

REPUBLIC OF SOUTH AFRICA

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**PREVENTION OF AND  
TREATMENT FOR SUBSTANCE  
ABUSE BILL**

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill published in Government Gazette No. 30814 of 25 February 2008)  
(The English text is the official text of the Bill)*

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(MINISTER FOR SOCIAL DEVELOPMENT)

[B —2008]

ISBN 978-1-77037-

No. of copies printed ..... 1 800

# BILL

**To create mechanisms for the combating of substance abuse through prevention, early intervention, treatment and re-integration programmes; to provide for the registration and establishment of treatment centres and halfway houses; to provide for the committal of persons to and from treatment centres and for their treatment and training in such treatment centres; to provide for the establishment of the Central Drug Authority; and to provide for matters connected therewith.**

## PREAMBLE

**WHEREAS** the drug trade has increased globally in intensity and reach;

**AND WHEREAS** substance abuse in South Africa has increased rapidly and demands a comprehensive national response;

**AND WHEREAS** South Africa continues to combat substance abuse through a wide range of programmes in order to reduce supply, demand and harm caused by substances of abuse;

**AND WHEREAS** a uniform law to deal with the prevention of and treatment for substance abuse and the harm associated therewith, the rehabilitation of service users in the various institutions and the reintegration of service users in their communities is urgently required,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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### DEFINITIONS AND OBJECTS OF ACT

#### Definitions

1. In this Act, unless the context indicates otherwise—
  - “**aftercare**” means ongoing professional support to a person who has received treatment for substance abuse in order to enable him or her to maintain sobriety or abstinence, personal growth and to enhance self-reliance and proper social functioning; 35
  - “**Central Drug Authority**” means the Central Drug Authority, established by section 49;
  - “**child**” means a person under the age of 18 years; 40
  - “**child and youth care centre**” means a facility for the provision of residential care to a child outside the child’s family environment;
  - “**Children’s Act**” means the Children’s Act, 2005 (Act No. 38 of 2005);
  - “**community-based services**” means services provided to people who abuse or are dependent on or addicted to substances of abuse while remaining within their families and communities and to persons affected by substance abuse; 45
  - “**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
  - “**Department**” means the Department of Social Development in the national sphere of government; 50

**“Director-General”** means the head of the Department;  
**“halfway house”** means a public or private halfway house established in terms of section 14 or registered in terms of section 15;  
**“in-patient service”** refers to a 24-hour treatment service provided at a treatment centre; 5  
**“involuntary service user”** means a service user admitted to a treatment centre in terms of a court order;  
**“magistrate”** includes an additional magistrate and an assistant magistrate;  
**“management structure”**, in relation to any treatment centre and halfway house, means the management structure of such treatment centre or halfway house established in terms of section 24; 10  
**“Mental Health Care Act”** means the Mental Health Care Act, 2002 (Act No. 17 of 2002);  
**“mental health practitioner”**, for the purposes of this Act, means a psychiatrist or registered medical practitioner or a nurse, occupational therapist, psychologist or social worker who has been trained to provide mental health care, treatment and rehabilitation services; 15  
**“Minister”** means the member of Cabinet responsible for social development;  
**“National Drug Master Plan”** means the national drug strategy that sets out measures to control and manage the supply of and demand for drugs in the Republic as approved by Cabinet; 20  
**“out-patient service”** means a service provided to persons who abuses substances of abuse and to persons affected by substance abuse and which is managed for the purposes of providing a holistic treatment service, but does not include overnight accommodation; 25  
**“persons affected by substance abuse”** means any member of a family or community not dependent on substances of abuse but who requires services related to substance abuse;  
**“police official”** means a member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995); 30  
**“prescribed”** means prescribed by regulation;  
**“private treatment centre”** means a treatment centre privately established and owned by persons or institutions for the purposes of providing 24-hour treatment and rehabilitation services to service users;  
**“public treatment centre”** means a treatment centre established by the Minister in terms of section 11; 35  
**“regulation”** means a regulation made in terms of section 61;  
**“rehabilitation”** means a process by which a service user is enabled to reach and maintain his or her optimal physical, sensory, intellectual, psychiatric or social functional levels, and includes measures to restore functions or compensate for the loss or absence of a function, but does not include medical care; 40  
**“service user”** means a person who is admitted to a treatment centre in terms of section 28 or 29;  
**“social auxiliary worker”** means a person registered and authorised in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978), to practise social auxiliary work; 45  
**“social worker”** means any person registered as a social worker under the Social Service Professions Act, 1978 (Act No. 110 of 1978);  
**“substance abuse”** means the sustained or sporadic excessive use of substances of abuse; 50  
**“substances of abuse”** means chemical, psychoactive substances that are prone to be abused, including alcohol, over the counter drugs, prescription drugs and substances defined in the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), or prescribed by the Minister after consultation with the Medicines Control Council established by section 2 of the Medicine and Related Substance Control Act, 1965 (Act No. 101 of 1965), and “drugs” in the context of this Act has a similar meaning; 55  
**“this Act”** includes any regulation;  
**“treatment centre”** means a public treatment centre or a private treatment centre;  
**“voluntary service user”** means any person admitted to a treatment centre in terms of section 28; 60  
**“volunteer”** means any person appointed in terms of section 23;

“**vulnerable persons**” means children, older persons and service users recovering from substance abuse.

### **Objects of Act**

2. The objects of this Act are to—
- (a) combat substance abuse in a coordinated manner; 5
  - (b) create conditions for the registration of all programmes, including those in treatment centres and halfway houses;
  - (c) create conditions and procedures for the admission and release of persons to or from treatment centres;
  - (d) provide vulnerable persons with early intervention, treatment and reintegration programmes; and 10
  - (e) establish a Central Drug Authority to monitor and oversee the implementation of the National Drug Master Plan.

## **CHAPTER 2**

### **COMBATING OF SUBSTANCE ABUSE** 15

#### **Programmes for combating substance abuse**

3. (1) The Minister may develop a framework for programmes to combat substance abuse.
- (2) Programmes for the combating of substance abuse must include—
- (a) prevention programmes that provide for— 20
    - (i) measures aimed at the prevention of substance abuse, including the education, by way of information and communication, of members of the public about the risks associated with substance abuse and ways in which to avoid abuse; and
    - (ii) proactive measures targeting individuals, families and communities that are at risk to avoid the use of substances of abuse and to prevent persons from moving into higher levels of addiction; 25
  - (b) early intervention programmes that provide for the early identification of substance abuse;
  - (c) treatment programmes, including the provision of counselling to the families of such persons; 30
  - (d) aftercare and reintegration programmes for the integration of people who abuse substances of abuse into their communities after treatment; and
  - (e) the promotion of a collaborative approach among government departments involved in the combating of substance abuse. 35
- (3) The Minister must prescribe conditions for the training and accreditation of persons involved with programmes for substance abuse.
- (4) The accreditation referred to in subsection (3) must be provided in terms of the South African Qualifications Authority Act, 1995 ( Act No. 58 of 1995).

