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OFFICE OF THE PRESIDENT

No. 1535.

27 November 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 100 of 1998: Aged Persons Amendment Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 1535.

27 November 1998

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 100 van 1998: Wysigingswet op Bejaarde Persone, 1998.

Act No. 100, 1998

AGED PERSONS AMENDMENT ACT, 1998

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.

(English text signed by the President.)
(Assented to 19 November 1998.)

ACT

To amend the Aged Persons Act, 1967, so as to insert certain definitions; to provide for conditions regarding subsidies to managers of registered homes for the aged and to certain other institutions; to monitor compliance with conditions of registration of homes for the aged; to provide for the establishment of management committees for those homes; to provide for the accessibility of those homes; to provide for the enquiry by designated bodies into matters regarding aged persons; to require reporting on the abuse of aged persons and the keeping of a register thereon; to generally regulate the prevention of the abuse of aged persons; 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 81 of 1967, as amended by section 1 of Act 14 of 1971, section 4 of Act 97 of 1972, section 21 of Act 37 of 1973, section 1 of Act 46 of 1976, section 1 of Act 44 of 1994, Proclamation No. R. 40 of 1994 and Proclamation No. R. 7 of 1996 5

1. Section 1 of the Aged Persons Act, 1967 (in this Act referred to as the principal Act), is hereby amended—

- (a) by the insertion before the definition of “aged person” of the following definition: 10
- “‘abuse’ means the maltreatment of an aged person or any other infliction of physical, mental or financial power on an aged person which adversely affects that person;”;
- (b) by the insertion after the definition of “debilitated person” of the following definition: 15
- “‘designated body’ means—
- (a) a person versed in law; or
- (b) a statutory body referred to in section 181(1) of the Constitution, designated by the national Minister, by notice in the *Gazette*, for the purposes of sections 3A, 5A and 6;” and 20
- (c) by the insertion after the definition of “Minister of Finance” of the following definition:
- “‘national Minister’ means the Minister for Welfare and Population Development in the national sphere of government;”.

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit
bestaande verordeningen aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 19 November 1998.)

WET

Tot wysiging van die Wet op Bejaarde Persone, 1967, ten einde sekere omskrywings in te voeg; voorsiening te maak vir voorwaardes betreffende subsidies aan die bestuurders van geregistreerde ouetehuse en aan sekere ander instellings; die nakoming van voorwaardes van registrasie van ouetehuse te monitor; voorsiening te maak vir die instelling van bestuurskomitees vir daardie tehuse; voorsiening te maak vir die toeganklikheid van daardie tehuse; voorsiening te maak vir die ondersoek deur aangewese liggame aangeleenthede betreffende bejaarde persone; om die rapportering oor die mishandeling van bejaarde persone en die hou van 'n register daaroor te vereis; om in die algemeen die voorkoming van die mishandeling van bejaarde persone te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika,
soos volg:—

Wysiging van artikel 1 van Wet 81 van 1967, soos gewysig deur artikel 1 van Wet 14 van 1971, artikel 4 van Wet 97 van 1972, artikel 21 van Wet 37 van 1973, artikel 5 1 van Wet 46 van 1976, artikel 1 van Wet 44 van 1994, Proklamasie No. R. 40 van 1994 en Proklamasie No. R. 7 van 1996

1. Artikel 1 van die Wet op Bejaarde Persone, 1967 (in hierdie Wet die Hoofwet genoem), word hierby gewysig—

10 (a) deur voor die omskrywing van “bejaarde persoon” die volgende omskrywing in te voeg:

“ ‘aangewese liggaam’ —

(a) 'n persoon wat vertrouwd is met die reg; of

(b) 'n statutêre liggaam bedoel in artikel 181(1) van die Grondwet.

15 wat, vir die doeleindes van artikels 3A, 5A en 6, deur die nasionale Minister, by kennisgewing in die *Staatskoerant*, aangewys word.”;

(b) deur na die omskrywing van "Minister van Finansies" die volgende omskrywings in te voeg:

20 “‘mishandeling’ die mishandeling van ’n bejaarde persoon of enige ander toebrenging van fisieke, geestelike en finansiële mag op ’n bejaarde persoon wat ’n nadelige uitwerking het op daardie persoon; ‘nasionale Minister’ die Minister vir Welsyn en Bevolkingsontwikkeling in die nasionale regeringsfeer.”.

