

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
OLDER PERSONS BILL**

[B 68B—2003]

*(As agreed to by the Portfolio Committee on Social Development
(National Assembly))*

[B 68C—2003]

ISBN 0 621 36172 0

No. of copies printed 800

AMENDMENTS AGREED TO

OLDER PERSONS BILL [B 68B—2003]

CLAUSE 1

1. On page 3, from line 26, to omit the definition of “abuse” and to substitute:

“abuse” means abuse contemplated in section 30(2);
2. On page 3, from line 34, to omit the definition of “community-based care and support services” and to substitute:

“community-based care and support services” means any programme contemplated in section 11;
3. On page 3, from line 40, to omit the definition of “facility”.
4. On page 3, after line 46, to insert the following definitions:

“frail older person” means an older person in need of 24-hour care due to a physical or mental condition which renders him or her incapable of caring for himself or herself;

“health care provider” means a health care provider defined in section 1 of the National Health Act, 2003 (Act No. 61 of 2003);
5. On page 3, from line 47, to omit the definition of “home-based care” and to substitute:

“home-based care” means care provided or services rendered at the place where a frail older person resides, excluding at a residential facility, by a caregiver in order to maintain such frail older person’s maximum level of comfort, including care towards a dignified death;
6. On page 3, from line 49, to omit the definition of “luncheon club”.
7. On page 3, in line 52, after “a” to insert “residential”.
8. On page 4, in line 6, after “a” to insert “residential”.
10. On page 4, from line 12, to omit the definition of “professional health care provider”.
11. On page 4, after line 14, to insert the following definitions:

“rehabilitation” means a process by which an older person is enabled to reach and maintain his or her optimal physical, sensory, intellectual, psychiatric or social functional levels, and includes measures to restore functions or compensate for the loss or absence of a function, but excludes medical care;

“residential facility” means a building or other structure used primarily for the purposes of providing accommodation and of providing a 24-hour service to older persons;

“respite care” means a service offered specifically to a frail older person and to a caregiver and which is aimed at the provision of temporary care and relief;

12. On page 4, from line 19, to omit the definition of “social worker” and to substitute:

“social worker” means a person registered as a social worker under section 17 of the Social Service Professions Act, 1978 (Act No. 110 of 1978), and in the employ or service of government or a registered welfare organisation;

CHAPTER 1

Chapter 1 rejected.

NEW CHAPTER

1. That the following be a new Chapter:

CHAPTER 1

OBJECTS, IMPLEMENTATION, APPLICATION AND GENERAL PRINCIPLES

Objects of Act

2. The objects of the Act are to—
- (a) maintain and promote the status, well-being, safety and security of older persons;
 - (b) maintain and protect the rights of older persons;
 - (c) shift the emphasis from institutional care to community-based care in order to ensure that an older person remains in his or her home within the community for as long as possible;
 - (d) regulate the registration, establishment and management of services and the establishment and management of residential facilities for older persons; and
 - (e) combat the abuse of older persons.

Implementation of Act

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

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

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

Application of Act

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

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

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

General principles

5. (1) The general principles set out in this section guide—
- (a) the implementation of all legislation applicable to older persons, including this Act; and
 - (b) all proceedings, actions and decisions by any organ of state in any matter concerning an older person or older persons in general.
- (2) All proceedings, actions or decisions in a matter concerning an older person must—
- (a) respect, protect, promote and fulfill the older person’s rights, the best interests of the older person and the rights and principles set out in this Act, subject to any lawful limitation;
 - (b) respect the older person’s inherent dignity;
 - (c) treat the older person fairly and equitably; and
 - (d) protect the older person from unfair discrimination on any ground, including on the grounds of the health status or disability of the older person.
- (3) In any matter concerning an older person—
- (a) an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided; and
 - (b) a delay in any action or decision to be taken must be avoided as far as possible.

HEADING TO CHAPTER 2

1. On page 5, in line 2, to omit “ENSURING” and to substitute “CREATING”.

CLAUSE 3

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Development of and compliance with national norms and standards

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

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

CLAUSE 4

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses:

Rights of older persons

7. Older persons enjoy the rights contemplated in section 9 of the Constitution of the Republic of South Africa and in particular may not be unfairly denied the right to—

- (a) participate in community life in any position appropriate to his or her interests and capabilities;
- (b) participate in inter-generational programmes;
- (c) establish and participate in structures and associations for older persons;
- (d) participate in activities that enhance his or her income-generating capacity;
- (e) live in an environment catering for his or her changing capacities; and
- (f) access opportunities that promote his or her optimal level of social, physical, mental and emotional well being.

