the establishment of a Provincial Infrastructure Co-ordination Unit to co-ordinate plans of various institutions like Eskom for provision of electricity, Department of Water Affairs for provision of water, Department of Education for provision of schools, Public Works for construction of the said classrooms and Roads and Transport for provision of roads and transport routes.

- ◆ Maintenance of school buildings could be incorporated into the Expanded Public Works Programme.
- ◆ The volatile relationship between the Department of Education and Public Works might have to be addressed at national level in order to ensure improvements in service delivery.
- ◆ The provincial departments concerned must look at the possibilities of reconciling the socio-economic imperatives of BEE and the wider national democratic principles of a better life for all.
- ◆ The Committee wants to note that the issue of BEE as it unfolds, is a problem and that the standard of work tends to compromise the construction of schools. The Committee further wants to consider whether the departments should pursue or glance the issue of BEE at the expense of adequate classroom construction.
- ◆ The provincial Department of Education in Limpopo and North West expressed a view that the function of schools being built can be expressed

as their area of function. There is tension between the Department of Public Works and DoE regarding this. The view expressed is that DoE should be allowed to build schools while Public Works should take responsibility of its long term maintenance. Is there a need to review the role of Public Works? In this regard, the Portfolio Committee makes two recommendations:

- ◆ DPSA to investigate relevance of division of responsibilities between the two departments concerned.
- ◆ PSC in conjunction with CSIR to investigate a mechanism/capital project management tool that would assist DoE. This is also applicable to Housing.

3. The issue of school buildings and clinics that needs to be erected is a serious one: The question of Health and DoE's apparent failure to plan ahead and communicate needs and requirements with Public Works lies at the core of the tension around the quality of buildings.

- ◆ The Portfolio Committee recommends that steps be taken to ensure that standards are set which would apply across the board.

The Committee further recommends that the PSC investigate Education Development Trust Fund (EDTF) in North West and Limpopo. The key question that should drive this investigation is:

*Does the ETF benefit education generally or certain individuals only?*

It is recommended that the PSC investigate the existence of EDTF in all provinces.

#### **10.2. Delivery of Water Services:**

In terms of the Water Services Act, the Department of Water Affairs and Forestry (DWAF) is the regulator and District and local municipalities are deliverers. These different roles are still being implemented. The truth of the matter is that there has been no transfer of staff from the national DWAF to municipalities. The quality of service delivery is being compromised by the slow progress in this regard.

- ◆ The Portfolio Committee of Public Service and Administration recommends that these transfers be expedited.  
DWAF should extend water plants instead of putting up more bore holes.
- ◆ The Portfolio Committee should meet the District and BaPhalaborwa on the water crisis as a matter of extreme urgency.
- ◆ A way of channelling funding from ESKOM to municipalities needs to be explored.
- ◆ Regarding problems of unemployment around BaPhalaborwa due to retrenchments: The municipality needs to be assisted to revive the local economy.

- ◆ DPSA should be approached to assist on a consultancy basis with the much-anticipated staff transfers to municipalities from DWAF.
- ◆ The Municipalities need to take stock of their readiness to handle the distribution of electricity to the indigent in all communities
- ◆ The inter-sectoral committee envisaged in Collaborative Committees envisaged in Collaborative Committees should be pursued as a vehicle to promote communication between different levels of government as well as between departments.
- ◆ There is a need to capacitate municipalities to be able to implement cost recovery of services delivered.
- ◆ The transfer of staff from DWAF to municipalities should be accompanied by a budget.
- ◆ The possibility of making the infrastructure transfer from DWAF to municipalities needs to be explored by an inter-departmental committee driven at Ministerial level as guided by the Inter governmental Relations Framework Act (IGRFA).
- ◆ DWAF is requested to furnish the Portfolio Committee with a list of municipalities that are unable to spend money that has been transferred to them.

The Portfolio Committee would also need to interact with the Department of Minerals and Energy around the issue of collaboration with the municipalities on the supply of electricity. This would also require an interaction with relevant stakeholders involved in the provision of electricity such as ESKOM, Energy Distribution Industry (EDI) and National Energy Regulator (NER).

### **10.3. Delivery of social security services:**

The issue of security at disability, foster care and pension pay out points.

Absence of toilet facilities, medical facility, shelter at these points. Issue of transport.

- ◆ Having noted these, the Portfolio Committee recommends that the inspectorate in different departments in regions do regular check up on vendors selling meat, medical items, etc.
- ◆ There is a serious need for the appropriate placing of pay-points where people have to collect their social and disability grants. Current pay points are often located in inaccessible places that makes access to funds difficult and often dangerous.
- ◆ The Portfolio Committee recommends that the Department of Social Development investigate this issue.

In the North West there are no hospital boards as they were suspended due to investigations.

- ◆ The Portfolio Committee recommends that they be re-established.

There is serious disagreement in the local community in Swart Ruggens regarding the building of a hospital as there is a move to close the local clinic in the rural area so that people would have to travel very far for medical services. A similar problem exists in the Eastern Cape where staff and patients are up in arms as an orthopaedic clinic was moved from a rural to urban area, making it almost impossible for patients to access medical services. The subsequent answers provided by the MEC, is proof of the fact that issues are really not well communicated to the people.