#### **Development of and compliance with minimum norms and standards** 40

4. (1) The Minister may, from time to time, by notice in the *Gazette*, prescribe minimum norms and standards—
- (a) in order to delineate the levels of prevention and early intervention services to be provided to service users and persons affected by substance abuse;
  - (b) relating to the protection of children in treatment centres; 45
  - (c) for prevention programmes;
  - (d) for community-based services;
  - (e) for the establishment, management, monitoring and assessment of halfway houses and treatment centres;
  - (f) for the monitoring and assessment of treatment centres and halfway houses; 50
  - (g) for the registration, monitoring and evaluation of out-patient services; and
  - (h) the monitoring and evaluation of reintegration programmes.

**Support for services delivered by third parties**

5. (1) The Minister may—
- (a) from funds appropriated by Parliament for that purpose, provide financial assistance to service providers that provide services in relation to substance abuse; 5
  - (b) for the purposes of paragraph (a), prioritise certain needs of and services for persons affected by substance abuse;
  - (c) in the prescribed manner, enter into contracts with service providers to ensure that the services contemplated in paragraph (b) are provided; and
  - (d) provide assistance to persons who establish substance abuse services. 10
- (2) The Minister must—
- (a) prescribe conditions for the receiving of financial assistance referred to in subsection (1)(a), including accounting and compliance measures;
  - (b) prescribe remedies for failure to comply with the conditions contemplated in paragraph (a); 15
  - (c) establish and maintain a register of all assets bought by service providers with Government funds; and
  - (d) prescribe conditions for the management of assets contemplated in paragraph (c). 15

**Guiding principles for provision of services** 20

6. All services rendered to persons who are dependent and addicted to substances of abuse and those who are affected by substance abuse, must be provided in an environment that—
- (a) recognises the social, cultural, economic and physical needs, as well as the age and gender requirements, of such persons; 25
  - (b) ensures access to information regarding the prevention of substance abuse;
  - (c) promotes the prevention of exploitation of such persons;
  - (d) promotes the respect and dignity of persons affected by substance abuse; and
  - (e) promotes participation of persons affected by substance abuse in decision-making processes regarding their needs and requirements. 30

**CHAPTER 3****PREVENTION OF SUBSTANCE ABUSE****Establishment of programmes for prevention of substance abuse**

7. (1) The Minister may, in consultation with any relevant Minister, establish programmes for the prevention of substance abuse. 35
- (2) The programmes contemplated in subsection (1) may include elements which—
- (a) address the values, perceptions, expectations and beliefs that a community associates with substances of abuse; and
  - (b) develop the personal and social skills of people, especially children, to increase their capacity to make informed and healthy choices. 40

**Purpose of providing prevention services and programmes**

8. (1) The purpose of prevention services and programmes is to prevent a person from using or continuing to use substances of abuse that may result in addiction.
- (2) Prevention services and programmes must focus on—
- (a) preserving the family structure of the persons affected by substance abuse and those who are dependent and addicted to substances of abuse; 45
  - (b) establishing appropriate interpersonal relationships within the family of the affected persons;
  - (c) promoting the well-being of the service user and the realisation of his or her full potential; 50
  - (d) links between substance abuse and HIV and AIDS;
  - (e) promoting the sustainability of State intervention;
  - (f) preventing the recurrence of problems in the family environment of the service user that may contribute to substance abuse;

- (g) promoting the diversion of a child using substances of abuse, away from the child and youth care system and the criminal justice system;
- (h) building resistance to substances of abuse; and
- (i) promoting healthy lifestyles.

#### **Provision of prevention and early intervention services by various stakeholders 5**

9. (1) The Minister must, in consultation with any relevant Minister or organ of state, prescribe the type of prevention and early intervention services and the manner in which such services must be provided in order to prevent substance abuse.

(2) Prevention and early intervention services provided by an organ of state, any organisation or any service provider only qualify for financial assistance in terms of section 5 if those services comply with the minimum norms and standards contemplated in section 4. 10

(3) Early intervention services by an organ of state, any organisation, any service provider focusing on preventing serious harm to a person using substances of abuse must be made available to such a person. 15

### **CHAPTER 4**

#### **COMMUNITY-BASED SERVICES**

##### **Establishment of community-based services**

10. (1) The Minister may, after consultation with any relevant Minister, establish community-based services which must provide for prevention programmes and early intervention and treatment services. 20

(2) Any person who wishes to render a community-based service, must in the prescribed manner apply to the Director-General for the registration of such service.

(3) The Minister must prescribe conditions for the registration of any service contemplated in subsection (1). 25

### **CHAPTER 5**

#### **CENTRE-BASED AND OUT-PATIENT SERVICES**

##### **Establishment and abolition of public treatment centre**

11. (1) The Minister must, from funds appropriated by Parliament for that purpose, establish, maintain and manage at least one public treatment centre in each province of the Republic for the reception, treatment and training of service users contemplated in sections 28 and 29 and service users who are transferred or admitted to such centres. 30

(2) Every public treatment centre established or deemed to be established under a law repealed by this Act, and which is in existence at the date of commencement of this Act, must, from that date, be regarded as being a treatment centre established under subsection (1). 35

(3) The Minister may, after giving three months' notice and providing reasons for his or her decision, abolish a public treatment centre.

##### **Purposes for which persons are admitted to treatment centres**

12. The service user of a public treatment centre must be admitted to such centre for the purposes of receiving or undergoing such treatment, including any training, and to perform such functions as may be prescribed. 40

##### **Registration and cancellation of registration of private treatment centre**

13. (1) No person may establish or manage any private treatment centre maintained for the accommodation and care of persons who are dependent on substances of abuse or in which such persons receive mainly physical, psychological, spiritual or social treatment unless such treatment centre is registered under this section. 45



(2) Any person who desires to establish or manage a private treatment centre contemplated in subsection (1) must apply in the prescribed manner to the Director-General for the registration of such centre.

(3) The Director-General may—

(a) after consideration of an application contemplated in subsection (2) and such other information as he or she may obtain; and 5

(b) if he or she is satisfied that such treatment centre is managed and conducted in such a way that—

(i) the reception, maintenance, treatment and training of service users and the powers conferred by this Act on the management of a private treatment centre, are entrusted to or conferred on the management of that treatment centre; and 10

(ii) it complies with the prescribed requirements,

grant the application for registration and issue a registration certificate.

(4) The Director-General may grant a conditional registration on such conditions as he or she may deem fit for a maximum period of 12 months and must specify those conditions to the applicant in the prescribed manner. 15

(5) The conditional registration contemplated in subsection (4) may only be extended for a maximum period of 12 months under the same conditions.

(6) The Director-General may at any time after one month's notice of his or her intention to do so, and after consideration of any representation received by him or her during such month, amend or cancel a registration certificate issued in terms of subsection (3) or (4). 20

(7) A registration certificate granted by the Director-General is valid for a period of five years and the owner or manager of a private treatment centre may reapply for a further period of five years within six months of the expiry date. 25

(8) The Director-General must refuse an application for registration in terms of subsection (2) or (7), if after consideration of such application he or she is not satisfied that such private treatment centre is or will be managed or conducted in the manner contemplated in subsection (3). 30

(9) The Director-General may, after giving three months' notice of his or her intention to do so and providing reasons therefor, and after consideration of any written representations received by him or her during such period, amend or cancel a registration certificate issued in terms of subsection (3) or (4).

