

REPUBLIC OF SOUTH AFRICA

OLDER PERSONS AMENDMENT BILL

(As proposed by the Portfolio Committee on Social Development)
(The English text is the official text of the Bill)

(MINISTER OF SOCIAL DEVELOPMENT)

[B 11B—2022]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Older Persons Act, 2006, so as to insert new definitions; to insert new provisions relating to the monitoring and evaluation of all services to older persons and for the removal of older persons to a temporary safe care without a court order; to tighten up the existing implementation and compliance measures; to effect some textual amendments for greater clarity; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 13 of 2006

1. Section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006) (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion after the definition of “abuse” of the following definition:
“**assisted living facility**” means a residential facility used for the provision of safe and accessible accommodation with access to care and support services to older persons who are partially independent, with or without assistive devices, and who need some form of supervision and assistance with their activities of daily living;” 10

(b) by the substitution for the definition of “care” of the following definition:
“**care**” means physical, psychological, social, or material assistance to an older person, and includes services aimed at promoting **[the] and maintaining the comfort**, quality of life and general well-being of an older person;” 15

(c) by the substitution for the definition of “caregiver” of the following definition:
“**caregiver**” means— 20
(a) a family member who provides family care; or
(b) any other person who provides care and support services at a community-based care facility, residential facility or similar facility and who possesses a qualification accredited in terms of the National Qualifications Framework, appropriate for the care of older persons;” 25

(d) by the substitution for the definition of “Director-General” of the following definition:
“**Director-General**” means the Director-General of the Department of **Social Development**;” 30

(e) by the insertion after the definition of “Director-General” of the following definition:

- “**family care**” means the provision of support and assistance by family members to an older person including one who is frail or living with disabilities;”.
- (f) by the insertion of the following definitions after the definition of “home-based care”:
- “**independent living facility**” means a residential facility used for the provision of safe and accessible accommodation to active older persons, who are fully independent with or without assistive devices and who do not need assistance with their activities of daily living;
- “**inter-departmental structure**” means a structure consisting of the Departments of Social Development, Health, Basic Education, Human Settlements, Water and Sanitation, Sport and Recreation, Arts and Culture, Cooperative Governance and Traditional Affairs, Justice and Correctional Services, National Prosecuting Authority, South African Police Service at national level and, where applicable, provincial and local levels of government, and may include any other organ of state;”;
- (g) by the substitution for the definition of “manager” of the following definition:
- “**manager**” means the person responsible for the day-to-day management of a residential facility or similar facility, institution or programme for the rendering of services to older persons;”;
- (h) by the substitution for the definition of “older person” of the following definition:
- “**older person**” means a person who [in the case of a male, is 65 years of age or older and, in the case of a female, is 60 years of age or older] is 60 years of age or older;”;
- (i) by the substitution for the definition of “person” of the following definition:
- “**person**” includes a trust and for the purposes of the registration and operation of community-based care and support services, home-based care and residential facilities, means a juristic person or a trust only;”;
- (j) by the insertion after the definition of “prescribed” of the following definition:
- “**private residential facility**” means a residential facility that is not owned by the state and that is registered in terms of any applicable law;”;
- (k) by the substitution for the definition of “rehabilitation” of the following definition:
- “**rehabilitation**” means a process by which an older person is enabled to reach and maintain his or her optimal physical, sensory, intellectual, psychiatric, spiritual or social functional levels, and includes measures to restore functions or compensate for the loss or absence of a function, but excludes medical care;”;
- (l) by the substitution for the definition of “residential facility” of the following definition:
- “**residential facility**” means a building or other structure that is used primarily for [the purposes of providing] 24-hour care, accommodation and [of providing a 24-hour service] the provision of services to older persons in both public and private residential facilities, and includes assisted-living, independent-living, frail care and similar facilities;”;
- (m) by the insertion after the definition of “social worker” of the following definitions:
- “**special care**” means customised care and support tailored to meet the unique needs and challenges faced by the older person;”;
- “**stakeholder**” means a civil society organisation or a person in the public or private sector, that works with or has an interest in programmes or services rendered to older persons;”;
- “**substance**” means a substance as defined in section 1 of the Prevention of and Treatment for Substance Abuse Act, 2008 (Act No. 70 of 2008);”;
- “**temporary safe care**” means, in relation to older persons, a shelter or any other place where an older person is protected and safely accommodated, for a period not exceeding six months;”.

