

- (a) notify the Director-General of the intention and the implications of such stoppage for the affected older persons;
- (b) inform the older persons affected of the intended stoppage of the service; and
- (c) take reasonable steps to ensure that the older persons benefiting from the service are not adversely affected or put at risk and, where appropriate, are referred to a person providing similar services.

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

14. (1) Any person who provides home-based care must ensure that caregivers receive the prescribed training.

(2) All social workers and health care providers providing services to older persons contemplated in subsection (1) must be registered with the appropriate statutory council responsible for the relevant profession.

(3) (a) The Minister must keep a register of all caregivers providing home-based care and must prescribe a code of conduct for such caregivers.

(b) Paragraph (a) does not apply to social workers and health care providers referred to in subsection (2).

(4) Any person who contravenes or fails to comply with any provision of this section is guilty of an offence.

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

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

### **NEW CHAPTER**

1. That the following be a new Chapter:

#### **CHAPTER 4**

### **RESIDENTIAL FACILITIES**

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

16. An older person residing in a residential facility has, in addition to the rights he or she has in terms of the Bill of Rights or any other rights he or she may have, the right to—

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

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

17. The following services may be provided at residential facilities, namely—

- (a) 24-hour care and support services to frail older persons and older persons who need special attention;
- (b) care and supervision services to older persons who are suffering from dementia and related diseases;
- (c) rehabilitation services;
- (d) public education on issues of ageing, including dementia;

- (e) counselling services to residents and family members who need these services;
- (f) implementation and monitoring of outreach programmes;
- (g) provision of beds for the temporary accommodation of older persons at risk;
- (h) respite care services;
- (i) training of volunteer caregivers to deal with frail older persons; and
- (j) sport and recreational activities.

#### CLAUSE 5

1. On page 5, from line 25, to omit subsection (1) and to substitute:
  - (1) (a) Subject to section 35, no person may operate a residential facility unless such facility has been registered under this section.
  - (b) Paragraph (a) does not apply to a private residence in which an older person is looked after by a family member.
2. On page 5, in line 28, after "a" to insert "residential".
3. On page 5, in line 37, after "the" to insert "residential".
4. On page 5, after line 42, to insert the following subsection:
  - (4) Temporary registration contemplated in subsection (3)(b) may not be extended for more than 12 months under the same conditions.
5. On page 5, in line 48, after "months" to insert:
 

for permanent registration and one month for temporary registration

6. On page 5, in line 53, after "a" to insert "residential".
7. On page 5, in line 54, after "a" to insert "residential".
8. On page 5, in line 56, after "registered" to insert "residential".

#### CLAUSE 6

Clause rejected.

#### CLAUSE 7

1. On page 6, in line 12, after "of" to insert "residential".
2. On page 6, in line 16, after "registered" to insert "residential".
3. On page 6, in line 19, after "a" to insert "residential".
4. On page 6, in line 20, after "a" to insert "residential".
5. On page 6, in line 20, after "that" to insert "residential".
6. On page 6, in line 21, after "that" to insert "residential".
7. On page 6, after line 25, to insert:

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

#### CLAUSE 8

1. On page 6, in line 26, after "for" to insert "residential".
2. On page 6, in line 27, after the first "a" to insert "residential".

3. On page 6, in line 32, after "must" to insert:  
  
be reflective of the profile of residents and must
4. On page 6, in line 33, after "relevant" to insert "residential".
5. On page 6, in line 39, after "the" to insert "residential".
6. On page 6, in line 40, after the second "the" to insert "residential".
7. On page 6, in line 42, after "the" to insert "residents of the residential".
8. On page 6, in line 43, after the third "the" to insert "residential".
9. On page 6, in line 45, after the second "the" to insert "residential".
10. On page 6, in line 46, after "the" to insert "residential".
11. On page 6, in line 47, after the second "the" to insert "residential".
12. On page 6, in line 49, after the third "the" to insert "residential".
13. On page 6, in line 50, after the second "the" to insert "residential".
14. On page 6, in line 53, after the second "the" to insert "residential".