(10) If an application for a registration certificate is refused or if such certificate is cancelled, the owner or manager concerned must take reasonable steps to ensure that all service users accommodated in the private treatment centre concerned are accommodated in another registered facility or with persons who, in the opinion of a social worker, are fit and proper persons for accommodating such service users. 35

(11) The amendment or cancellation of a registration certificate contemplated in this section must be effected by notice in writing addressed to the holder thereof, and comes into operation on a date specified in the notice, which date may not be earlier than three months after the date of the notice, unless the Director-General and the holder of the registration certificate have agreed otherwise. 40

(12) A registration certificate issued under subsection (3) or (4) is not transferable. 45

(13) (a) The holder of a registration certificate issued under subsection (3) or (4) may, after three months' written notice, surrender such registration certificate to the Director-General.

(b) Whenever a registration certificate is cancelled under subsection (6) or surrendered under paragraph (a), the powers and duties conferred or imposed under this Act on the holder thereof must devolve upon the Director-General. 50

(14) A private treatment centre registered under a law repealed by this Act, and which is in existence at the date of commencement of this Act, must from such date be regarded as being a treatment centre registered under subsection (3).

(15) A person who contravenes or fails to comply with any provision of this section, or any condition imposed thereunder, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. 55

### Establishment of public halfway house

- 14.** (1) The Minister may, from funds appropriated by Parliament for that purpose, establish, maintain and manage halfway houses to provide homes for—
- (a) service users who, in terms of this Act, have been discharged from a public or private treatment centre or have been granted leave of absence from any such centre; 5
  - (b) service users who have been discharged from a treatment centre;
  - (c) service users referred to in sections 28 and 29;
  - (d) persons referred to in sections 31 and 33; and
  - (e) persons who are receiving or undergoing treatment for dependency on substances of abuse in a facility of a provincial administration or who have received or undergone such treatment in any facility approved by the Director-General. 10
- (2) A service user may be admitted to a halfway house for a period not exceeding 12 months' which may be extended for a further period not exceeding six months if there is a need for such extension, and upon application by the manager of the facility to the Director-General and upon furnishing reasons for such extension. 15
- (3) The manager of a halfway house must submit to the Minister programmes established by the manager regarding—
- (a) relapse prevention in respect of substance abuse; 20
  - (b) the dissemination of information to the community about the dangers of substance abuse;
  - (c) the education of and dissemination of information to children, families and communities about the dangers of substance abuse;
  - (d) skills development for service users and their re-integration into society; and 25
  - (e) the dissemination of information to the community and service users about the dangers of substance abuse, including links between substance abuse, HIV and AIDS.
- (4) A halfway house established or deemed to have been established under a law repealed by this Act, and which is in existence and complies with the prescribed minimum norms and standards at the date of commencement of this Act, must from such date be regarded as being a halfway house established under this section. 30

### Registration of private halfway house

- 15.** (1) No person may establish or manage a private halfway house or other place maintained mainly for the accommodation of persons contemplated in section 14(1) unless such halfway house or place is registered under this section or unless it is a halfway house or place maintained by the State. 35
- (2) Any person who desires to establish or manage a private halfway house contemplated in subsection (1) must apply in the prescribed manner to the Director-General for the registration of such halfway house. 40
- (3) The Director-General may—
- (a) after consideration of an application contemplated in subsection (2) and such other information as he or she may obtain; and
  - (b) if he or she is satisfied that such private halfway house is managed and conducted in such a way that— 45
    - (i) the reception, maintenance, rehabilitation, professional support and training of service users are entrusted to or conferred on the management of that private halfway house; and
    - (ii) it complies with the prescribed requirements;
- grant the application for registration and issue a registration certificate. 50
- (4) The Director-General may grant a conditional registration on such conditions as he or she may deem fit for a maximum period of 12 months and must specify those conditions to the applicant in the prescribed manner.
- (5) The conditional registration contemplated in subsection (4) may be extended for a maximum period of 12 months under the same conditions. 55
- (6) The Director-General may at any time after one month's notice of his or her intention to do so, and after consideration of any representation received by him or her during such month, amend or cancel a registration certificate issued in terms of subsection (3) or (4).

(7) The Director-General may, after three months' notice of his or her intention to do so and providing reasons therefor, and after consideration of any written representations received by him or her during such period, amend or cancel a registration certificate issued in terms of subsection (3) or (4).

(8) The amendment or cancellation of a registration certificate contemplated in this section must be effected by notice in writing to the holder thereof, and comes into operation on a date specified in the notice, which date may not be earlier than three months after the date of the notice, unless the Director-General and the holder of the registration certificate have agreed otherwise.

(9) The Director-General must refuse the application in terms of subsection (2), if after consideration of such application he or she is not satisfied that such private halfway house is or will be managed or conducted in the manner contemplated in subsection (3).

(10) A registration certificate issued under subsection (3) or (4) is not transferable.

(11) The holder of a registration certificate issued under subsection (3) or (4) may, after three months' written notice, surrender such registration certificate to the Director-General.

(12) The manager of a private halfway house must submit to the Director-General programmes established by it regarding its activities for prevention, treatment, rehabilitation, training and reintegration of persons contemplated in section 14(1).

(13) A service user may be accommodated in a private halfway house for a period not exceeding 12 months, which period may, if there is a need for an extension of the period of accommodation, be extended for a further period not exceeding 12 months and if the manager concerned has furnished reasons for such extension to the Director-General.

(14) A private halfway house registered under a law repealed by this Act, and which is in existence and complies with the prescribed minimum norms and standards at the date of commencement of this Act, must from such date be regarded as being a private halfway house registered under subsection (3).

(15) Any person who contravenes or fails to comply with any provision of this section, or any condition imposed thereunder, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

#### **Compliance with conditions for registration of private treatment centre and private halfway house**

**16.** (1) If there is reason to believe that any of the conditions contemplated in section 13(4) or 15(4) have not been complied with, the Minister may implement measures to facilitate compliance with those conditions.

(2) The manager of a private treatment centre or private halfway house must report to the Minister any circumstance which may result in his or her inability to comply with any condition contemplated in section 13(4) or 15(4).

(3) If the registration of a private treatment centre or private halfway house has been cancelled in terms of section 13(9) or 15(7), or if the owner or management of a private treatment centre or private halfway house wishes to discontinue his or her service, the owner or management must—

- (a) prior to any decision to discontinue the relevant service, consult with the Minister on the matter;
- (b) furnish the Minister with a full report on the accommodation of the service users affected by the decision; and
- (c) hand over to the Department all assets bought with government funds.

(4) Any person who fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

(5) A person convicted of an offence in terms of this section, may not manage or operate a private treatment centre and halfway house.

#### **Monitoring and assessment of treatment centre and halfway house**

**17.** (1) A monitoring and assessment team consisting of a social worker, professional nurse or any other person authorised thereto by the Director-General may, and must if so directed by the Minister, enter any private or public treatment centre or private or public halfway house and assess and monitor compliance with any prescribed requirements and applicable minimum norms and standards in relation to—

- (a) the records and documents of such centre or house;
- (b) any service users admitted or accommodated in such centre or house; and
- (c) the programmes provided by such centre or house.

(2) The monitoring and assessment team may interview any service user accommodated in such centre or house and may cause such service user to be medically examined by a medical practitioner, psychologist, professional nurse or psychiatrist in a facility designated by the Director-General of the Department of Health for this purpose. 5

(3) The members of the monitoring and assessment team must be furnished with a certificate authorising such members to give effect to the provisions of subsection (1), signed by the Director-General, which must be produced at the request of any person affected by such monitoring and assessment. 10

(4) No notice of a visit to a treatment centre or halfway house is required if there is reason to believe that—

- (a) the life of a service user in the treatment centre or halfway house is threatened or in danger; or 15
- (b) the treatment centre or halfway house is managed in a way that constitutes a danger or threat to the service users accommodated in such centre or house.