- ◆ The Portfolio Committee recommends that Provincial departments take note of this and address it. In addition, the Portfolio Committee requires a follow-up with the Department of Health nationally so that issues where people are not properly informed provincially and locally in provinces can be addressed. The problem of the huge shortage of medical doctors must in addition also be raised.

The instrument used to state which hospital have rural allowance (as an incentive for medical doctors to work there) or not needs to be clarified, as well as the grading of hospitals where these are often converted into clinics, health centres.

- ◆ The Portfolio Committee recommends a follow-up with the Department of Health nationally and would like to set up a joint committee meeting with the Portfolio Committee on Health in this regard.

The Portfolio Committee recommends the establishment a mechanism to deal with Foster Care Grants. The Portfolio Committee further recommends that the Department of Social Development needs to communicate to the Portfolio Committee on Public Service and Administration the status of Foster Care Grants.

Regarding the Limpopo Province, the Portfolio Committee made the following recommendations:

- ◆ There is a need to encourage beneficiaries (especially child support grants) to receive their monies from other alternative methods.
- ◆ The trading at the site of the pay point needs to be controlled and co-ordinated to ensure that high level of ethics are uphold and the vulnerability of the beneficiaries are not taken advantage of.
- ◆ The department needs to undertake awareness amongst beneficiaries to be aware of sharks, other unscrupulous traders.  
Environmental health offices need to monitor the activities at the pay points.

Inter-departmental collaboration need to take place at the social security pay-points to address and monitor various aspects that relates to social security of the indigent, such as visible policing, home affairs, trading, health, environment, etc.

#### **10.4. Housing Services:**

The underspending of budgets for houses to be built in the North West: The province put down a good plan to deal with these delays.

- ◆ The Portfolio Committee requires regular feed back regarding the targets that Department set itself.

#### **10.5. Compliance with Batho Pele and Managing Discipline**

- ◆ Provincial Departments of Education needs to report to the Portfolio Committee on their performances. Also Members of Parliament
- ◆ with Constituency Offices in these provinces is to visit schools regularly to oversee these developments. Wonga Lethu and others must be visited again as well. Problem with management pulling together.

This should be extended to the other 18 schools that failed to submit year marks. Schools in former Transkei must be visited to see what is going on in terms of Batho Pele and management.

- ◆ The Portfolio Committee is to set up communication between DoE management and the South African Democratic Teachers Union (SADTU) in the Eastern Cape (The Portfolio Committee on Education should be engaged regarding such a visit).

- ◆ The specific recommendation is to write to the Minister of Education and respective Members of Executive Councils responsible for Education in provinces about why those teachers guilty of not handing in year marks were not charged with misconduct. The Issue of teacher absenteeism on pay day with children being left alone on classrooms is a serious one that must be addressed urgently.
- ◆ The PSC to investigate the recruitment of principals.

A problem with communication between Department of Minerals and Energy, and Eskom has been noted as having negative influences on service delivery. The Portfolio Committee recommends that this be communicated to the Department of Minerals and Energy.

## 11. CONCLUSION: TOWARDS EFFECTIVE OVERSIGHT

- 11.1 The Portfolio Committee convened a workshop after the oversight visits to assess the issues that arose during the visits as part of the preparation of this report to Parliament. It held a one-day workshop on the 12<sup>th</sup> September 2005 in Parliament in which Public Service Commissioners who were part of the visits also participated. It was clear, after this assessment, that there is a need for follow-up visits to these provinces and institutions in order for us to accomplish the mission of the oversight visit. The Portfolio Committee needed to give an opportunity to key stakeholders to express their views on issues that arose during the oversight visit.
- 11.2. With a view to taking action, the Portfolio Committee was of the view that the institutions in the following action plan should be invited to a hearing on the delivery topics mentioned below, in order that they can express their views on the issues that arose during the oversight visit.

### ACTION PLAN

SUBJECT	IMPLEMENTING AGENCY	Comment
Classroom Construction	DWAF DPLG Water Boards Eskom EDI NER	The National Departments of Water Affairs and Forestry and the Department of Provincial and Local Government should be given an opportunity to relate to the issues raised during the provincial visits. The Water Boards in some of the provinces need to be interacted with on the issues relating to the provision of water. The Portfolio Committee would also need to interact with the Department of Minerals and Energy around the issue of collaboration with the municipalities on the supply of electricity. That would also require an interaction with the stakeholders in the provision of electricity such as Eskom, EDI and NER.

Social Security	Safety & Security Home Affairs Health	The Portfolio Committee would need to interact with other Departments, which are key to the provision of social security services, such the Departments of Safety and Security, Home Affairs and Health.
Housing Provision	Housing DPLG Land Affairs and Agriculture	There is a need to interact with the National Departments of Housing, Land Affairs and Agriculture and Provincial and Local Government on issues that relate to housing, roles and functions of local authorities, traditional leadership and land.