Insertion of section 2A in Act 81 of 1967

2. The following section is hereby inserted after section 2 of the principal Act:

“Conditions for subsidies to homes for the aged and certain other institutions

2A. (1) When a subsidy is paid in terms of section 2, the national Minister shall, by regulation in terms of section 20A, prescribe the conditions of use of that subsidy, including conditions regarding the accounting for the subsidy so paid. 5

(2) Any person to whom a subsidy is paid in terms of section 2 shall use, and account for, the subsidy in accordance with the conditions referred to in subsection (1). 10

(3) If any condition referred to in subsection (1) is not complied with, the national Minister may, in consultation with the relevant competent authority referred to in the definition of ‘Minister’ in section 1 and after one month’s notice of the intention to do so, withdraw the subsidy in question. 15

(4) Any person to whom a subsidy in terms of section 2 is paid is personally liable for the refund of the amounts used contrary to any condition referred to in subsection (1).”

Insertion of sections 3A, 3B and 3C in Act 81 of 1967

3. The followings sections are hereby inserted after section 3 of the principal Act: 20

“Monitoring compliance with conditions for registration of homes for the aged

3A. (1) If there is reason to believe that any of the conditions referred to in section 3(3) have not been complied with, the national Minister shall, in consultation with the relevant competent authority referred to in the definition of ‘Minister’ in section 1, appoint a designated body— 25

(a) to monitor compliance with those conditions; and
(b) to order specific measures to be adopted to facilitate compliance with those conditions.

(2) The applicant concerned shall at all reasonable times report to the national Minister and the competent authority referred to in subsection (1) any circumstances which may result in his or her inability to fully comply with the conditions referred to in section 3(3). 30

(3) If the registration of a home for the aged has been cancelled in terms of section 3(4), or if the manager of a home for the aged desires to close down or transfer that home for any other reason, the manager shall— 35

(a) prior to any decision to close down or transfer that home is made, consult with the national Minister and the competent authority referred to in subsection (1) on the matter;

(b) furnish the national Minister and the competent authority referred to in subsection (1) with a full report on the steps taken regarding the future accommodation of the aged persons in question as contemplated in section 3(7); and 40

(c) at least six months before the closing down or transfer of that home in writing notify the aged persons in question and the national Minister and the competent authority referred to in subsection (1) of such closure or transfer. 45

Establishment of management committees for homes for the aged

3B. (1) If more than 10 aged persons reside in a home for the aged, a management committee shall be established as prescribed by the national Minister by regulation in terms of section 20A. 50

(2) The national Minister shall, by regulation in terms of section 20A, prescribe—

(a) the composition of every management committee to be established under subsection (1), which shall include representation of the residents and staff of the relevant home for the aged and the public in general; 55

Invoeging van artikel 2A in Wet 81 van 1967

2. Die volgende artikel word hierby na artikel 2 van die Hoofwet ingevoeg:

“Voorwaardes vir subsidies aan ouetehuse en sekere ander instellings

2A. (1) Wanneer 'n subsidie ingevolge artikel 2 betaal word, moet die nasionale Minister, by regulasie ingevolge artikel 20A, die voorwaardes vir die gebruik van daardie subsidie voorskryf, met inbegrip van voorwaardes betreffende verslagdoening oor die subsidie aldus betaal.

(2) Enige persoon aan wie 'n subsidie ingevolge artikel 2 betaal word, moet in ooreenstemming met die voorwaardes bedoel in subartikel (1), die subsidie aanwend en daarvoor verslag doen.

(3) Indien enige voorwaarde bedoel in subartikel (1) nie nagekom word nie, kan die nasionale Minister, in oorleg met die tersaaklike bevoegde gesag bedoel in die omskrywing van 'Minister' in artikel 1 en na een maand kennis van die voorneme om dit te doen, die betrokke subsidie onttrek.

(4) Enige persoon aan wie 'n subsidie ingevolge artikel 2 betaal word, is persoonlik aanspreeklik vir die terugbetaling van die bedrae wat aangewend is in stryd met enige voorwaarde bedoel in subartikel (1).”

Invoeging van artikels 3A, 3B en 3C in Wet 81 van 1967

3. Die volgende artikels word hierby na artikel 3 van die Hoofwet ingevoeg:

“Monitering van nakoming van voorwaardes vir registrasie van ouetehuse

3A. (1) Indien daar rede is om te glo dat enige van die voorwaardes bedoel in artikel 3(3) nie nagekom is nie, kan die nasionale Minister, in oorleg met die tersaaklike bevoegde gesag bedoel in die omskrywing van 'Minister' in artikel 1, 'n aangewese liggaam aanstel—

- (a) om die nakoming van daardie voorwaardes te monitor; en
- (b) om spesifieke maatreëls wat aangeneem moet word om die nakoming van daardie voorwaardes te vergemaklik, te beveel.

(2) Die betrokke applikant moet te alle redelike tye aan die nasionale Minister en die bevoegde gesag bedoel in subartikel (1) verslag doen oor enige omstandighede wat tot gevolg mag hê dat hy of sy nie in staat is om ten volle aan die voorwaardes bedoel in artikel 3(3) te voldoen nie.