(5) Any person who—

- (a) obstructs or hinders the monitoring and assessment team or any other official in the exercise of any power conferred upon it in terms of this section; 20
- (b) fails to produce any document or record required by the monitoring and assessment team, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

(6) The composition and duties of the monitoring and assessment team must be prescribed. 25

#### **Staff of public treatment centre and public halfway house**

**18.** (1) The Director-General may, subject to the laws governing the public service, appoint such staff as may be required for the proper management and control of a public treatment centre and public halfway house and must appoint a social worker, medical practitioner, psychiatrist, psychologist or nurse as manager of each public treatment centre or public halfway house. 30

(2) The powers and duties of staff appointed in terms of subsection (1) must be prescribed.

(3) (a) The manager contemplated in subsection (1) may be assisted by a social worker, medical practitioner, psychiatrist, clinical psychologist or a nurse, as the case may be. 35

(b) The manager must be assisted in the—

- (i) determination of treatment and training in respect of service users;
- (ii) treatment and training of service users. 40

(c) The assistance may be in respect of service users in general or may be in respect of service users in particular.

(d) A social worker, medical practitioner, psychiatrist, clinical psychologist or nurse contemplated in paragraph (a) may be attached to the public treatment centre or public halfway house in question or may be assigned to such treatment centre or halfway house by the Director-General. 45

#### **Conditions of service for volunteers**

**19.** The Director-General may appoint any person as a volunteer to exercise powers or to perform duties in accordance with a programme referred to in section 3 and may prescribe the conditions of service of such volunteers, including— 50

- (a) minimum qualifications; and
- (b) remuneration and compensation for expenses incurred.

#### **Death of service user in treatment centre or halfway house**

**20.** (1) In the event of the death of a service user in a treatment centre or halfway house, the manager of such centre or house must immediately report such death to a police official and to the Director-General. 55

(2) A manager who fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

#### **Establishment of out-patient services**

21. The Minister may establish out-patient services at any public treatment centre. 5

#### **Types of out-patient services**

22. The Minister may establish the following types of out-patient services:

- (a) Services consisting of prevention programmes, including programmes on education, training, information-sharing and campaigns;
- (b) services consisting of early intervention programmes, including programmes for the diversion of adults and children; and
- (c) holistic treatment services, including family programmes, treatment services, therapeutic intervention, aftercare and reintegration.

#### **Children addicted to substances of abuse**

23. Section 110 of the Children's Act applies with the changes required by the context in respect of children addicted to substances of abuse. 15

#### **Management structure of treatment centre and halfway house**

24. (1) A management structure must be established in accordance with the provisions of this section for each treatment centre and halfway house.

(2) The Minister must prescribe the— 20

- (a) composition of the structure, which must include representatives of the beneficiaries of the service, staff of the relevant treatment centre or half way house and members of the public;
- (b) election, appointment, qualification, terms of office and grounds for removal from office of members of the structure and the filling of vacancies; and 25
- (c) number of and procedure to be followed at meetings of a management structure.

(3) The management structure established in terms of subsection (1) must ensure that the treatment centre or halfway house—

- (a) provides a quality service; 30
- (b) provides opportunities for the training of staff;
- (c) applies principles of sound financial management;
- (d) if it is a treatment centre or a halfway house registered in terms of the Non Profit Organisation Act, 1997 (Act No. 71 of 1997), complies with section 18 of that Act; 35
- (e) if it is a company registered in terms Companies Act, 1973 (Act No 61 of 1973), complies with section 302 of that Act; and
- (f) functions effectively.

## **CHAPTER 6**

### **AFTERCARE AND REINTEGRATION SERVICES 40**

#### **Establishment of aftercare and reintegration programmes**

25. (1) The Minister may establish aftercare and reintegration programmes aimed at the successful reintegration of a service user into society, the workforce, family and community life.

(2) The programmes contemplated in subsection (1) must include elements that— 45

- (a) allow service users to interact with other service users, their families and communities;
- (b) promote the development of specific aftercare and relapse prevention programmes;
- (c) allow service users to share long term sobriety experiences; 50
- (d) promote group cohesion among service users;

- (e) enable service users to abstain from substance abuse;
- (f) are based on structured programmes;
- (g) must focus on successful reintegration of a service user into society, family and community life; and
- (h) promote the development of specific evidence-based HIV and Aids prevention programmes, with a particular focus on relapsing service users. 5

### **Norms and standards applicable**

26. Any person or organisation that intends to manage, or managing, any prevention, intervention, aftercare or reintegration programmes for substance abuse must comply with the applicable minimum norms and standards contemplated in section 4. 10

### **Support groups**

27. (1) Service users may establish support groups that focus on integrated ongoing support to service users in their recovery.
- (2) The purpose of the establishment of support groups is to—
- (a) provide a safe and substances of abuse-free group experience where service users can practice re-socialisation skills; 15
  - (b) facilitate access to persons who have recovered from dependency and addiction in substance of abuse, who can serve as role models for service users who are in the beginning or middle stages of the recovery process; and
  - (c) encourage service users to broaden their support system from persons referred to in paragraph (b). 20

## **CHAPTER 7**

### **ADMISSION, TRANSFER AND REFERRAL TO TREATMENT CENTRE**

#### **Admission of voluntary service user to treatment centre**

28. (1) An application for admission as a voluntary service user to a public or private treatment centre must be made in the prescribed manner by— 25
- (a) the voluntary service user or by any other person acting on behalf of the voluntary service user; or
  - (b) if the voluntary service user is a child, a parent or guardian of that child.
- (2) A person who submits himself or herself voluntarily to a public or private treatment centre for treatment and rehabilitation is entitled to appropriate treatment, rehabilitation and skills development services. 30
- (3) The Director-General of the Department of Health must provide detoxification services and health care requirements to service users.
- (4) The services and requirements contemplated in subsection (3) must be provided in health care facilities designated by the Director-General of the Department of Health for those purposes. 35
- (5) (a) An application contemplated in subsection (1) must be accompanied by a report from a social worker regarding the applicant's social circumstances, including any medical or psychiatric report that the manager of the treatment centre may consider necessary. 40
- (b) If a social worker is not available at the time of admission, such report must be submitted within seven days after admission.

#### **Admission of involuntary service user to treatment centre**

29. (1) An involuntary service user may not be provided with treatment, rehabilitation and training at a public or private treatment centre unless a sworn statement is submitted to a public prosecutor by a social worker, community leader or person closely associated with such a person, alleging that the involuntary service user is within the area of jurisdiction of the magistrate's court to which such prosecutor is attached and is a person who is dependent on substances of abuse and— 50
- (a) is a danger to himself or herself or to the immediate environment or cause a major public health risk;

(b) in any other manner does harm to his or her own welfare or the welfare of his or her family and others; or

(c) commits a criminal act to sustain his or her dependence on substances of abuse.