#### CLAUSE 9

1. On page 7, in line 1, after "to" to insert "residential".
2. On page 7, in line 3, after "a" to insert "residential".
3. On page 7, in line 5, to omit subsection (2).

4. On page 7, in line 7, after the second "a" to insert "residential".
5. On page 7, in line 7, after "that" to insert "residential".
6. On page 7, from line 9, to omit subsection (4) and to substitute:

(3) (a) An older person may not be admitted to a residential facility without his or her consent, unless his or her mental condition renders him or her incapable of giving such consent, in which case a person authorised to give such consent in terms of any law or in terms of a court order may give the required consent.

(b) In the absence of a person contemplated in—

- (i) paragraph (a), the required consent may be given by the spouse or partner of the older person concerned or, in the absence of such spouse or partner, an adult child or sibling of the older person, in the specific order as listed; or
- (ii) paragraph (a) or subparagraph (i), the required consent may be given by the Minister.

(c) The consent contemplated in paragraph (b)(i) or (ii) may only be given after a medical practitioner registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), has certified that any delay in the admission of the older person might result in his or her death or irreversible damage to his or her health.

(4) The operator of a residential facility must take all reasonable steps to obtain the older person's consent.

(5) Notwithstanding subsection (3), an older person who is capable of understanding must be informed of the intended admission even if his or her mental condition renders him or her incapable of giving the required consent in terms of that subsection.

(6) The operator of a residential facility into which an older person is admitted as a result of consent given in terms of

subsection (3)(b) must notify the Director General of the admission within 48 hours after such admission.

(7) On receipt of the notice referred to in subsection (6), the Director General may constitute such a multidisciplinary team as may be prescribed in order to assess and to confirm or reject the admission contemplated in that subsection.

7. On page 7, in line 11, to omit "subsection (1) or (4)" and to substitute "this section".

#### CLAUSE 10

1. On page 7, in line 12, to omit "facilities or places" and to substitute "residential facilities".
2. On page 7, from line 16, to omit paragraph (a) and to substitute:
  - (a) visit and monitor a registered residential facility in order to ensure compliance with this Act;
3. On page 7, from line 19, to omit "facility or place" and to substitute "residential facility".
4. On page 7, in line 21, to omit "professional".
5. On page 7, in line 22, to omit "and"
6. On page 7, from line 24, to omit "facility or place" and to substitute "residential facility".
7. On page 7, after line 25, to add the following paragraphs:

- (e) submit a report to the Director General on the outcome of the inspection; and
  - (f) provide the operator of the residential facility with a report on the findings of the inspection.
8. On page 7, from line 26, to omit subsection (2) and to substitute:
- (2) A social worker or designated person exercising any power in terms of subsection (1) must, at the request of the manager of the residential facility in question, produce a certificate issued by the Director-General stating that he or she is such a social worker or designated person.
9. On page 7, in line 39, to omit "facility or place" and substitute "residential facility".

#### CLAUSE 11

- 1. On page 7, in line 42, after "of" to insert "residential".
- 2. On page 7, in line 43, after "registered" to insert "residential".
- 3. On page 7, in line 44, after "that" to insert "residential".
- 4. On page 7, in line 52, after "registered" to insert "residential".
- 5. On page 7, from line 54, to omit paragraphs (a) and (b) and to substitute:
  - (a) give notice to that operator that if such report is not submitted within 90 days after the date of that notice, the registration may be withdrawn; and

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

### CHAPTER 3

1. On page 8, in line 4, to omit "CHAPTER 3" and to substitute "CHAPTER 5".

### CLAUSE 12

Clause 12 rejected.

### CLAUSE 13

Clause 13 rejected.

### NEW CLAUSES

1. That the following be new Clauses:

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

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

### Older person in need of care and protection

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

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

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

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

- (a) facilitate the removal of the older person concerned to a hospital, in case of injury, or to a shelter;
- (b) make a report to a police official requesting the latter to act in terms of section 27;
- (c) take such other steps as may be prescribed to ensure adequate provision for the basic needs and protection of the older person concerned; or
- (d) if the older person concerned is the victim of an offence or crime, assist the older person to see a police official in order to lay a complaint.