Support for services delivered by third parties

8. (1) The Minister—

- (a) may, in consultation with the Minister of Finance, provide financial awards to service providers that provide social services to older persons from funds appropriated by Parliament for that purpose;
- (b) may for the purposes of paragraph (a) prioritise needs and services for older persons;
- (c) may in the prescribed manner enter into contracts with service providers to ensure that the services contemplated in paragraph (b) are provided;
- (d) must prescribe conditions for the receiving of financial awards, including accounting measures, compliance measures and norms and standards; and
- (e) must prescribe remedies for failure to comply with the prescribed conditions contemplated in paragraph (d).

(2) The Minister must open and maintain a register of all assets bought with Government funds and prescribe conditions for the management of such assets.

Guiding principles for provision of services

9. Any service must be provided in an environment that—

- (a) recognises the social, cultural and economic contribution of older persons;
- (b) promotes participation of older persons in decision-making processes at all levels;
- (c) recognises the multi-dimensional needs of older persons and therefore promotes inter-sectoral collaboration;
- (d) ensures access to information by, education of and training of older persons;
- (e) promotes the development and basic care of older persons in rural and urban areas;
- (f) promotes the prevention of exploitation of older persons;
- (g) promotes the respect and dignity of older persons;

- (h) ensures that older persons receive priority in the provision of basic services;
- (i) ensures rehabilitation and the provisioning of assisted devices to older persons; and
- (j) ensures, as far as is practicable, that services and facilities are accessible to older persons.

NEW CHAPTER

1. That the following be a new Chapter:

CHAPTER 3

COMMUNITY-BASED CARE AND SUPPORT SERVICES FOR OLDER PERSONS

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

10. An older person receiving community-based care and support services has, in addition to the rights contemplated in section 7, the right to—

- (a) reside at home as long as possible;
- (b) pursue opportunities for the full development of his or her potential; and
- (c) benefit from family and community care and protection in accordance with society's system of cultural values.

Community-based programmes for older persons

11. (1) The Minister may, in collaboration with any relevant Minister or Member of the Executive Council in a province—

- (a) develop community based programmes that fall into two broad categories, namely—
 - (i) prevention and promotion programmes, which ensure the independent living of an older person in the community in which the older person resides; and
 - (ii) home-based care, which ensures that a frail older person receives maximum care within the community through a comprehensive range of integrated services.
- (b) determine how any person who runs a programme contemplated in paragraph (a) may be supported, either financially or otherwise.

(2) The programmes contemplated in subsection (1) are programmes aimed at—

- (a) economic empowerment of older persons;
- (b) establishment of recreational opportunities for older persons;
- (c) information, education and counselling services, including HIV and AIDS, care for orphans, Alzheimer's, dementia and basic emergency care;
- (d) spiritual, cultural, medical, civic and social services;
- (e) provision of nutritionally balanced meals to needy older persons;
- (f) promotion of skills and capacity of older persons to sustain their livelihoods;
- (g) professional services, including care and rehabilitation to ensure independent living of older persons;
- (h) appropriate services contained in the indigent policy for vulnerable and qualifying older persons;
- (i) the utilisation and management of existing facilities for older persons as multi-purpose community centres;

- (j) integrated community care and development systems for older persons; and
 - (k) inter-generational programmes.
- (3) Home-based care programmes directed at frail older persons within the community may include—
- (a) provision of hygienic and physical care of older persons;
 - (b) provision of professional and lay support for the care of older persons within the home;
 - (c) rehabilitation programmes that include provision of assisted devices;
 - (d) provision of respite care;
 - (e) information, education and counselling for family members, care-givers and the community regarding ageing and associated conditions; and
 - (f) provision of free health care to frail older persons and to other older persons determined by the Minister.

Community-based care and support services to be registered

12. (1) No person may provide community-based care and support services unless the service is registered in terms of section 13.

(2) A person who renders a community-based care and support service that has not been registered in terms of section 13 is guilty of an offence.

Registration of community-based care and support services

13. (1) Any person who wishes to provide a community-based care and support service must apply to the Director-General for the registration of such service.

(2) The Minister must prescribe conditions for the registration of community-based care and support services, including application for registration, approval of registration, temporary registration, withdrawal and termination of registration, and any matter contemplated in subsection (4).

(3) Registration granted in terms of this section is not transferable to another person.

(4) If the provider of a service for any reason intends to stop providing the service, the provider must, prior to stopping the service in question—

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

Persons providing home-based care

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

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

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

(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), 14(4), 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)(a) or (b), 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”.

Printed by Creda Communications

ISBN 0 621 36172 0