(2) The clerk of the court must, at the request of the public prosecutor, issue a summons to a police official to be served on a service user contemplated in subsection (1), calling on him or her to appear before a magistrate at a time and place stated in such summons. 5

(3) Notwithstanding subsection (2), a magistrate of the relevant court may, at the request of the public prosecutor, issue a warrant directing that a service user contemplated in subsection (1) be arrested and be brought before the magistrate. 10

(4) A public prosecutor may request a clerk of the court to issue a summons in respect of any person or request a magistrate to issue a warrant of arrest, only after he or she has obtained a report from a social worker regarding the social circumstances of the person concerned and any other matter that the prosecutor may consider relevant. 15

(5) The provisions of the Criminal Procedure Act relating to—

(a) the form and manner of execution of warrants of arrest;

(b) the service of summonses in criminal cases in lower courts;

(c) arrest, detention and searching; and

(d) the manner in which persons summoned to appear may be dealt with on failure to appear or to remain in attendance as required, apply with the changes required by the context in respect of warrants of arrest and summonses issued under this section. 20

### **Admission and transfer of children**

**30.** Section 152 of the Children's Act apply with the changes required by the context in respect of the admission and transfer of a child to a treatment centre. 25

### **Committal of person to treatment centre after enquiry**

**31.** (1) Subject to this section, a magistrate before whom any person is brought in terms of section 29(2) or (3) must, in the presence of that person, enquire whether he or she is a person contemplated in section 29(1). 30

(2) A public prosecutor, or another fit and proper person designated by the magistrate concerned, must appear at the enquiry, and such prosecutor or other person may call witnesses to give evidence at the enquiry and may cross-examine such witnesses.

(3) The person in respect of whom the enquiry is being held—

(a) is entitled to legal representation; 35

(b) is entitled to cross-examine any witness and to call witnesses;

(c) may give evidence in person or through his or her legal representative; and

(d) may show cause why an order must not be made under subsection (7).

(4) (a) No person whose presence is not necessary may be present at an enquiry, except with the consent of the magistrate. 40

(b) Section 159(1) of the Criminal Procedure Act, in so far as it relates to the holding of a criminal trial in the absence of an accused person, applies with the changes required by the context in respect of an enquiry held in terms of this section.

(c) Section 108 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), applies with the changes required by the context in respect of proceedings in connection with an enquiry held in terms of this section as if such proceedings are those of a court contemplated in section 108 of the said Act. 45

(d) Any person who at such an enquiry gives false evidence, knowing it to be false or not knowing or believing it to be true, is guilty of an offence and liable on conviction to the penalties prescribed by law for perjury. 50

(5) The magistrate holding the enquiry—

(a) must, before he or she makes an order in terms of subsection (7), direct the public prosecutor or other person appearing at the enquiry contemplated in subsection (2), to submit to him or her the report obtained from a social worker in terms of section 29(4); and 55

(b) may direct that the person in respect of whom the enquiry is being held, be examined by a medical officer, psychiatrist or clinical psychologist designated by the magistrate; and

(c) may call upon the medical officer, psychiatrist or clinical psychologist to furnish him or her with a report reflecting the results of the examination.

(6) The contents of any report submitted or furnished in terms of subsection (5) must be disclosed to the person concerned, and such person or his or her legal representative must be given an opportunity, if he or she so desires, to cross-examine the person by whom the report was made in relation to any aspect thereof and may refute any allegation contained therein. 5

(7) If it appears to a magistrate on consideration of the evidence and of any report submitted or furnished to him or her in terms of subsection (5) that—

(a) the person concerned is a person contemplated in section 29(1); 10

(b) such person requires and is likely to benefit from treatment and training provided in a public or private treatment centre; or

(c) it would be in such a person's interest or in the interest of his or her dependants, if any, or in the interest of the community, that he or she be admitted to a public or private treatment centre, 15

the magistrate may order that the person concerned be admitted to a public or private treatment centre designated by the Director-General for a period not exceeding 120 days.

(8) A magistrate who makes an order in terms of subsection (7) that a person be admitted to a treatment centre, may, in addition, order that such person be admitted in custody as provided for in section 36 or released on bail or warning until such time as effect can be given to the order of the court. 20

### **Committal of person to treatment centre after conviction**

**32.** (1) A court convicting a person of any offence may in addition and in lieu of any sentence in respect of such offence, order that such person be committed to a treatment centre if the court is satisfied that such person is a person contemplated in section 29(1) and such order, for the purposes of this Act, must be regarded as having been made in terms of section 31. 25

(2) An order in terms of subsection (1) may not be made in addition to any sentence of imprisonment, whether direct or as an alternative of a fine, unless the operation of the whole sentence is suspended. 30

(3) (a) Where a court has referred a person to a treatment centre under subsection (1) and such person is later found not to be fit for treatment in such treatment centre, he or she may be dealt with in accordance with section 276A(4) of the Criminal Procedure Act. 35

(b) For the purposes of paragraph (a) the expression "probation officer or the Commissioner" in section 276A(4) of the Criminal Procedure Act must be construed as the manager of the treatment centre or a person authorised by him or her for the purpose of this Act.

### **Court may order inquiry in terms of this Act** 40

**33.** Section 255 of the Criminal Procedure Act applies with the changes required by the context to an enquiry ordered by the court if, in any court during a trial of a person who is charged with an offence other than an offence referred to in section 18 of that Act, it appears to the officer presiding at the trial that such person is probably a person contemplated in section 29(1). 45

### **Estimation of age of person**

**34.** (1) Whenever in connection with any proceedings in terms of this Act—

(a) the age of a person is a relevant fact of which no or insufficient evidence is available, the presiding officer in legal proceedings or a medical practitioner in other proceedings may estimate the age of that person by his or her appearance or from any information which is available, and the age so estimated is, for the purposes of this Act, deemed to be the true age of that person; and 50

(b) it is proved after the conclusion of those proceedings that the age so estimated is not the true age of that person, the error may not, if it was made in good faith, affect any decision given or order made in the course of those proceedings. 55



(2) The age of a person estimated in terms of subsection (1) is deemed to have been attained on the day when the estimate is made.

### Postponement of order

**35.** (1) If it appears to a magistrate at an enquiry contemplated in section 31 that the person in respect of whom the enquiry is being held is a person contemplated in subsection (7) of that section, the magistrate may postpone the making of an order in terms of that subsection for a period not exceeding three years, and must release the person concerned on condition that he or she—

- (a) submits himself or herself to supervision by a social worker or a probation officer specialising in substance abuse; and
- (b) undergoes any prescribed treatment.

(2) The Magistrate may order that the Director-General, after consideration of a report by a social worker, discharge any person in respect of whom the making of an order has been postponed in terms of this section unconditionally.

(3) Where the making of an order has been postponed for a period of less than three years, the Director-General may, after consideration of a report by a social worker, at any time before the expiry of such period make an order extending the period of postponement for such further period, not exceeding the difference between three years and the period for which the making of the order has been postponed, as he or she may deem fit.

(4) If at the end of the period for which the making of an order has been postponed in terms of this section the Director-General is satisfied that the person concerned has observed all the conditions subject to which he or she was released, the Director-General must discharge him or her unconditionally.

(5) (a) If a person in respect of whom the making of an order has been postponed in terms of this section fails to comply with any of the conditions subject to which he or she was released, he or she may, upon the order of any magistrate, be arrested without warrant by a police official, upon which an order in terms of section 31(7) may be made as if the making of such an order had never been postponed.