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

- (a) has his or her income, assets or old age grant taken against his or her wishes or who suffers any other economic abuse;
- (b) has been removed from his or her property against his or her wishes or who has been unlawfully evicted from any property occupied by him or her;
- (c) has been neglected or abandoned without any visible means of support;
- (d) lives or works on the streets or begs for a living;

- (e) abuses or is addicted to a substance and without any support or treatment for such substance abuse or addiction;
- (f) lives in circumstances likely to cause or to be conducive to seduction, abduction or sexual exploitation;
- (g) lives in or is exposed to circumstances which may harm that older person physically or mentally; or
- (h) is in a state of physical, mental or social neglect.

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

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

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

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

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

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

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

#### **Written notice to alleged offender**

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

- (a) specifies the names, surname, residential address, occupation and status of the alleged offender;
- (b) calls upon the alleged offender to leave the home or place where the older person resides and refrain from entering such home or place or having contact with the older person until the court hearing specified in paragraph (c);
- (c) calls upon the alleged offender to appear at a magistrates' court having jurisdiction on a date and at a time specified in the written notice to advance reasons why he or she should not be permanently prohibited from entering the home or place where the older person resides: Provided that the date so specified must be the first court day after the day upon which the notice is issued; and
- (d) contains a certificate under the hand of the police official that he or she has handed the original of such written notice to the alleged offender and that he or she has explained to the alleged offender the importance thereof.

(2) The police official must forthwith forward a duplicate original of the written notice to the clerk of the magistrates' court concerned.

(3) The mere production to the magistrates' court of the duplicate original referred to in subsection (2) is *prima facie* proof of the issue of the original thereof to the alleged offender and that such original was handed to the offender.

(4) Section 55 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) apply, with the necessary changes, to a written notice handed to an alleged offender in terms of subsection (1).

(5) A magistrates' court before which an alleged offender to whom a written notice in terms of subsection (1) has been

issued, appears, may summarily inquire into the circumstances which gave rise to the issuing of the notice.

(6) The magistrates' court may, after having considered the circumstances which gave rise to the issuing of the written notice and after having heard the alleged offender—

- (a) issue an order prohibiting the alleged offender from entering the home or place where the older person resides or from having any contact with the older person, or both from entering such home or place and having contact with the older person, for such period of time as the court deems fit;
- (b) order that the alleged offender may enter the home or the place where the older person resides or have contact with the older person upon such conditions as would ensure that the best interests of the older person are served;
- (c) order that the alleged offender will be responsible for the maintenance of his or her family during the period contemplated in paragraph (a); or
- (d) make such other order with regard to the matter as the court deems fit.

(7) Misuse of a power referred to in subsection (1) by a police official constitutes grounds for disciplinary proceedings contemplated in section 40 of the South African Police Service Act, 1995 (Act No. 68 of 1995), against such police official.

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

- (a) has been issued with a written notice contemplated in subsection (1) and—
  - (i) refuses to leave the home or place where the older person resides; or
  - (ii) has contact with the older person in contravention of the written notice;
- (b) contravenes or fails to comply with an order of the magistrates' court issued in terms of subsection 6 or with any condition contained in such order.

# CLAUSE 14

1. On page 8, in line 21, to omit "person who accommodates or cares for" and to substitute "alleged abuser of".
2. On page 8, in line 23, to omit "professional".
3. On page 8, in line 33, to omit "accommodation or care" and to substitute "alleged abuse".
4. On page 8, in line 38, to omit "is being accommodated or cared for" and to substitute "resides".
5. On page 9, in line 2, to omit "accommodation or care" and to substitute "alleged abuse".

# CLAUSE 15

1. On page 9, in line 5, to omit "accommodation or care" and to substitute "abuse".

# CLAUSE 16

Clause rejected.

# NEW CLAUSE

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

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

(2) Any conduct or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which

causes harm or distress or is likely to cause harm or distress to an older person constitutes abuse of an older person.