(3) Indien die registrasie van 'n ouetehuis ingevolge artikel 3(4) ingetrek is, of indien die bestuurder van 'n ouetehuis om 'n ander rede daardie ouetehuis wil sluit of oordra, moet die bestuurder—

- (a) voor enige beslissing om die ouetehuis te sluit of oor te dra gemaak word, die nasionale Minister en die bevoegde gesag bedoel in subartikel (1) daarvoor raadpleeg;
- (b) die nasionale Minister en die bevoegde gesag bedoel in subartikel (1) voorsien van 'n volledige verslag oor die stappe betreffende die toekomstige verblyf van die betrokke bejaarde persone soos beoog in artikel 3(7); en
- (c) minstens ses maande voor die sluiting of oordrag van daardie tehuis, die betrokke bejaarde persone en die nasionale Minister en die bevoegde gesag bedoel in subartikel (1) skriftelik van sodanige sluiting of oordrag in kennis stel.

Instelling van bestuurskomitees vir ouetehuse

3B. (1) Indien meer as 10 bejaarde persone in 'n ouetehuis woonagtig is, moet 'n bestuurskomitee soos voorgeskryf deur die nasionale Minister by regulasie ingevolge artikel 20A ingestel word.

- (2) Die nasionale Minister moet, by regulasie ingevolge artikel 20A—
- (a) die samestelling van elke bestuurskomitee wat ingevolge subartikel (1) ingestel moet word, wat verteenwoordiging van die inwoners en personeel van die betrokke ouetehuis en die publiek in die algemeen insluit;

- (b) the election and appointment, qualifications, term of office, and grounds of removal from office, of the members of that committee and the filling of vacancies on that committee; and
- (c) the number of, and procedure at, meetings of that committee.
- (3) A management committee established under subsection (1) shall ensure that the manager of the home for the aged in question—
- (a) facilitates interaction between the residents of the home and their families, the public in general and that committee;
- (b) provides quality service to the home;
- (c) provides opportunities for the training of the staff of the home;
- (d) applies principles of sound financial management and submits quarterly financial reports to the residents and staff of the home;
- (e) monitors activities at the home in order to deal speedily with any incidents of abuse of the residents of the home and takes steps to report such incidents to the appropriate authority;
- (f) consults the management committee in the appointment of the staff of the home;
- (g) establishes complaints procedures for the residents and staff of the home and persons who wish to lodge a complaint on behalf of any such resident; and
- (h) does everything necessary or expedient for the effective functioning of the home.

Admission to homes for the aged

3C. (1) When deciding whether or not to admit a person to a home for the aged, no person shall unfairly discriminate directly or indirectly against the first-mentioned person on one or more grounds referred to in section 9(3) of the Constitution.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall, notwithstanding section 19, be liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

(3) The need for a home for the aged to reflect broadly the race composition of South Africa shall be considered when determining eligibility for admission to that home.

(4) If a person is refused admission to a home for the aged, the manager of that home shall, on the request of that person, give reasons for such refusal to the person.”.

Repeal of section 5 of Act 81 of 1967, as amended by sections 4 and 11 of Act 44 of 1994

4. Section 5 of the principal Act is hereby repealed.

Insertion of section 5A in Act 81 of 1967

5. The following section is hereby inserted before section 6 of the principal Act:

“Enquiry by designated body into matters regarding aged persons

5A. (1) The Minister may appoint any designated body to inquire into and consider any matter relating to the rights of an aged person.

(2) The designated body so appointed may, for the purposes of that enquiry—

- (a) summon in the manner prescribed by regulation in terms of section 20A any person—
 - (i) who, in the opinion of the designated body, is able to furnish information of material importance to the enquiry; or
 - (ii) who the designated body has reason to believe has in his or her

- (b) die verkiesing en aanstelling, kwalifikasies, ampstermyn, en gronde vir ampsverwydering, van die lede van daardie komitee en die vul van vakatures in daardie komitee; en
- (c) die getal, en die prosedure by, vergaderings van daardie komitee, voorskryf.
- (3) 'n Bestuurskomitee ingestel kragtens subartikel (1) moet verseker dat die bestuurder van die betrokke tehuis—
- (a) interaksie tussen die inwoners van die tehuis en hul families, die publiek in die algemeen en daardie bestuurskomitee vergemaklik;
- (b) kwaliteitsdienste aan die tehuis verskaf;
- (c) geleenthede vir die opleiding van die personeel van die tehuis verskaf;
- (d) beginsels van gesonde finansiële bestuur toepas en kwartaallikse finansiële verslae aan die inwoners en personeel van die tehuis voorlê;
- (e) die aktiwiteite by die tehuis monitor ten einde vinnig met enige gevalle van mishandeling van die inwoners van die tehuis te handel en stappe doen om sodanige gevalle aan die toepaslike gesag te rapporteer;
- (f) die bestuurskomitee raadpleeg by die aanstelling van die personeel van die tehuis;
- (g) klagteprosedures instel vir die inwoners en personeel van die tehuis en persone wat ten behoeve van enige sodanige inwoner 'n klag wil lê; en
- (h) enigiets anders doen wat nodig of dienstig is vir die doeltreffende werking van die tehuis.