Amendment of section 2 of Act 13 of 2006

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (b) of the following paragraph:
 - “(b) recognise, maintain and protect the rights of older persons in terms of any laws and policies on vulnerability, ageing, disability, families and other applicable legislation;”; and
- (b) by the substitution for paragraph (e) of the following paragraph: 5
 - “(e) prevent and combat the abuse of older persons.”.

Amendment of section 3 of Act 13 of 2006

3. Section 3 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 10
 - “(1) Subject to this Act allocating roles and responsibilities, the Act must be implemented by all organs of state and any other stakeholders rendering services **[to older persons in the national, provincial and, where applicable, local sphere of government]** in an integrated, co-ordinated and uniform manner.”;
 - (b) by the substitution for subsection (2) of the following subsection: 15
 - “(2) Recognising that competing social and economic needs exist, such organs of state and stakeholders must take reasonable measures to the maximum extent of their available resources to achieve the realisation of the objects of this Act.”;
 - (c) by the substitution for subsection (3) of the following subsection: 20
 - “(3) To achieve the implementation of this Act in the manner contemplated in subsections (1) and (2), all organs of state and stakeholders must co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to older persons.”; and 25
 - (d) by the addition of the following subsections after subsection (3):
 - “(4) To achieve the implementation of this Act in the manner contemplated in subsections (1), (2) and (3), all public service facilities and service points providing services must prioritise older persons. 30
 - (5) There must be an inter-departmental structure to integrate, co-ordinate and monitor the effective implementation of this Act, as prescribed.
 - (6) The Office of the Premier in each province must, together with the provincial department of social development, facilitate and support the co-ordination and integration of provincial plans and the implementation of this Act, as may be prescribed. 35

Amendment of section 4 of Act 13 of 2006

4. Section 4 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
- “(2) All organs of state and all officials, employees and representatives of organs of state and stakeholders must respect, protect and promote the rights of older persons contained in this Act.”. 40

Amendment of section 5 of Act 13 of 2006

5. Section 5 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 45
 - “(b) all proceedings, actions and decisions by any organ of state and stakeholders in any matter concerning an older person or older persons in general.”; and
 - (b) by the addition after subsection (3) of the following subsection: 50
 - “(4) Anyone dealing with an older person must take all the measures necessary to eliminate traditional practices, including witchcraft accusations, which may affect the welfare, health, life and dignity of that older person.”.

Insertion of sections 7A and 7B in Act 13 of 2006

6. The following sections are hereby inserted in the principal Act after section 7:

“Responsibilities of older person

7A. Older persons have the responsibility to—

- (a) mentor and pass on knowledge and experience to a younger person;
- (b) foster and facilitate inter-generational dialogue and solidarity within his or her family or community; and
- (c) play a role in mediation and conflict resolution.

Protection of rights against abuse, to property, inheritance and bodily integrity of older person

7B. An older person has the right to protection against—

- (a) any form of abuse, violence and discrimination based on gender;
- (b) abuse related to property and land rights; and
- (c) abuse related to the right to inheritance.”.

Amendment of section 11 of Act 13 of 2006

7. Section 11 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

- “(c) information, education and counselling services, including HIV and AIDS, care for orphans, Alzheimer’s, all diseases, dementia and basic emergency care;”.

Amendment of section 13 of Act 13 of 2006

8. Section 13 of the principal Act is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection:
“(1A) Only a juristic person or a trust may be registered to provide community-based care and support services to older persons.”.
- (b) by the substitution for subsection (2) of the following subsection:
“(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 or conditional registration, duration of registration, withdrawal and termination of registration, and any matter contemplated in subsection (4).”; and
- (c) by the substitution for subsection (4) of the following subsection:
“(4) If the [**provider of a**] service provider for any reason intends to [**stop providing the service**] terminate or suspend the provision of a service, or the Department for any reason intends to terminate or suspend the service provider from providing a service, [**the provider**] the service provider or the Department, as the case may be, must, prior to [**stopping**] the termination or suspension of the service in question—
 - (a) notify the Director-General or the manager of the service provider of the intention, reasons and the implications of such [**stoppage**] termination or suspension [**for**] on the affected older persons;
 - (b) inform the older persons affected of the intended [**stoppage**] termination or suspension of the service, and the reasons for the intended termination or suspension; 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**] an alternative registered facility or institution providing similar services.”.
- (d) by the addition of the following subsection:
“(5) Any person who contravenes or fails to comply with the provisions of this section is guilty of an offence.”.

Amendment of section 14 of Act 13 of 2006

9. Section 14 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
“**Persons providing home-based care and frail care**”;
 - (b) by the substitution for subsection (1) of the following subsection: 5
“(1) Any person who provides home-based care and frail care must ensure that caregivers receive the prescribed training.”; and
 - (c) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
“(a) The Minister must keep a register of all caregivers providing 10
home-based care and frail care and must prescribe a code of conduct for such caregivers.”.