**A NOTE OF APPRECIATION:**

The Committee wishes to convey appreciation for the warm and positive reception that all the stakeholders afforded it during the time of the oversight visits in dealing with all areas concerning service delivery.

**National Council of Provinces**

**1. Report of the Select Committee on Labour and Public Enterprises on the Independent Communications Authority of South Africa Amendment Bill [B 32B-2005], dated 16 November 2005:**

The Select Committee on Labour and Public Enterprises, having considered the subject of the **Independent Communications Authority of South Africa Amendment Bill [B 32B- 2005]** (National Assembly – sec 75), referred to it and classified by the Joint Tagging Mechanism as a section 75 Bill, reports the Bill with proposed amendments, as follows:

**CLAUSE 7**

Clause rejected.

**NEW CLAUSE**

1. That the following be a new clause to follow Clause 6:

**Amendment of section 5 of Act 13 of 2000**

7. Section 5 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- "(1) **[The Council consists of seven councillors appointed by the President on the recommendation of the National Assembly according to the following principles, namely—**
- (a) **participation by the public in the nomination process;**
- (b) **transparency and openness; and**

(c) **the publication of a shortlist of candidates for appointment, with due regard to subsection (3) and section 6.]** The Council consists of a chairperson and eight other councillors appointed by the Minister, by notice in the *Gazette*."

(b) by the insertion after subsection (1) of the following subsections:

"(1A) (a) Whenever it is necessary to appoint a chairperson or other councillor, the Minister must appoint an independent and impartial selection panel consisting of seven persons who have an understanding of issues relating to the electronic communications and postal sectors.

(b) The panel must consist of—

- (i) a person with knowledge and experience from the industry;
- (ii) a person with a legal background and knowledge of the ICT sector;
- (iii) an academic in the field of electronic communications;
- (iv) a representative from the labour sector;
- (v) a representative of consumer interests; and
- (vi) two representatives from Parliament.

(c) The names and terms of reference of persons on the selection panel must be published by the Minister by notice in the *Gazette*.

(1B) The selection panel contemplated in subsection (1A) must—

(a) at least 60 days prior to the last day of service of a councillor, invite the public to nominate candidates for appointment to the Council in not less than two newspapers circulating nationally;

(b) submit to the Minister a list of suitable candidates at least one and a half times the number of councillors to be appointed;

(c) recommend and motivate to the Minister, from the list contemplated in paragraph (b), persons who would be most suited to serve on the Council.

(1C) If the Minister is not satisfied that the persons recommended by the panel do not comply with subsection (3), the Minister may request the panel to review its recommendations.

(1D) The selection panel will be automatically dissolved when the appointment is published in the *Gazette* in terms of subsection (1).";

(c) by the substitution for subsection (2) of the following subsections:

"(2) (a) **[The President must appoint one of the councillors as chairperson of the Council.]** The chairperson must, in writing, appoint a councillor as acting chairperson to perform the functions of the chairperson in his or her absence.

(b) **[In the absence of the chairperson, the remaining councillors must from their number elect an acting chairperson, who, while he or she so acts, may perform all the functions of the chairperson.]** Where the chairperson is unable to make an appointment, the remaining councillors must from their number elect an acting chairperson."; and

(d) by the substitution for subparagraph (ii) of paragraph (b) of subsection (3) of the following subparagraph:

"(ii) possess suitable qualifications, expertise and experience in the fields of, amongst others, broadcasting, **[and telecommunications policy]** electronic communications and postal policy or operations, public policy development, electronic engineering, **[technology, frequency band planning,]** law, marketing, journalism, entertainment, education, economics, **[business practice and]** finance or any other related expertise or qualifications."

**CLAUSE 11**

1. On page 9, from line 22, to omit subsection (2) and to substitute:
  - (2) A councillor may be removed from office only **[on]**—
    - (a) **[a finding to that effect by the National Assembly] on recommendation by the panel contemplated in section 6A(4) to the Minister;** and
    - (b) **[the adoption by the National Assembly of a resolution calling for that councillor's removal from office] upon approval by the Minister of the recommendation contemplated in paragraph (a).**
  - (3) The **[President] Minister**—
    - (a) may suspend a councillor from office at any time after the start of the proceedings of **[the National Assembly] the panel contemplated in section 6A (4)** for the removal of that councillor;
    - (b) **[must] may** remove a councillor from office upon **[adoption] approval** by **[the National Assembly] the Minister** of the **[resolution calling] recommendation** for that councillor's removal."

**CLAUSE 12**

1. On page 9, in line 40 to omit ",following approval by the National Assembly," and to substitute "on recommendation by the panel contemplated in section 6A (4).".

**CLAUSE 19**

1. On page 14, in line 40, to omit "serviced" and to substitute "service".
2. On page 17, in line 53, to omit all the words after "in" up to and including "(1)(b)" in line 54 and to substitute "subsection (3)(b)".
3. On page 17, in line 58, after "must" to insert "not".

**CLAUSE 21**

- On page 18, in line 5, to omit "17" and to substitute "21".

