



Submission

to the

Department of Social Development

on the

Draft Amendments to the Older Persons Act 13 of 2006

30 June 2016

“The SA Human Rights Commission recognises that older persons constitute a vulnerable group with unique and differing needs and that they therefore deserve focused attention in order to address and resolve the rights violations currently being experienced by older persons”.

SAHRC, June 2015

1. Introduction

The SACBC Parliamentary Liaison Office welcomes this opportunity to engage with the Department on these important amendments. We engaged with Parliament during the hearings pertaining to the principal Act, and we have followed the implementation of the Older Person’s Act with interest since then.

The rights of the older person are an especial concern of the Church and an important area of focus for this office. The Vatican’s Council for the Laity supported the United Nations resolution that declared 1999 the *International Year of Older Persons* as well as the chosen theme, “Towards a Society for All Ages”. As Kofi Annan, UN Secretary General, declared in his message for the 1998 World Day of Older Persons, “a society for all ages is a society which, far from caricaturing older people as retired and infirm, considers them on the contrary as agents and beneficiaries of development”.¹ This resonates with the Church’s own teaching which, far from considering the “question as a mere problem of assistance and charity, has always reaffirmed the primary importance of recognising and fostering the intrinsic value of persons of all ages. She has continued to remind everyone of the need to ensure that the human and spiritual riches, the reserves of experience and wisdom accumulated in the course of entire lives, be not lost”.² Accordingly a ‘society for all ages’ is a multigenerational society committed to creating the conditions of life able to fulfil the great potential that older people still have.

While the principal Act sought to give effect to the rights of the older person contained in the Constitution, there have been difficulties in its implementation.³ The drafting, and particularly the definitions, have been criticized as clumsy and confusing.⁴

2. Clause 1: Amendment of s 1 of the Act

We welcome the inclusion of (a) ‘assisted living facilities’ and (f) ‘independent living facilities’ in the definitions, as such facilities were not included in the principal Act. Such residential facilities are increasingly common and provide an opportunity for older persons who wish to live independently, but with support available should it be required.

Definition (m) ‘residential care facility’ is particularly confusing and it is unclear how it differs from ‘frail care facility’.

The definition of ‘care’ in clause 1(b) has been expanded to include spiritual care. This resonates with the Catholic Church as one of the works of mercy is to visit the sick and comfort those reaching the end of their lives. The recognition of the importance of the spiritual dimension in the care and comfort of older persons is a holistic and comforting approach.

The definition of ‘care-giver’ is expanded considerably and this is to be welcomed.

3. Clause 2: Amendment of s 2 of the Act

(b) Recognise, maintain and protect the rights of older persons [;] in line with any laws and national policies on vulnerability, ageing, disability and families.

The expansion of (b) recognises that the Older Persons Act intersects with other legislation and policies regarding the vulnerable, and that these should not be overlooked. They include the Domestic Violence Act; the Sexual Offences Act; the Police Act; the Health Professions Act; the Allied Health Professions Act; the Nursing Act, as well the White Paper on Families. The focus on families is to be welcomed. Families need to be made aware of special needs that older persons may have and what alternative residential arrangements can be made, should the need arise. Families should also have access to counselling and support. Support groups for families for those with particular conditions such as Alzheimer's should be encouraged and facilitated.

(e) Prevent and combat the abuse of older persons

The inclusion of prevention is welcome, but there is a need to spell out what efforts to prevent the abuse of older persons are envisaged. These could include public education, setting out what constitutes abuse of older persons, and referring to the penalties provided for in section 33, should these rights be violated.

4. Clause 3: Amendment of s 3 of the Act

(a) "(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, coordinated and uniform manner."

An *intersectoral* approach would constitute a best practice model but such legislation is the most difficult to implement.⁵ This is of grave concern in matters that affect the most vulnerable members of our society. The collaboration and co-operation of the Treasury as well as the Departments of Health and Social Development is essential, and this should be taken into account in the drawing up of budgets.

(b) "(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."

While the inclusion of 'stakeholders' does indicate a willingness to engage with NGOs, CSOs and FBOs that provide many services to older persons, it is important to emphasise that the present economic climate is challenging the capacity of such organizations. The NGO sector cannot absorb older persons in need without funding from the Department and cannot be expected to do so. The tragedy of 'Life Esidimeni' is a sad testament to such an approach. Creating innovative collaborations should be explored.