Substitution of section 15 of Act 13 of 2006

10. The principal Act is hereby amended by the substitution for section 15 of the following section: 15

“Monitoring and evaluation of community-based care and support services

15. Subject to section 22 of the Act and to the extent to which that section is applicable, monitoring and evaluation of community-based care and support services must be implemented as prescribed.”. 20

Amendment of section 17 of Act 13 of 2006

11. Section 17 of the principal Act is hereby amended—
- (a) by the substitution for paragraphs (i) and (j) of the following paragraphs:
“(i) training of volunteer caregivers to deal with frail older persons;
[and] 25
(j) sport and recreational activities [.]”; and
 - (b) by the addition of the following paragraphs:
“(k) assisted-living which provides accommodation, care and support services for older persons who need specialised care; and
(l) independent-living which provides safe and accessible accommodation to active older persons.”. 30

Amendment of section 18 of Act 13 of 2006

12. Section 18 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 35
“(a) Subject to section 35, no person may operate a residential facility, including a private residential facility, assisted-living facility or similar facility, unless such facility has been registered under this section.”; and
 - (b) by the substitution for subsection (2) of the following subsection: 40
“(2) A juristic person [who wishes] or a trust wishing to operate a residential facility must, in the prescribed manner, apply to the Minister for registration thereof.”.

Insertion of section 18A in Act 13 of 2006

13. The following section is hereby inserted in the principal Act after section 18:

“Deregistration, closing and revocation of registration of residential or community-based facilities 45

18A. (1) Notwithstanding the provisions of this section and any provision of this Act, a person designated by the Director-General may close down any unregistered or illegal community-based care or residential facility service or any similar service for older persons. 50

- (2) A person designated by the Director-General may—
- (a) in writing, direct any person operating an unregistered or illegal facility to close down operations immediately within 24 hours;
 - (b) where necessary, enlist the assistance of the police to effect the closure;
 - (c) in instances where there is a material contravention of this Act by a registered community-based care service provider or residential facility operator, recommend to the Director-General that such community-based care service provider or residential facility be deregistered and closed; and
 - (d) in instances where a person refuses to cooperate with, obstructs or misrepresents any fact to a social worker, health care provider, police official or an official exercising any reporting, enforcement and monitoring powers conferred by this Act, upon receipt of such information, recommend to the Director-General that the community-based care or residential facility concerned be deregistered or that the registration of the community-based care or residential facility be revoked.
- (3) If a person designated by the Director-General has directed that a community-based care or residential facility be closed down, deregistered or the registration of a community-based care or residential facility be revoked, such designated person must—
- (a) notify the person in charge of the community-based care or residential facility, in writing, of the intention to deregister the facility or the intention to revoke the registration of such facility;
 - (b) afford the person in charge of the community-based care or residential facility an opportunity of no less than 30 days to make written representations in respect of such closure, deregistration or revocation of registration;
 - (c) consider the representations made by the person in charge of the community-based care or residential facility with regard to such closure, deregistration or revocation of registration; and
 - (d) in writing, notify the person in charge of the community-based care or residential facility of the decision regarding the closure, deregistration or revocation of registration of the facility and measures to accommodate or relocate the beneficiaries of such services.
- (4) Any person who contravenes or fails to comply with any provision of this section is guilty of an offence.”.

Amendment of section 25 of Act 13 of 2006 40

- 14.** Section 25 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (a) of subsection (5) for the following paragraph:
 - “(a) has his or her income, assets or **[old age]** older person’s grant taken against his or her wishes or who suffers any other economic abuse;”;
 - (b) by the deletion in subsection (5) of the word “or” at the end of paragraph (g);
 - (c) by the substitution at the end of subsection (5)(h) for the full stop of a semicolon; and
 - (d) by the addition in subsection (5) of the following paragraphs: 50
 - “(i) has been or is being maltreated, abused, neglected or degraded by a care-giver, family member or any other person; or
 - (j) has been or is being accused of practising witchcraft or blamed by the community for inexplicable events.”.