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

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

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

#### CLAUSE 17

1. On page 10, in line 6, after "person" to insert:

or of any crime or offence contemplated in section 30(4)

2. On page 10, from line 7, to omit subsection (2) and to substitute:

- (2) A person whose name appears in the register contemplated in subsection (1) may not in any way—
  - (a) operate or be employed at any residential facility;
  - (b) provide any community-based care and support service to an older person.

#### CLAUSE 18

Clause rejected.

#### CHAPTER 4

1. On page 10, in line 36, to omit "CHAPTER 4" and to substitute "CHAPTER 6".

#### CLAUSE 20

1. On page 11, in line 29, to omit "4(5), 5(8), 10(5)(a), (b) or (c) or 14(6)(a) or (b)" and to substitute:

12(2), 18(8), 19(4), 22(5)(a), (b) or (c) or 28(6)(a) or (b)

2. On page 11, in line 29, to omit "9(5), 13, 15 (11) or 16(5)" and to substitute:

21(8), 26(3), 27(8), 29(11) or 30(1),

#### CLAUSE 21

1. On page 11, in line 50, after "a" to insert "residential".
2. On page 11, in line 54, after "of" to insert "residential".

3. On page 11, after line 54, to insert the following subparagraph
  - (iv) promote the rights of older persons that are not in residential facilities;
4. On page 11, in line 56, after "a" to insert "residential".
5. On page 11, in line 57, after "to" to insert "residential".
6. On page 11, in line 59, after "care" to insert "and support".
7. On page 12, after line 16, to insert the following subsection:
  - (6) The Minister must submit to Parliament the draft regulations contemplated in subsection (5) and comments received in terms of that subsection before final publication.

#### CLAUSE 23

1. On page 12, in line 39, to omit "2005" and to substitute "2006".

#### ARRANGEMENT OF SECTIONS

1. On page 2, from line 3, to omit the ARRANGEMENT OF SECTIONS and to substitute:

#### ARRANGEMENT OF SECTIONS

##### Sections

1. Definitions

#### CHAPTER 1

#### OBJECTS, IMPLEMENTATION, APPLICATION AND

#### GENERAL PRINCIPLES

2. Objects of Act
3. Implementation of Act
4. Application of Act
5. General principles

## **CHAPTER 2**

### **CREATING AN ENABLING AND SUPPORTIVE ENVIRONMENT**

#### **FOR OLDER PERSONS**

6. Development of and compliance with national norms and standards
7. Rights of older persons
8. Support services delivered by third parties
9. Guiding principles for provision of services

## **CHAPTER 3**

### **COMMUNITY-BASED CARE AND SUPPORT SERVICES**

10. Rights of older persons receiving community-based care and support services
11. Community-based programmes for older persons
12. Community-based care and support services to be registered
13. Registration of community-based care and support services
14. Persons providing community-based care

15. Monitoring and evaluating community-based care and support services

#### **CHAPTER 4**

#### **RESIDENTIAL FACILITIES**

16. Rights of older persons in residential facilities
17. Services at residential facilities
18. Prohibition on operation of unregistered residential facilities, and registration of such facilities
19. Compliance with conditions for registration of residential facilities
20. Establishment of residents' committees for residential facilities
21. Admission to residential facilities
22. Monitoring of registered residential facilities
23. Report to Minister by managers of residential facilities

#### **CHAPTER 5**

#### **PROTECTION FOR OLDER PERSONS**

24. Effect of Act on Domestic Violence Act, 1998
25. Older person in need of care and protection
26. Notification of abuse of older persons
27. Written notice to alleged offender
28. Procedure for bringing alleged abuser of older person or frail person before magistrate

29. Enquiry into alleged abuse of older or frail person
30. Prohibition of abuse of older persons and special measure to combat abuse of older persons
31. Keeping of register of abuse of older persons

## CHAPTER 6

### GENERAL AND SUPPLEMENTARY PROVISIONS

32. Delegation
33. Penalties
34. Regulations
35. Repeal of laws, and transitional provisions and saving
36. Short title and commencement.

### PREAMBLE

1. On page 2, from the seventh line, to omit the third paragraph and to substitute:

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

2. On page 2, in the twelfth line, to omit "enrichment" and to substitute "knowledge, wisdom"