(b) A person arrested in terms of paragraph (a) may be placed in custody in any place referred to in section 36(1) until he or she can be brought before a magistrate.

(c) Section 36(4) applies with the changes required by the context in respect of a person placed in custody in terms of paragraph (b).

(6) A copy of an order made in terms of subsection (1) purporting to be certified by the clerk of the court or any other officer having the custody of the records of the magistrate's court to which the magistrate who made the order is or was attached must, if the name of the person mentioned therein against whom such order was made, substantially corresponds with that of the person who is to be dealt with in accordance with the provisions of subsections (2), (3), (4) or (5) of this section, on the mere production thereof be regarded as *prima facie* proof of the fact that such order was so made against such person.

### Temporary custody of person pending enquiry or removal to treatment centre

**36.** (1) A magistrate holding an enquiry contemplated in section 31 may, if he or she deems it necessary or expedient to postpone or adjourn the enquiry for periods determined by him or her having regard to the circumstances of the case, order that the person concerned be admitted in custody to a public or private treatment centre, public or private halfway house, prison, police cell or other place regarded by the magistrate as suitable.

(2) If the person concerned is under the age of 18 years, the magistrate may order that he or she be placed in custody in a child and youth care centre or be released on bail or warning, as if such person was a person whose trial on a criminal charge in a magistrate's court had been postponed or adjourned.

(3) No person may be admitted in custody for a continuous period of longer than 28 days in terms of subsection (1).

(4) The Minister may out of moneys appropriated by Parliament for that purpose, contribute towards the maintenance of any person who is, in terms of subsection (1), admitted or placed in a treatment centre, halfway house, child and youth care centre or any other place which is not maintained by the State.

### **Appeal against and review of certain orders**

37. The law relating to appeals and any form of review in criminal cases applies with the changes required by the context in respect of any order made under section 31, 32 or 35 as if such order were a conviction made and sentence passed by a magistrate's court in a criminal case.

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### **Admission or transfer to treatment centre**

38. (1) A person who must be admitted to a public or private treatment centre in terms of section 31 or who has been transferred to a public or private treatment centre in terms of this Act, must be admitted to the public or private treatment centre concerned until he or she is released on licence in terms of section 43 or he or she is discharged, transferred or returned to any other facility in terms of this Act.

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(2) The manager of a public or private treatment centre must—

- (a) notify the Director-General when an involuntary service user is released on licence in terms of this Act and of the particulars of such release;
- (b) if an involuntary service user has, after the expiry of a period of 12 months after an order referred to in section 31(8) was made, not yet been discharged from the public or private treatment centre concerned, notify the Director-General and give reasons as to why such involuntary service user must not be so discharged and must, every 12 months thereafter, if such involuntary service user has not been so discharged, give further reasons as to why he or she must not be discharged.

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(3) The magistrate may order the Director-General to discharge such involuntary service user, after having considered the report from the Director-General if such report recommends that it is in the interest of an involuntary service user to be discharged.

(4) The discharge of an involuntary service user from the effect of any order made under this Act does not preclude the subsequent committal or transfer of the person concerned to a public or private treatment centre.

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(5) (a) If a child is to be placed in a public or private treatment centre in terms of this Act, the Director-General may direct that the child be placed in a child and youth care centre in accordance with the provisions of the Children's Act.

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(b) If a child is placed in a child and youth care centre, such centre must be regarded as a public or private treatment centre for the purposes of this Act.

### **Transfer of involuntary service user from and to treatment centre**

39. (1) Subject to subsection (2), the Director-General may, after consultation with the manager of the treatment centre concerned—

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- (a) transfer an involuntary service user from one public treatment centre to another public treatment centre;
- (b) transfer an involuntary service user from a public treatment centre to a private treatment centre and *vice versa*; or
- (c) transfer an involuntary service user from one private treatment centre to another private treatment centre, if the involuntary service user concerned is likely to benefit from the treatment or training provided at the public or private treatment centre to which he or she is to be transferred.

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(2) No person transferred to a public treatment centre in terms of section 40 may be transferred to a private treatment centre in terms of this section.

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### **Transfer of involuntary service user from prison, child and youth care centre, alternative care or mental health care facility to public treatment centre**

40. (1) Subject to subsection (2) and despite anything to the contrary contained in any other law or—

- (a) in the Correctional Services Act, 1998 (Act No. 111 of 1998), the Minister of Correctional Services may, in consultation with the Minister, by order in writing transfer to a public treatment centre designated by the Minister any person who is undergoing a term of imprisonment in any correctional facility which is subject to the provisions of the said Act;

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- (b) in the Children's Act, the Minister may, by order in writing, transfer to a public treatment centre any child who is placed in a child and youth care centre or in alternative care; or
  - (c) in the Mental Health Care Act, the Minister of Health may, in consultation with the Minister, by order in writing transfer to a public treatment centre designated by the Minister any mental health care user in a mental health care establishment. 5
- (2) No person may be transferred unless—
- (a) it is desirable that such person should, before he or she is returned to the community, receive or undergo treatment or training in a public treatment centre; and 10
  - (b) such person is likely to benefit from the particular kind of treatment and training provided in the public treatment centre.
- (3) A person transferred to a public treatment centre in terms of subsection (1), subject to section 41(1), must be regarded as having been discharged from the provisions of the Act governing the facility from which he or she was transferred and is subject, with the changes required by the context, to all the provisions of this Act as if he or she had in the first instance been committed to a public treatment centre under this Act. 15

**Retransfer from public treatment centre to prison, child and youth care centre, alternative care or mental health care facility** 20

- 41.** (1) The Minister may—
- (a) in consultation with the Minister of Correctional Services, retransfer any person transferred to a public treatment centre in terms of section 40(1)(a) to the prison from which he or she was originally transferred, or to any other prison designated by the Minister of Correctional Services; or 25
  - (b) retransfer any child transferred to a public treatment centre in terms of section 40(1)(b) to the child and youth care centre or alternative care from which he or she was originally transferred or placed, or to any other child and youth care centre or alternative care; or
  - (c) in consultation with the Minister of Health, retransfer any person transferred to a public treatment centre in terms of section 40(1)(c) to the mental health care facility from which he or she was originally transferred, or to any other mental health care facility designated by the Minister of Health, if such person or child is not likely to benefit from the kind of treatment and training provided in the public treatment centre. 30 35
- (2) An involuntary service user retransferred to a prison, mental health care facility or child and youth care centre in terms of subsection (1) must be regarded as having been discharged from the public treatment centre in terms of this Act, and is thereafter subject to the law governing the facility to which he or she has been retransferred.
- (3) A child retransferred to a child and youth care centre or alternative care in terms of subsection (1)(b) may not be placed in a child and youth care centre beyond the expiration of the period for which he or she could, in terms of the order of the court which authorised his or her placement, have been detained in a child and youth care centre had he or she not been transferred. 40
- (4) For the purposes of calculating the period for which an involuntary service user retransferred to a prison in terms of subsection (1)(a) must be detained in such prison in respect of the sentence passed upon him or her, the period between the date of his or her transfer to a public treatment centre and the date of his or her retransfer to that prison must be calculated as part of his or her sentence. 45

**Leave of absence from treatment centre** 50

- 42.** (1) The manager of a treatment centre may, and must if so directed by the Director-General, in writing, grant leave of absence to any service user from a treatment centre for such period and on such conditions as he or she may prescribe.
- (2) The manager may, subject to the conditions determined by the centre during the period of leave of absence, if the service user is not complying with the conditions applicable to such leave, cancel the leave and direct the service user to return to the treatment centre as prescribed. 55
- (3) A service user who fails to return to the treatment centre on the return date must be regarded as having absconded.