Insertion of sections 25A and 25B in Act 13 of 2006 55

- 15.** The following sections are hereby inserted in the principal Act after section 25:

“Removal of older person to temporary safe care

- 25A.** (1) A social worker or health care provider or a police official must, with the consent of an older person or authorised person in the event that the older person is incapable of providing such consent, remove such older person and place that older person in temporary safe care without a court order, if there are reasonable grounds for believing—
- (a) that the older person—
 - (i) is in need of care and protection as contemplated in section 25(5) of the Act; and
 - (ii) needs immediate emergency protection;
 - (b) that the delay in obtaining a court order for the removal of an older person to temporary safe care may jeopardise the safety and well-being of the older person; and
 - (c) that the removal of the older person from his or her home environment is the best way to secure the safety and well-being of that older person.
- (2) If a social worker or health care provider has removed an older person and placed the older person in temporary safe care as contemplated in subsection (1), the social worker or health care provider must, in writing, report the matter to the relevant provincial department of social development and must—
- (a) without delay, but within 24 hours, inform the family of the older person of such removal and the place where the older person has been moved to; and
 - (b) without delay, obtain a court order within 48 hours for the placement of the older person in temporary safe care.
- (3) If a police official has removed an older person and placed the older person in temporary safe care as contemplated in subsection (1), the police official must—
- (a) without delay, but within 24 hours, inform the family of the older person, in writing, of such removal; and
 - (b) without delay, but within 24 hours, notify the provincial department of social development, in writing, of the removal of the older person and of the place where the older person has been placed.
- (4) Notwithstanding subsection (1), any person may apply to a court having jurisdiction to obtain an order authorising the removal of an older person to a temporary safe care in instances where there is no need for immediate removal.
- (5) The placement of an older person into temporary safe care may be for any period not exceeding six months and every effort must be made by the Director-General to find a safe permanent placement.
- (6) Misuse of a power referred to in subsection (1) by a social worker employed in terms of the Public Service Act, 1994 (Proclamation No.103 of 1994), or any other law or by a non-profit organisation, constitutes unprofessional or improper conduct by that social worker.
- (7) Misuse of a power referred to in subsection (1) by a police official constitutes grounds for disciplinary proceedings against such police official as contemplated in section 40 of the South African Police Service Act, 1995 (Act No. 68 of 1995).
- (8) Misuse of a power referred to in subsection (1) by a health care worker constitutes grounds for disciplinary proceedings against such health care worker in accordance with section 23 of the Allied Health Professions Act, 1982 (Act No. 63 of 1982), section 3(n) of the Health Professions Act, 1974 (Act No. 56 of 1974), section 46 of the Nursing Act, 2005 (Act No. 33 of 2005), section 39 of the Pharmacy Act, 1974 (Act No. 53 of 1974), and section 35 of the Dental Technicians Act, 1979 (Act No. 19 of 1979), whichever Act is applicable.
- (9) A person exercising a power or acting pursuant to this section is not liable to any person if he or she has acted or exercised that power in good faith.

Older person with disability and chronic illness

- 25B.** (1) In any matter concerning an older person with a disability, due consideration must be given to—
- (a) providing the older person with family care or special care as and when appropriate; 5
 - (b) making it possible for the older person to participate in social, cultural, religious and educational activities, recognising the special needs that the older person may have;
 - (c) providing the older person with conditions that ensure dignity, promote self-reliance and facilitate active participation in the community; and 10
 - (d) providing the older person and the care-giver with the necessary support services.
- (2) In any matter concerning an older person with chronic illness, due consideration must be given to— 15
- (a) providing the older person with family care or special care as and when appropriate;
 - (b) providing the older person with conditions that ensure dignity, promote self-reliance and facilitate active participation in the community; and 20
 - (c) providing the older person with the necessary support services.
- (3) An older person with a disability or chronic illness has the right not to be subjected to medical, social, cultural or religious practices that are detrimental to his or her health, well-being or dignity.”

Amendment of section 26 of Act 13 of 2006 25

- 16.** Section 26 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
“(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, a social worker or a police official or the manager, if applicable, of his or her suspicion.”; and 30
 - (b) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
“(a) the Director-General, social worker, police official or manager must, within 48 hours, investigate the matter and if the suspicion is substantiated by the investigation, section 25(4) applies with the necessary changes;”. 35

Amendment of section 28 of Act 13 of 2006

- 17.** Section 28 of the principal Act is hereby amended—
- (a) by the substitution in subsection (6) for paragraph (b) of the following paragraph: 40
“(b) refuses to furnish to a social worker or a health care provider any information in connection with the alleged abuse of an older person at his or her disposal which such officer requires for the purposes of an investigation referred to in subsection (3): Provided that— 45
 - (i) the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law applies in relation to the questioning of a person for purposes of that investigation: Provided further that such a person may not refuse to answer any question on the ground that the answer would tend to expose him or her to a criminal charge; and 50
 - (ii) evidence regarding any questions and answers for purposes of an investigation referred to in subsection (3) is not admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).”; and 55

- (b) by the addition of the following subsection after subsection (6):
- “(7) In every investigative or court proceedings, as the case may be, an older person may—
- (a) in addition to legal assistance, be assisted by a social worker, an intermediary or any suitable person; and
 - (b) be allowed to testify or cross-examine through an intermediary or in camera, in the language the older person understands.”.