(d) The inclusion of "(4) There must be an inter-departmental structure to integrate, co-ordinate and monitor the effective implementation of this Act as prescribed; and (5) The Offices of the Premier must facilitate and support the co-ordination and integration of the provincial plans and the implementation of this Act as prescribed" is welcome. However, strict oversight is necessary. The 'Life Esidimeni' scandal brought the lack of proper oversight into sharp relief and resulted in discussion as to whether or not provincial departments had the necessary competence to conduct oversight or whether the national Department of Health should take over this role.

5. Clause 4: Amendment of s 4 of the Act

"(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."

The inclusion of 'stakeholders' emphasises the importance of consultation and recognizes the contribution, experience and knowledge of other stakeholders. This should also include the research conducted by academic institutions; those working in the NGO sector and other health care practitioners.⁶ The care of the older person demands a holistic approach.

6. Clause 6: Amendment of s 11 of the Act

The addition of 'non-communicable chronic disease' to the list of conditions in sub-section 2(c) is welcomed. However, sub-section (2) is a lengthy one containing a detailed list of conditions, and it is sometimes difficult to distinguish between community based programmes and home based care. Greater clarity regarding the distinction between them would be welcome.

7. Clause 7: Amendment of s 13 of the Act

The regulation of community-based care and the registration of facilities suitable for the care of older persons is to be welcomed as it makes it more difficult for unregistered facilities to operate. There is much anecdotal evidence of such facilities being closed down only to reopen at another address.

We also support the expansion of the requirements relating to the stopping of services, as contained in clause 7(c) of the draft Bill.

8. Clause 11: Amendment of s 25 of the Act

"(i) has been or is being maltreated, abused, neglected or degraded by a caregiver or family member; or (j) has been accused of practicing witchcraft or blamed by the community for inexplicable events." These inclusions are to be welcomed. The belief that elderly women may be witches persists and is gravely concerning.⁷

9. Clause 12: Insertion of s 25A into the Act

We support the proposed insertion of s 25A **"Removal of older person to temporary safe care without court order"** in that it enables the immediate removal of an older person in an abusive situation, and in so doing provides for extra layer of protection.

10. Clause 16: Amendment of s 31 of the Act

Provision for similar registers of persons convicted of abuse are included in the Children's Act and in the Sexual Offences Act. These registers have proved difficult to establish and maintain and have been of limited use. It is questionable how much protection the register has actually afforded to older persons. If such registers are to be part of protective strategies to protect the vulnerable measures

must be put in place to ensure that they are properly maintained and updated, and that the information they contain is made use of by the relevant stakeholders.

11. Clause 17: Substitution of s 33

We note that this section has been expanded considerably and that the amendments provide measures to effect the closure and deregistration of non-compliant facilities. However, it is imperative to have plans in place for residents of such facilities to be transferred to other places of residence which are strictly compliant. Families should be consulted and informed throughout the whole relocation process. Every effort must be made to make the transition from one facility to another as easy as possible. A provision to this effect could be added after the proposed s 33(3)(d).

12. Conclusion

In general, we welcome and support the amendments. They give greater substance to the principal Act and address many of its shortcomings. The challenge is in the implementation. Older persons deserve to live out their twilight years in comfort, care and security, and for far too many in our country this is sadly not the case.

For further information please contact:

Ms Lois Law
Researcher
Catholic Parliamentary Liaison Office
lois@cplo.org.za

¹ Speech by Kofi Annan, UN Secretary General, declaring 1998 World Day of Older Persons.

² http://www.vatican.va/roman_curia/pontifical_councils/laity/documents/rc_pc_laity_doc_05021999_older-people_en.html

³ The Regulations and to the Older Persons Act of 2006 were only finalized in 2010, which delayed implementation.

⁴ 'Puzzling legislation: Scrap or re-write the Older Persons Act', Neels Coertse 'De Rebus' October 2013.

⁵ Such an 'intersectoral' approach has been one of the factors militating against the successful implementation of the Children's Act 38 of 2005.

⁶ These would include physiotherapists, occupational therapists, dieticians, podiatrists, opticians. All of these contribute to the well-being of older persons.

⁷ <http://www.enca.com/south-africa/elderly-women-terrorised-in-escape-village-over-witchcraft-claims>