### **Service user of treatment centre may be released on licence**

- 43.** (1) The manager of a treatment centre may release, and must release if so directed by the Director-General, a service user on licence subject to such conditions as the manager may stipulate.
- (2) The manager may vary the conditions of such release after giving notice thereof to the service user. 5
- (3) A service user who has been released on licence remains under supervision of a social worker as may be prescribed or a person approved by the Director-General, until such release expires or is cancelled in terms of this Act or he or she is discharged in terms of this Act. 10
- (4) The Director-General, upon an order made by the magistrate, must discharge a service user from the effect of any order made under this Act at any time prior to the expiry of the period for which he or she was released on licence.

### **Revocation of licence**

- 44.** (1) The manager of a treatment centre may revoke a service user's licence and direct that he or she return to the treatment centre, if the management structure has reason to believe that the service user—
- (a) is failing to comply with any of the conditions of his or her release; or
- (b) has not proved himself or herself capable of adjusting properly to community life. 20
- (2) If the need for the return of a service user to the treatment centre is of such a nature that it cannot be deferred until the manager has dealt with the matter, the manager may exercise all the powers of the management structure in terms of this section.
- (3) A service user recalled to a treatment centre and who fails to return on the return date, must be regarded as having absconded and may be arrested in terms of section 48(2). 25
- (4) A service user arrested in terms of section 48(1) must be admitted in custody until he or she can be returned to the treatment centre in question.
- (5) A service user recalled to a treatment centre in terms of subsection (1) or (2) and who has returned to such centre must be admitted to that centre until he or she is released or discharged in terms of this Act. 30

### **Admission to public treatment centre of persons from territories outside Republic**

- 45.** (1) (a) The Government, represented by the Minister, in consultation with the Minister of Foreign Affairs, may enter into an agreement with the government of any other country for the admission to any treatment centre in the Republic of any person whose admission in any treatment centre for a period of not less than one year has been ordered by a competent court or officer of such country according to that country's laws. 35
- (b) Whenever such an agreement has been entered into, the Minister must cause a notice of that fact and a summary of the terms of the agreement to be published in the *Gazette*. 40
- (2) The Minister may, with due regard to section 31(8), order the admission to a treatment centre of any person whose admission in a treatment centre for a period of not less than one year has been ordered by a competent court or officer of a country, the government of which has entered into an agreement contemplated in subsection (1) with the Government of the Republic. 45
- (3) A person admitted to a treatment centre by order of the Minister in terms of subsection (2) may be admitted to such centre until he or she is discharged in terms of this Act, but not longer than the expiration of the period fixed by the court which, or officer who, ordered that person's admission to the treatment centre.
- (4) This Act applies in respect of a person admitted to a treatment centre in terms of this section as if his or her admission to that treatment centre had been ordered in terms of this Act—
- (a) but the manager concerned may not grant leave of absence to such person in terms of section 42 without the approval of the Director-General; and
- (b) such person may only be discharged from the treatment centre in question if the Minister approves his or her discharge, subject to the provisions of the agreement, if any, in terms of which such person was admitted to the treatment centre in question. 55

**Service user to have access to management and *vice versa***

46. A service user of a treatment centre has, subject to any prescribed conditions, the right of personal access to the management structure of the treatment centre and the management structure has a similar right of access to the service user.

**CHAPTER 8**

5

**DISCIPLINARY INTERVENTION AND APPEAL PROCEDURE**

**Maintenance of discipline in treatment centre, halfway house, out-patient services and community-based treatment facility**

47. (1) If a service user in a treatment centre, halfway house or community-based treatment facility contravenes any rule pertaining to such centre, house or facility, the manager or a person designated by the manager may, after holding an inquiry in the prescribed manner— 10

- (a) take such disciplinary steps as may be prescribed against that service user; and
- (b) impose on the service user such measure as determined.

(2) A manager or person contemplated in subsection (1) who holds an inquiry in terms of that subsection must keep a record of the proceedings of the inquiry. 15

(3) A service user who is not satisfied with the outcome of an inquiry and disciplinary steps taken or measures imposed against him or her may appeal to an appeal committee, established by the Minister, within seven days of the outcome of the inquiry.

(4) The Minister must prescribe the duties and composition of an appeal committee. 20

(5) If it appears to the appeal committee, on consideration of the documentation submitted to such committee, that the disciplinary steps taken or measures imposed against a service user is unjustified, the committee must—

- (a) set aside, reduce or vary any disciplinary action taken against such service user; and 25
- (b) return its record with instructions to the manager or designated person concerned.

(6) The manager of a treatment centre, halfway house or community-based treatment facility must report the commission of a serious offence by a service user to a police official to deal with the matter in terms of the Criminal Procedure Act. 30

**Method of dealing with absconder from treatment centre**

48. (1) For the purposes of this section, a service user who—

- (a) has been granted leave of absence from a treatment centre and who, on the revocation or expiration of his or her leave of absence, fails to return to the treatment centre concerned; and 35
- (b) without permission absents himself or herself from any hospital or treatment centre to which he or she may have been admitted at the instance of the management of a treatment centre,

must be regarded as having absconded from such treatment centre or hospital.

(2) A service user who has absconded from a treatment centre may be arrested without warrant by a police official, social worker or member of staff of the treatment centre, and must as soon as possible be brought before a magistrate of the district in which he or she was arrested. 40

(3) Any person who obstructs or hinders a police official, social worker or member of staff of the treatment centre in the exercise of any power contemplated in subsection (2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. 45

(4) A service user arrested in terms of subsection (2) may be placed in custody in any place contemplated in section 36(1) until he or she is brought before a magistrate.

(5) (a) A magistrate before whom a service user contemplated in subsection (2) is brought must, after having enquired into the reasons for the service user's abscondment, order that the service user—

- (i) be returned to the treatment centre or hospital from which he or she absconded; or
- (ii) be placed in custody, pending the decision of the Director-General, or in any place contemplated in section 36(1) designated by the magistrate. 55

(b) The magistrate must notify the Director-General of the result of the enquiry and of the order made in terms of this subsection.

(6) On consideration of the notification contemplated in subsection (5) and after any further enquiry which he or she may deem necessary, the Director-General must, if the magistrate has ordered that the service user be placed in custody pending the decision of the Director-General— 5

- (a) direct that the service user be returned to the treatment centre or hospital from which he or she absconded;
- (b) deal with the service user in terms of section 39(1);
- (c) direct that the service user be released on licence in terms of section 43; or 10
- (d) direct that he or she be discharged from the effect of an order made under this Act.