Amendment of section 30 of Act 13 of 2006

18. Section 30 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection: 10

“(3) For the purposes of subsection (2), **‘abuse’** includes physical, sexual, **[psychological]** emotional, verbal or psychological, harassment, spiritual abuse and economic abuse and—

(a) **‘physical abuse’** means any act or threat of physical violence towards an older person, including unlawful detention, medical sedation or shackling, deprivation of nutrition or medical care, neglect or exploitation of an older person in any manner; 15

(b) **‘sexual abuse’** means any conduct that violates the sexual integrity of an older person and includes an act of sexual penetration or sexual violation as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); 20

(c) **‘[psychological abuse] means any pattern of degrading or humiliating conduct towards an older person, including** 25

(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] ‘emotional, verbal or psychological abuse’** means emotional, verbal and psychological abuse as defined in section 1 of the Domestic Violence Act, 1998 (Act No. 116 of 1998) (“Domestic Violence Act”); 30

(d) **‘economic abuse’** means—

(i) the deprivation of economic and financial resources to which an older person is entitled under any law; 35

(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; 40

(e) **‘harassment’** means harassment as defined in section 1 of the Domestic Violence Act;

(f) **‘spiritual abuse’** means spiritual abuse as defined in section 1 of the Domestic Violence Act.”. 45

- (b) by the addition of the following subsection after subsection (4):

“(5) A court clerk or registrar must, upon a court convicting a person as contemplated in subsection (4), forthwith provide the Minister with the details of the offender, conviction and sentence for the purposes of reporting in the register contemplated in section 31 of this Act.”. 50

Amendment of section 31 of Act 13 of 2006

19. Section 31 of the principal Act is hereby amended by the addition of the following subsection after subsection (2):

“(3) An application to the Minister for the removal of a name from the register may be brought by any person, after the criminal record of the offender, whose name appears in the register, has been expunged in terms of section 271A, 271B, 271C or 271D of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).”.

Amendment of section 33 of Act 13 of 2006

20. Section 33 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) section 12(2), 13(5), 14(4), 18(1), 18(8), 18(9), 18A(4), 19(4), 22(5)(a), (b) or (c), or 28(6)(a) or (b) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment;”.

Amendment of section 34 of Act 13 of 2006

21. Section 34 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Any regulation made in terms of subsection (1) which affects the South African Police Service must be made after consultation with the Minister [**for Safety and Security**] of Police.”.

Transitional provision

22. Any person operating a community-based care and support service, home-based care or residential facility as a sole proprietor immediately before this Act took effect, must within 12 months from the date on which this Act took effect, convert the sole proprietorship to a juristic person.

Short title and commencement

23. (1) This Act is called the Older Persons Amendment Act, 2022, and takes effect on a date fixed by the President by Proclamation in the *Gazette*.

(2) Different dates may, under subsection (1), be fixed in respect of different provisions of this Act.

MEMORANDUM ON THE OBJECTS OF THE OLDER PERSONS AMENDMENT BILL, 2022

1. BACKGROUND AND PURPOSE

The Older Persons Act, 2006 (Act No. 13 of 2006) (“principal Act”), mandates that services to older persons should be rendered in a comprehensive, coordinated, integrated and standardised manner by all organs of state and other service providers. The Department of Social Development (“Department”), as the custodian and a lead department for the provision of services to older persons in consultation with the (SAOPF) or a provincial Forum as the case maybe, has a responsibility of ensuring that the objectives of the principal Act are adhered to and that older persons receive services in accordance with the principal Act. The principal Act came into operation on 1 April 2010. Soon thereafter, a number of challenges in relation to the implementation of the principal Act have been experienced. Chief amongst these were the institutional, coordination mechanisms and compliance measures. Poor coordination and inter-sectoral collaborations impacted negatively on the provision of services to older persons. The purpose of the Older Persons Amendment Bill, 2022 (“Bill”) is to ensure that older persons are provided with quality services and are afforded the necessary protection by society, including community-based and residential care facilities.

2. OBJECTS

The Bill seeks to insert new definitions and new provisions relating to the monitoring and evaluation of all services to older persons, to make provision for the removal of older persons to temporary safe care without a court order, to tighten up the existing implementation and compliance measures and to effect some textual amendments for greater clarity.