Toegang tot ouetehuisse

- 3C.** (1) Wanneer besluit word of 'n persoon tot 'n ouetehuis toegelaat word of nie, mag geen persoon direk of indirek teen eersgenoemde persoon onbillik diskrimineer nie.
- (2) Iemand wat die bepalings van subartikel (1) oortree, is aan 'n misdryf skuldig en, ondanks artikel 19, by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar, of met daardie boete sowel as daardie gevangenisstraf.
- (3) Die behoefte dat 'n ouetehuis in die breë die rassamesstelling van Suid-Afrika weerspieël, moet oorweeg word wanneer die geskiktheid vir toelating tot daardie tehuis bepaal word.
- (4) Indien 'n persoon toelating tot 'n ouetehuis geweier word, moet die bestuurder van daardie tehuis, op versoek van daardie persoon, redes vir sodanige weiering verstrek."

40 Herroeping van artikel 5 van Wet 81 van 1967, soos gewysig deur artikels 4 en 11 van Wet 44 van 1994

4. Artikel 5 van die Hoofwet word hierby herroep.

Invoeging van artikel 5A in Wet 81 van 1967

5. Die volgende artikel word hierby voor artikel 6 van die Hoofwet ingevoeg:

45 "Ondersoek deur aangewese liggaam na aangeleenthede betreffende bejaarde persone

- 5A.** (1) Die Minister kan 'n aangewese liggaam aanstel om ondersoek te doen na en enige aangeleentheid te oorweeg betreffende die regte van 'n bejaarde persoon.
- (2) Die aangewese liggaam aldus aangestel kan vir die doeleindes van daardie ondersoek—
- (a) (i) iemand wat na die oordeel van die aangewese liggaam in staat is om inligting te verstrek wat van wesenlike belang vir die ondersoek is; of
- (ii) iemand wat die aangewese liggaam rede het om te vermoed enige boek, dokument of oorkonde wat op die onderwerp van die

- possession or custody or under his or her control, any book, document or record relating to the subject of the enquiry, to appear at a time and place specified in the summons to be examined or to produce that book, document or record and may retain for examination any book, document or record so produced;
- (b) through the person presiding at the enquiry—
- (i) administer an oath to, or accept an affirmation from, any person summoned in terms of paragraph (a); and
 - (ii) examine or cause him or her to be examined by a person designated by the designated body to lead the evidence at the enquiry and instruct him or her to produce any book, document or record in his or her possession or custody or under his or her control.
- (3) A summons referred to in subsection (2) shall contain the information and shall be served in the manner, prescribed by regulation in terms of section 20A, and section 51(2) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall *mutatis mutandis* apply in respect of any person on whom that summons has been so served.
- (4) The law relating to privilege, as applicable to a witness summoned to give evidence or to produce a book, document or record in any civil proceedings, shall *mutatis mutandis* apply in respect of the examination of or the production of any book, document or record by any person summoned in terms of this section.
- (5) If the record of any criminal or civil proceedings is relevant in any enquiry in terms of this section, that record shall on the mere production thereof be *prima facie* proof of the facts stated therein.
- (6) If the conduct which forms the subject of any enquiry referred to in subsection (1), forms or is likely to form the subject of any criminal or civil proceedings, the designated body may postpone the enquiry until those proceedings have been concluded.
- (7) Any person against whom an enquiry is instituted in terms of this Act, shall be entitled, in person or through his or her legal representative, to answer the charge and to be heard in his or her defence.
- (8)(a) The designated body may, generally or in any specified case, appoint a committee in the manner prescribed by regulation in terms of section 20A to exercise and perform all powers and duties of the designated body conferred or imposed by this Act.
- (b) If the designated body so appoints a committee, those powers and duties are regarded to have been delegated to the committee.
- (9) Any person who, having been duly sworn or having made an affirmation, tenders false evidence at an enquiry held in terms of this section, knowing that evidence to be false, shall be guilty of an offence and shall, notwithstanding section 19, be liable on conviction to the penalties which may be imposed for the offence of perjury."