3. CLAUSE-BY-CLAUSE ANALYSIS

3.1 Clause 1

3.1.1 Clause 1 seeks to amend various definitions as well as the insertion of new definitions. It proposes the substitution of the definition of “older person” to include “a person who is 60 years of age or older”. The proposed new definition ensures that all persons who are 60 years and older are equally entitled to the benefits and protection afforded to older persons in the principal Act, irrespective of gender. This is consistent with section 9(1) and (3) of the Constitution of the Republic of South Africa, 1996 (“Constitution”). Clause 1 introduces an “inter-departmental structure” to integrate, coordinate and monitor the effective implementation of the Act. The Bill proposes an amendment to the definition of “residential facility” to include private, public, independent-living, assisted-living and frail care facilities.

3.2 Clause 2

3.2.1 Clause 2 proposes an amendment to section 2 of the principal Act so as to protect the rights of older persons in conformity with the Constitution and domestic law, as well as to prevent abuse against older persons.

3.3 Clause 3

3.3.1 Clause 3 seeks to amend section 3 of the principal Act by making provision for the role of stakeholders over and above the organs of state and the inclusion of an inter-departmental structure to integrate, coordinate and monitor the effective implementation of the Act. It also seeks to provide for the Premiers in each province, together with the provincial department of social development, to facilitate and support

the coordination and integration of provincial plans and the implementation of the principal Act.

3.4 **Clause 4**

3.4.1 Clause 4 seeks to amend section 4 of the principal Act by making provision for the role of other stakeholders in the protection of the rights of older persons.

3.5 **Clause 5**

3.5.1 Clause 5 seeks to amend section 5 of the principal Act by the insertion of a new subsection (4), which provides that anyone dealing with an older person should take all the necessary precautions in order to eliminate harmful traditional practices against an older person.

3.6 **Clause 6**

3.6.1 Clause 6 seeks to amend section 7 of the principal Act by the insertion of sections 7A and 7B. The proposed new section 7A makes provision for the responsibilities of older persons, which include mentoring and passing on knowledge and experience to the younger generation, fostering and facilitating inter-generational dialogue and solidarity within their families and communities and playing a role in mediation and conflict resolution. The proposed new section 7B makes provision for the protection of rights of older persons to property, inheritance and physical abuse.

3.7 **Clause 7**

3.7.1 Clause 7 seeks to amend section 11 of the principal Act by providing that the Minister of Social Development, in collaboration with any other relevant Minister or member of the executive in a province, may make available any information, education or counselling services in relation to, amongst others, non-communicable chronic diseases.

3.8 **Clause 8**

3.8.1 Clause 8 proposes an amendment to section 13 of the principal Act. The proposed amendment provides that only a juristic person or a trust may be registered to provide community-based care and support services to older persons. Furthermore, clause 8 also proposes an amendment to section 13 of the principal Act by substituting the word “stop” for the words “terminate or suspend” in subsection (4). The proposed amendment deals with the termination or suspension of services by a service provider or the Department. Subsection (4)(a) to (c) provides that, in the event of termination by the Department or the service provider, as the case may be, the Director-General or manager of the service provider must be notified, that the older person affected must be notified and that reasonable steps should be taken to ensure that an affected older person is referred to an institution or facility providing a similar service.

3.9 **Clause 9**

3.9.1 Clause 9 seeks to amend section 14 of the principal Act. The proposed amendment provides that any person who provides home-based care and frail care must ensure that caregivers receive the prescribed training. Clause 9 also provides that the Minister must keep a register of all caregivers providing home-based care and frail care.

3.10 Clause 10

3.10.1 Clause 10 seeks to amend section 15 of the principal Act in order to provide for monitoring and evaluation of community-based care and support services and to empower the Minister to make regulations regarding the manner in which such may be conducted.

3.11 Clause 11

3.11.1 Clause 11 seeks to amend section 17 of the principal Act by the addition of two new paragraphs, (paragraph *(k)* and *(l)* respectively). The proposed amendment makes provision for “assisted-living” and “independent-living” as additional services which may be offered at residential facilities to older persons.

3.12 Clause 12

3.12.1 Clause 12 seeks to amend section 18 of the principal Act so as to include a private residential facility, assisted-living facility or similar facility in the list of facilities that must be registered by the Department.

3.13 Clause 13

3.13.1 Clause 13 seeks to insert a new section 18A which makes provision for the deregistration, closing and revocation of the registration of residential or community-based facilities.

3.14 Clause 14

3.14.1 Clause 14 proposes an amendment to section 25 of the principal Act. The proposed amendment provides that an older person in need of care and protection includes a person who has been or is being maltreated, abused, neglected or degraded by a care-giver or family member or a person who has been accused of practicing witchcraft or blamed by the community for inexplicable events.

3.15 Clause 15

3.15.1 Clause 15 seeks to amend section 25 of the principal Act by the insertion of new sections 25A and 25B. The proposed new section 25A deals with the removal of an older person to temporary safe care without a court order and section 25B deals with older persons with disabilities and chronic illnesses. The proposed section 25A(1)(a) provides that an older person will be moved to temporary safe care if there are reasonable grounds for believing that an older person is in need of care and protection and needs immediate emergency protection. The proposed new section 25A(2)(a) provides that if a social worker or health care worker has removed an older person and placed him or her in temporary safe care, the social worker or health care worker must report the matter to the relevant provincial department of social development. The proposed new section 25A(6), (7) and (8) makes provision for disciplinary proceedings against a social worker, health care worker or police official who misuses the power contemplated in the proposed new section 25A(1). The proposed new section 25B deals with older persons with disabilities and chronic illnesses.

3.16 Clause 16

3.16.1 Clause 16 seeks to amend section 26 of the principal Act in order to make provision for the inclusion of a social worker and a manager of

a facility, over and above the Director-General and a police official as it relates to the reporting of a suspected injury to an older person.

3.17 Clause 17

3.17.1 Clause 17 seeks to amend section 28 of the principal Act which deals with the procedure for bringing an alleged abuser before a magistrate. The proposed amendment seeks to amend subsection (6)(b), which deals with the law of privilege applicable to a witness in a criminal case. The proposed amendment also deals with the admissibility of evidence in certain criminal proceedings involving older persons.

3.18 Clause 18

3.18.1 Clause 18 seeks to amend section 30 of the principal Act by extending the definition of physical abuse to include unlawful detention, medical sedation or shackling, deprivation of nutrition or medical care and neglect or exploitation of an older person in any manner. This clause also seeks to insert a new subsection (5) which empowers a clerk of the court or registrar to provide the Minister with the details of an offender, conviction and sentence for the purposes of adding such information to the register upon conviction and sentence.

3.19 Clause 19

3.19.1 Clause 19 proposes the amendment of section 31 of the principal Act by the insertion of subsection (3) which provides that an application to the Minister for the removal of a name from the register may be brought by any person after the criminal record of the offender whose name appears in the register has been expunged in accordance with the relevant provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

3.20 Clause 20

3.20.1 Clause 20 seeks to amend section 33 of the principal Act by the addition of penalties to the existing list of penalties.

3.21 Clause 21

3.21.1 Clause 21 proposes an amendment to section 34 of the principal Act which deals with the regulations. The proposed amendment provides that any regulation made in accordance with subsection (1) which affects the South African Police Service, must be made after consultation with the Minister of Police.

3.22 Clause 22

3.22.1 Clause 22 provides for the short title and commencement.

4. PERSONS OR BODIES CONSULTED

4.1 The following national departments were consulted:

- Department of Justice and Constitutional Development
- Department of Health
- South African Local Government Association (SALGA)
- South African Police Service
- Department of International Relations and Cooperation
- Department of Energy
- Department of Transport
- Department of Sport and Recreation
- Department of Human Settlements

- Department of Basic Education
- Department of Cooperative Governance and Traditional Affairs
- Department of Arts and Culture
- South African Social Security Agency

4.2 The following provincial departments were consulted:

- Department of Social Development: North West Province
- Department of Social Development: Western Cape Province
- Office of the Premier: Mpumalanga

4.3 The following Chapter 9 Institution was consulted:

- South African Human Rights Commission (National Office)

4.4 The following institutes of higher learning were consulted:

- University of Limpopo
- University of Cape Town
- University of Pretoria

4.5 The following civil society organisations were consulted:

- South African Older Persons Forum
- Age-in-Action
- Help Age
- Alzheimers South Africa
- FAMSA
- Action Against Elder Abuse South Africa

Eastern Cape

- Likhanyiso MPC
- Grannies OAG
- Lindumsa Service Centre
- Ubuntu CC
- Dubana Old Age
- Zibambele Project
- Masizakhe
- Zibambele Older persons
- Nobubele
- Nompiliso
- Masimanyane
- Empilweni Home
- Elliot Old Age Home
- S.O.M
- Madeira Home
- Huis John Vorster
- Ithemba lethu
- Huis Tarkastad Home
- Ons Tuiste
- Sterkstroom Service Centre
- Umthunzi Wokuphumla Old Age Home
- Cingela centre for the elderly
- Badisa Huis
- Age-in-Action
- Alzheimer s SA
- EC Older Persons Forum