Amendment of section 6 of Act 81 of 1967, as amended by section 3 of Act 46 of 1976 and section 5 of Act 44 of 1994

6. Section 6 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections:
- "(1) Subject to the provisions of this section, [a magistrate] the designated body before whom any person is brought in terms of section [5] 5A, shall enquire into the correctness or otherwise of the allegations contained in the summons in question.
- (2) The [Public Prosecutor or any other person designated by the magistrate shall appear at the enquiry, and] designated body may call witnesses and cross-examine any other witnesses giving evidence at the enquiry.";
- (b) by the substitution of subsection (5) of the following subsection:

ondersoek betrekking het, in sy of haar besit of bewaring of onder sy of haar beheer het,

op die wyse voorgeskryf by regulasie ingevolge artikel 20A dagvaar om op 'n tyd en plek in die dagvaarding vermeld, te verskyn om ondervra te word of om daardie boek, dokument of oorkonde oor te lê en kan daardie boek, dokument of oorkonde wat aldus oorgelê is, vir ondersoek-behou;

(b) deur die persoon wat by die ondersoek voorsit—

(i) iemand wat ingevolge paragraaf (a) gedagvaar is, 'n eed oplê of van hom of haar 'n bevestiging aanneem; en

(ii) hom of haar ondervra of laat ondervra deur iemand wat deur die aangewese liggaam aangewys is om die getuienis by die ondersoek te lei, en hom of haar aansê om enige boek, dokument of oorkonde in sy of haar besit of bewaring of onder sy of haar beheer oor te lê.

(3) 'n Dagvaarding bedoel in subartikel (2) moet die inligting bevat en word op die wyse beteken, wat by regulasie ingevolge artikel 20A voorgeskryf word, en artikel 51(2) van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), is *mutatis mutandis* van toepassing ten opsigte van iemand op wie daardie dagvaarding aldus beteken is.

(4) Die regsbepalings betreffende privilegie, soos van toepassing op 'n getuie wat gedagvaar is om in enige siviele verrigtinge getuienis af te lê of om 'n boek, dokument of oorkonde oor te lê, is *mutatis mutandis* van toepassing ten opsigte van die ondervraging van of oorlegging van 'n boek, dokument of oorkonde deur iemand wat ingevolge hierdie artikel gedagvaar is.

(5) Indien die oorkonde van strafregtelike of siviele verrigtinge by 'n ondersoek ingevolge hierdie artikel ter sake is, is daardie oorkonde by blote voorlegging daarvan *prima facie*-bewys van die feite daarin vermeld.

(6) Indien die gedrag wat die onderwerp van 'n in subartikel (1) bedoelde ondersoek uitmaak of waarskynlik sal uitmaak, kan die aangewese liggaam die ondersoek uitstel totdat daardie verrigtinge afgehandel is.

(7) Iemand teen wie 'n ondersoek ingevolge hierdie Wet ingestel word, is geregtig om, óf persoonlik óf deur sy of haar regsvertegenwoordiger, op die beskuldiging te antwoord en sy of haar verdediging aan te voer.

(8)(a) Die aangewese liggaam kan, in die algemeen of in 'n bepaalde geval, 'n komitee op die wyse, voorgeskryf by regulasie ingevolge artikel 20A, aanstel om alle bevoegdhede en pligte van die aangewese liggaam verleen of opgelê by hierdie Wet uit te oefen en te verrig.

(b) Indien die aangewese liggaam 'n komitee aldus aanstel, word daardie bevoegdhede en pligte geag aan die komitee gedelegeer te gewees het.

(9) Iemand wat, nadat hy of sy behoorlik beëdig is of 'n bevestiging gedoen het, by 'n ondersoek wat ingevolge hierdie artikel gehou word valse getuienis aflê met die wete dat daardie getuienis vals is, is aan 'n misdryf skuldig en, ondanks artikel 19, by skuldigbevinding strafbaar met die strawwe wat vir die misdryf van meened opgelê kan word.”.

Wysiging van artikel 6 van Wet 81 van 1967, soos gewysig deur artikel 3 van Wet 46 van 1976 en artikel 5 van Wet 44 van 1994

6. Artikel 6 van die Hoofwet word hierby gewysig—

(a) deur subartikels (1) en (2) deur die volgende subartikels te vervang:

“(1) Behoudens die bepalinge van hierdie artikel, moet [**'n landdros**] die aangewese liggaam voor wie iemand ingevolge artikel [5] 5A gebring word, ondersoek instel na die juistheid al dan nie van die bewerings in die betrokke dagvaarding vervat.

(2) Die [**Staatsaanklaer of iemand anders deur die landdros vir die doel aangewys, verskyn by die ondersoek en**] aangewese liggaam kan getuies oproep en ander getuies wat by die ondersoek getuienis aflê onder kruisverhoor neem.”;

(b) deur subartikel (5) deur die volgende subartikel te vervang:

- “(5) The proceedings at the enquiry shall be conducted in an open court room or behind closed doors, as the **[magistrate]** designated body holding the enquiry may determine.”;
- (c) by the substitution for subsections (8), (9) and (10) of the following subsections:
- “(8) The **[report referred to in section 5(2) shall be submitted to the magistrate holding the enquiry, and he]** designated body may direct the district surgeon, or a psychiatrist or a clinical psychologist designated by **[him]** the body to examine the aged or debilitated person in question and to furnish **[him]** the body with a report on his or her findings.
- (9) The contents of a report **[submitted or]** furnished in terms of subsection (8) shall be disclosed to the person against whom the allegations were made, and if he or she so desires, he or she or his or her legal representative shall be given an opportunity of cross-examining the person who made the report, in relation to any matter arising out of the report, and of disproving any allegation occurring therein.
- (10) If after consideration of the evidence and of any report **[submitted or]** furnished in terms of subsection (8), it appears to the **[magistrate]** designated body that any allegation in the summons in question against the person in question is correct, **[he]** the body may—
- (a) prohibit that person from accommodating or caring for the aged or debilitated person in question except subject to such conditions and in accordance with such requirements as the **[magistrate]** designated body may impose; or
- (b) prohibit that person from accommodating or caring for any aged or debilitated person for such period, but not exceeding ten years, as may be determined by the **[magistrate]** designated body.”; and
- (d) by the substitution for subsection (11) of the following subsection:
- “(11) Any person who contravenes or fails to comply with any condition, requirement or prohibition imposed in terms of subsection (10) shall, subject to the provisions of subsection (12), be guilty of an offence and shall, notwithstanding section 19, be liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.”.

Insertion of sections 6A, 6B and 6C in Act 81 of 1967

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

Notification of abuse of aged persons

- 6A.** (1) Every registered dentist, medical practitioner, nurse or social worker or any other person who examines, attends to or deals with an aged person and suspects that that aged person—
- (a) has been abused; or
- (b) suffers from any injury,
- shall immediately notify the Director-General: Welfare or the relevant officer referred to in the definition of ‘Director-General’ in section 1.
- (2) On receipt of a notification in terms of subsection (1), the Director-General or the officer referred to in subsection (1)—
- (a) may issue a warrant, in the form and manner prescribed by regulation under section 20A, for the removal of the aged person concerned to a hospital or such other place as that Director-General or officer may determine;
- (b) shall arrange that the aged person receive the necessary treatment.
- (3) Any dentist, medical practitioner, nurse, social worker or other person shall not be liable in respect of any notification given in good faith in accordance with subsection (1).

“(5) Die verrigtings by die ondersoek geskied in ’n ope hofsaal of agter geslote deure, na gelang die [landdros] aangewese liggaam wat die ondersoek hou, bepaal.”;

(c) deur subartikels (8), (9) en (10) deur die volgende subartikels te vervang:

“(8) Die [verslag bedoel in artikel 5(2) moet voorgelê word aan die landdros wat die ondersoek hou, en hy] aangewese liggaam kan gelas dat die distriksgeneesheer of ’n psigiater of kliniese sielkundige deur [hom] die liggaam aangewys, die betrokke bejaarde of verswakte persoon moet ondersoek en aan [hom] die liggaam ’n verslag van sy of haar bevindings moet verstrek.

(9) Die inhoud van ’n verslag wat ingevolge subartikel (8) [voorgelê of] verstrek is, moet aan die persoon teen wie die bewerings gedoen is, meegedeel word, en indien hy of sy dit verlang, moet hy of sy of sy of haar regsvertegenwoordiger in die geleentheid gestel word om die persoon wat die verslag uitgebring het, onder kruisverhoor te neem met betrekking tot enige aangeleentheid wat uit die verslag voortspruit, en om enige bewering wat daarin voorkom, te weerlê.

(10) As dit, na oorweging van die getuienis en van ’n verslag wat ingevolge subartikel (8) [voorgelê of] verstrek is, aan die [landdros] aangewese liggaam blyk dat ’n bewering in die betrokke dagvaarding teen die betrokke persoon juis is, kan [hy] die liggaam—

(a) daardie persoon verbied om die betrokke bejaarde of verswakte persoon te huisves of te versorg behalwe op die voorwaardes en ooreenkomstig die vereistes wat die [landdros] aangewese liggaam stel; of

(b) daardie persoon verbied om enige bejaarde of verswakte persoon te huisves of te versorg vir dié tydperk, maar hoogstens tien jaar, wat die [landdros] aangewese liggaam bepaal.”; en

(d) deur subartikel (11) deur die volgende subartikel te vervang:

“(11) Iemand wat ’n voorwaarde, vereiste of verbod opgelê ingevolge subartikel (10) oortree of nie nakom nie, is, behoudens die bepalings van subartikel (12), aan ’n misdryf skuldig en, ondanks artikel 19, by skuldigbevinding strafbaar met ’n boete of met gevangenisstraf vir ’n tydperk van hoogstens vyf jaar, of met daardie boete sowel as daardie gevangenisstraf.”.