Free State

- Boikhucho Old Age Home
- Boiketlong
- Botshabelo Haven
- Mabahloki Clara Home
- Sevendelaan Community Base Care
- Thabang Old Age Club
- Ratanang
- Bramfisher Service Centre
- Mooi Hawe
- MSCN
- Free State Care Forum
- Age-in-Action
- Alzheimer s SA
- FS Older Persons Forum

Gauteng

- Harmony Park home for the elderly
- Kome multi-purpose centre
- RAA
- NICDAM
- Age-in-Action
- FAMSA
- SAVF
- Alzheimers SA
- GP Older Persons Forum

KwaZulu-Natal

- TAFTA
- Angerley Haven
- Trans-50 Association
- Ethekwini Municipality
- Maphumulo Municipality
- Msunduzi Municipality
- Ugu district Municipality
- Umgungundlovu District Municipality
- Ilembe Municipality
- Uthukela District Municipality
- Mandeni Municipality Umhlathuze Municipality
- Okhahlamba Municipality
- Kwadukuza Municipality
- Age-in-Action
- Alzheimer s SA
- KZN Older Persons Forum

Limpopo

- Lewensvruig Client Sentrum
- Alzheimer s SA
- Martha Hofmeyer Huis
- Mmatwele Old Age Care Centre
- Service Centre for the Aged
- Hlanganani-Malamulele
- Blouberu Bochum One-Stop Centre
- Botlokwa One-Stop Centre (Molemole)
- Golden Years Elderly Care
- Giyani Society for the Care of the Aged
- Aretsogeng Batsofe Project
- Mookgophong Society for the Aged
- Naboom Tuiste vir Bejaardes
- Cross Age
- Warmbad Rusoord
- Age in Action
- Limpopo Older Persons Forum

- Mpumalanga
- Masibambaneni service centre
- Sikhulile Mhola LC
- Thandanani Mhluzi service centre
- Lydenburg Rusoord
- Wibank Society for the Aged
- Masisizane
- Ekukhanyeni assistance living
- Ebeneza Service Centre
- Dipaleseng
- Mpumalanga Older Persons Forum
- SAVF

Northern Cape

- Fatherhood Foundation
- Huis Namakwaland- Springbok
- NC Older Persons Forum
- Age-in-Action
- Alzheimer s SA

North West

- Age-in-Action
- NW Older Persons Forum
- Seroke Service Centre
- SASSA
- Thusotsile Service Centre
- Tswelopele Old Age
- SAVF

Western Cape

- Dementia SA
- Institute of ageing
- HEAL
- STTOP
- Helderberg Society for The Aged
- Ikamva Labantu
- BADISA
- Cape Jewish Seniors
- Age in Action
- WC Older Persons Forum
- SAVF

4.6 Civil society organisations that submitted comments after gazetting:

- Action on Elder Abuse SA
- GERADEC: Western Cape
- SIFAR Samson Institute for Ageing Research Cape Town
- ACVV Cape Town
- Southern African Catholic Bishop s Conference: Western Cape
- Bellville Senior Centre: Western Cape
- BADISA: Western Cape
- RANDAID: GP
- Methodist Homes: GP
- NG Kerk Primrose Heuwel, Germiston
- Consult Age
- Alzheimer s SA: GP
- Help Age International: GP
- PADCA: KZN
- J Leslie Smith and Company Inc: KZN
- BADISA: Western Cape
- Huis Izak Van Tonder
- SAVF
- SAAHA

- Witbank Society for the Aged
- Interest Group for Retirement Villages
- Office of the Premier: Mpumalanga
- Verulam Day and Frail Care Centres

4.7 Organised Labour consulted:

- NEHAWU

4.8 Individuals consulted:

- Sana Bria2. Thomas Hlakudi
- Rev Jannie McDuling
- Nelly Machaba
- Robert Watson

5. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill was costed in the 2017/2018 financial year, with two funding models recommended, one on maintaining the status quo and the other one based on the norms and standards. Each funding model has three funding options. The preferred funding model is the norms and standards, option 2, which is 41% allowing 114 993 older persons access to services. The total cost for option 2 is R2 663 220 000. Provinces will have to prioritise from the baseline due to current fiscal constraints.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Department of Social Development and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure envisaged in section 76 of the Constitution.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since the Bill does not contain any provisions which directly affects customary law or the customs of traditional or Khoi-San communities.