Invoeging van artikels 6A, 6B en 6C in Wet 81 van 1967

7. Die volgende artikels word hierby na artikel 6 van die Hoofwet ingevoeg:

“Kennisgewing van mishandeling van bejaarde persone

6A. (1) Elke geregistreerde tandarts, geneesheer, verpleegkundige of maatskaplike werker of enige ander persoon wat ’n bejaarde persoon ondersoek, verpleeg of aan hom of haar aandag gee en vermoed dat daardie bejaarde persoon—

(a) mishandel is; of

(b) aan beserings ly,

moet die Direkteur-generaal: Welsyn of die tersaaklike beampte bedoel in die omskrywing van ‘Direkteur-generaal’ in artikel 1, onmiddellik in kennis stel.

(2) By ontvangs van ’n kennisgewing ingevolge subartikel (1)—

(a) kan die Direkteur-generaal of die beampte bedoel in subartikel (1) ’n lasbrief, in die vorm en op die wyse voorgeskrif by regulasie ingevolge artikel 20A, uitreik vir die verwydering van die betrokke bejaarde persoon na ’n hospitaal of die ander plek wat die Direkteur-generaal of beampte bepaal;

(b) moet die Direkteur-generaal of beampte reëlins tref dat die bejaarde persoon die nodige behandeling ontvang.

(3) Enige tandarts, geneesheer, verpleegkundige of maatskaplike werker of ander persoon is nie aanspreeklik nie ten opsigte van ’n kennisgewing te goeder trou ooreenkomstig subartikel (1).

(4) Any dentist, medical practitioner, nurse, social worker or other person who fails to comply with subsection (1) shall be guilty of an offence and shall, notwithstanding section 19, be liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

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Prohibition of abuse of aged persons

6B. Any person who abuses an aged person shall be guilty of an offence and shall, notwithstanding section 19, be liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

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Keeping of register of abuse of aged persons

6C. The national Minister shall, in the manner prescribed by regulation under section 20A, cause to be kept a register of all notifications in terms of section 6A(1), together with a description of the circumstances regarding each notification.

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Report to national Minister by managers of homes for the aged

6D. (1) The manager of a home for the aged shall within 60 days after the end of the financial year of that home submit to the national Minister and the relevant competent authority referred to in the definition of 'Minister' in section 1 a report on—

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(a) compliance with—

(i) the service standards, prescribed by regulation in terms of section 20A; and

(ii) the measures, so prescribed, to prevent and combat abuse of aged persons,

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during that financial year; and

(b) the content of the service level agreements, so prescribed, concluded during that financial year.”

(2) When the manager of a home for the aged fails to submit a report in accordance with subsection (1), the national Minister may, in consultation with the competent authority referred to in subsection (1)—

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(a) give notice to that manager that if such report is not submitted within 90 days after the date of that notice, any subsidy paid in respect of that home in terms of section 2 will 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 subsidy after giving one month's notice of the intention to do so.

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Insertion of section 18A in Act 81 of 1967

8. The following section is hereby inserted after section 18 of the principal Act:

“Delegation by national Minister

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18A. (1) The national Minister may, on such conditions as he or she may determine, in writing delegate to the Director-General: Welfare or any other officer in the service of the State, any power conferred upon the national Minister by or in terms of this Act, except a power referred to in section 20A.

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(2) The national Minister shall not be divested of any power delegated by him or her, and may amend or set aside any decision taken by a person in the exercise of the power delegated to him or her.”

(4) Enige tandarts, geneesheer, verpleegkundige of maatskaplike werker of ander persoon wat nie aan subartikel (1) voldoen nie is aan 'n misdryf skuldig en, ondanks artikel 19, by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar, of met daardie boete sowel as daardie gevangenisstraf.

Verbod op mishandeling van bejaarde persone

6B. Iemand wat 'n bejaarde persoon mishandel, is aan 'n misdryf skuldig en, ondanks artikel 19, by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar, of met daardie boete sowel as daardie gevangenisstraf.

Hou van register van mishandeling van bejaarde persone

6C. Die nasionale Minister laat hou, op die wyse voorgeskryf by regulasie ingevolge artikel 20A, 'n register van alle kennisgewings ingevolge artikel 6A(1), tesame met 'n beskrywing van die omstandighede betreffende elke kennisgewing.

Verslagdoening aan nasionale Minister deur bestuurders van ouetehuse

6D. (1) Die bestuurder van 'n ouetehuis moet binne 60 dae na die einde van die boekjaar van daardie tehuis 'n verslag aan die nasionale Minister en die tersaaklike bevoegde gesag bedoel in die omskrywing van 'Minister' in artikel 1 voorlê oor—

(a) nakoming van—

(i) die diensstandaarde, voorgeskryf by regulasie ingevolge artikel 20A; en

(ii) die maatreëls, aldus voorgeskryf, om die mishandeling van bejaarde persone te bestry; gedurende daardie boekjaar; en

(b) die inhoud van diensstandaardooreenkomste, aldus voorgeskryf, wat gedurende daardie boekjaar aangegaan is.

(2) Wanneer die bestuurder van 'n ouetehuis versuim om 'n verslag ooreenkomstig subartikel (1) voor te lê, kan die nasionale Minister, in oorleg met die bevoegde gesag bedoel in subartikel (1)—

(a) kennis aan daardie bestuurder gee dat indien sodanige verslag nie binne 90 dae na die datum van daardie kennisgewing voorgelê word nie, enige subsidie wat ten opsigte van daardie tehuis ingevolge artikel 2 betaal word, onttrek gaan word; en

(b) indien sodanige verslag nie binne 90 dae na die datum van die kennisgewing ingevolge paragraaf (a) voorgelê word nie, sodanige subsidie onttrek na een maand kennis van die voorneme om dit te doen.”.

Invoeging van artikel 18A in Wet 81 van 1967

8. Die volgende artikel word hierby na artikel 18 van die Hoofwet ingevoeg:

“Delegering deur nasionale Minister

18A. (1) Die nasionale Minister kan, op die voorwaardes wat hy of sy bepaal, enige bevoegdheid by of ingevolge hierdie Wet aan hom of haar verleen, behalwe 'n bevoegdheid in artikel 20A bedoel, skriftelik aan die Direkteur-generaal: Welsyn of 'n ander beamppte in diens van die Staat deleger.

(2) Die nasionale Minister is nie ontdoen van enige bevoegdheid wat hy of sy gedelegeer het nie, en kan enige beslissing van 'n persoon wat geneem word in die uitoefening van 'n bevoegdheid aan hom of haar gedelegeer, wysig of herroep.”.

Insertion of section 20A in Act 81 of 1967

9. The following section is hereby inserted after section 20 of the principal Act:

“Regulations by national Minister

20A. (1) The national Minister may, subject to subsection (2), make regulations regarding—

(a) any matter which in terms of this Act is required or permitted to be prescribed by the national Minister;

(b) measures—

(i) to prevent, combat and deal with the abuse of aged persons;

(ii) to be taken to advance persons disadvantaged by unfair discrimination;

(iii) to promote the rights of residents of homes for the aged;

(c) the form and content of service level agreements between the residents and the management committee of a home for the aged;

(d) the minimum service standards for homes for the aged;

(e) the minimum norms and standards for the care of aged persons;

(f) criteria, and assessment procedures, for admission of persons to homes for the aged;

(g) the conditions of use of subsidies paid in terms of section 2;

(h) the form of, and manner in which, a warrant referred to in section 6A(2)(a) is to be issued;

(i) the keeping of a register of all notifications in terms of section 6A(1).

(2) Any regulation made in terms of subsection (1) shall be made after consultation with every competent authority referred to in the definition of ‘Minister’ in section 1.”

Short title and commencement

10. This Act shall be called the Aged Persons Amendment Act, 1998, and shall come into operation on a date determined by the President by proclamation in the *Gazette*.

Invoeging van artikel 20A in Wet 81 van 1967

9. Die volgende artikel word hierby na artikel 20 van die Hoofwet ingevoeg:

“Regulasies deur nasionale Minister

20A. (1) Die nasionale Minister kan, behoudens subartikel (2), regulasies uitvaardig betreffende—

(a) enige aangeleentheid wat ingevolge hierdie Wet deur die nasionale Minister voorgeskryf moet of kan word;

(b) maatreëls—

(i) om die mishandeling van bejaarde persone te voorkom, te bestry en daarmee te handel;

(ii) wat getref moet word om persone wat benadeel is deur onbillike diskriminasie, te bevoordeel;

(iii) om die regte van inwoners van ouetehuse te bevorder;

(c) die vorm en inhoud van diensstandaardooreenkomste tussen die inwoners en die bestuurskomitee van 'n ouetehuis;

(d) die minimum diensstandaarde vir ouetehuse;

(e) die minimum norme en standaarde vir die sorg van bejaardes;

(f) kriteria en beoordelingsprosedures vir die toelating van persone tot ouetehuse.

(g) die voorwaardes vir die gebruik van subsidies wat ingevolge artikel 2 betaal word;

(h) die vorm van, en wyse waarop, 'n lasbrief bedoel in artikel 6A(2)(a) uitgereik moet word;

(i) die hou van 'n register van alle kennisgewings ingevolge artikel 6A(1).

(2) Enige regulasie wat ingevolge subartikel (1) uitgevaardig word, moet na oorleg met elke bevoegde gesag bedoel in die omskrywing van 'Minister' in artikel 1 uitgevaardig word.”

Kort titel en inwerkingtreding

30 **10.** Hierdie Wet heet die Wysigingswet op Bejaarde Persone, 1998, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