(7) Section 36(4) applies with the changes required by the context in respect of any person placed in custody in a place referred to in section 36(1) or in pursuance of an order made under subsection (5)(a)(ii). 15

## CHAPTER 9

### CENTRAL DRUG AUTHORITY AND SUPPORTING STRUCTURES

#### Establishment and functions of Central Drug Authority

**49.** (1) There is hereby established a body known as the Central Drug Authority, which may exercise the powers and must perform the duties conferred or imposed on it by or in terms of this Act. 20

(2) The members of the Central Drug Authority are appointed by the Minister and consist of—

- (a) a person seconded by the Department of Social Development nominated by the Minister; 25
- (b) a person seconded by the Department of Justice and Constitutional Development nominated by that Department;
- (c) a person seconded by the South African Police Service nominated by the South African Police Service;
- (d) a person seconded by the Department of Health nominated by that Department; 30
- (e) a person seconded by the Department of Education nominated by that Department;
- (f) a person seconded by the Department of Home Affairs nominated by that Department; 35
- (g) a person seconded by the Department of Foreign Affairs nominated by that Department;
- (h) a person seconded by the Department of Trade and Industry nominated by that Department;
- (i) a person seconded by the South African Revenue Services nominated by the South African Revenue Services; 40
- (j) a person seconded by the Department of Correctional Services nominated by that Department;
- (k) a person seconded by the Department of Labour nominated by that Department; 45
- (l) a person seconded by the National Treasury nominated by the National Treasury;
- (m) a person seconded by the Department of Arts and Culture nominated by that Department;
- (n) a person seconded by the Department of Sport and Recreation South Africa nominated by that Department; 50
- (o) a person seconded by the Department of Agriculture nominated by that Department;
- (p) a person seconded by the Department of Transport nominated by that Department; 55
- (q) a representative of the National Youth Commission nominated by that Commission;
- (r) a representative of the Medicines Control Council nominated by that Council;

- (s) are presentative from the National Prosecuting Authority nominated by that Authority; and
- (t) not more than 13 other members who must be persons who have knowledge or experience in the management of the demand and supply of substances of abuse or who are able to make a substantial contribution to the combating of such problem. 5
- (3) The members contemplated in subsection (2)(t) may be appointed only after—
- (a) the Minister has through the media and by notice in the *Gazette* invited nominations of persons as members of the Central Drug Authority; and
- (b) the parliamentary committees on social development of the National Assembly and the National Council of Provinces have made recommendations to the Minister in relation to such appointments after a transparent and open process of considering persons so nominated. 10
- (4) (a) The Minister must appoint a member of the Central Drug Authority for a period not exceeding five years on such conditions as the Minister may determine at the time of making the appointment. 15
- (b) The Minister may terminate membership of any member for reasons which are just and fair.
- (c) A member of the Central Drug Authority may, on the expiry of any period for which he or she was appointed, be reappointed for one additional term only. 20
- (5) If the office of any member of the Central Drug Authority becomes vacant before the expiry of the period for which he or she was appointed, the Minister must, subject to subsections (2) and (3), appoint another person to hold office for the unexpired portion of the period for which his or her predecessor was appointed.
- (6) Any member of the Central Drug Authority who is not an officer in the public service, may be paid such fees or travelling and subsistence allowance, while engaged in the business of the Central Drug Authority, as the Minister, with the concurrence of the Minister of Finance, may determine. 25
- (7) (a) One of the members of the Central Drug Authority must be designated by the Minister as chairperson of the Central Drug Authority, and at the first meeting of every newly constituted Central Drug Authority the members of the Central Drug Authority must elect a vice-chairperson from their members. 30
- (b) The vice-chairperson, when acting in the place of the chairperson, has all the powers and must perform all the duties of the chairperson and must be paid the allowances normally paid to the chairperson. 35
- (8) In the event of the absence of both the chairperson and the vice-chairperson from any meeting of the Central Drug Authority, the members present at that meeting must elect one of their members to preside at that meeting.
- (9) The first meeting of the Central Drug Authority must be held at a time and place to be determined by the Minister, and subsequent meetings must be held at least twice a year and at such times and places as the chairperson may determine. 40
- (10) (a) The Central Drug Authority must, as soon as is practicable after it has been established, draft rules governing its quorum, the procedure at meetings and, generally, the conduct of its functions, and may from time to time alter or revoke any such rules.
- (b) Such rules have no force and effect unless approved by the Minister. 45
- (11) (a) The Central Drug Authority must annually, by no later than the first day of June, submit to the Minister a report on all its functions as well as a comprehensive description of the national effort to reduce the demand for, and supply of, substances of abuse in the previous financial year.
- (b) The Minister must table the report referred to in paragraph (a) in Parliament within 14 days after it is submitted to him or her, if Parliament is then sitting, or, if Parliament is not then sitting, within 14 days after its next sitting day. 50

### **Executive committee**

- 50.** (1) The executive committee of the Central Drug Authority consists of the chairperson and vice-chairperson of the Central Drug Authority and such other members of the Central Drug Authority as may be determined and designated by the Central Drug Authority. 55
- (2) The executive committee may, subject to the directions of the Central Drug Authority, during periods between meetings of the Central Drug Authority, exercise all the powers and perform all the duties of the Central Drug Authority. 60

(3) Subsection (2) does not empower the executive committee to set aside or amend any decision of the Central Drug Authority.

(4) Any decision taken or act performed by or on the authority of the executive committee is of full force and effect, unless it is set aside or amended by the Central Drug Authority at its first meeting following the meeting of the executive committee at which such decision was taken or such action was authorised. 5

(5) The executive committee may make rules in relation to the holding of, and procedure at, its meetings.

### **Secretariat of Central Drug Authority**

**51.** (1) Work incidental to the performance of the functions of the Central Drug Authority must, subject to the control and directions of the Central Drug Authority, be performed by a secretariat consisting of the Director: Secretariat of the Central Drug Authority and such other administrative and support staff as may be required for the performance of its functions by the Central Drug Authority. 10

(2) (a) The Director and staff contemplated in subsection (1) must be suitably qualified and experienced persons appointed by the Minister on such terms and conditions as the Minister with the concurrence of the Minister of Finance may determine. 15

(b) If the Director or any staff member appointed in terms of paragraph (a) is an officer in the public service, such appointment must be in terms of the laws governing the public service and by arrangement with the Department in question. 20

(3) The Secretariat must be assisted by—

- (a) officers of the Department designated for that purpose by the Director-General;
- (b) officers of any other Department seconded to the service of the Secretariat in terms of the laws governing the public service; 25
- (c) persons in the service of any public or other body, by arrangement with the body concerned and seconded to the service of the Secretariat; and
- (d) such other staff as may reasonably be required to assist the Secretariat, appointed by the Minister after consultation with the Minister of Finance. 30

### **Powers and duties of Central Drug Authority**

**52.** The Central Drug Authority—

- (a) must oversee and monitor the implementation of the National Drug Master Plan;
- (b) must facilitate and encourage the coordination of strategic projects; 35
- (c) must facilitate the rationalisation of existing resources and monitor their effective use;
- (d) must encourage government departments and private institutions to compile plans to address substance abuse in line with the goals of the National Drug Master Plan; 40
- (e) must ensure that each department of state has its own performance indicators;
- (f) must facilitate the initiation and promotion of measures to combat the use of substances of abuse;
- (g) must ensure the establishment and maintenance of information systems which will support the implementation, evaluation and ongoing development of the National Drug Master Plan; 45
- (h) must submit an annual report that sets out a comprehensive description of the national effort relating to the problem of substance abuse;
- (i) must ensure the development of effective strategies on prevention, early intervention, reintegration and aftercare services; 50
- (j) must advise Government on policies and programmes in the field of substance abuse and drug trafficking;
- (k) must review the National Drug Master Plan every five years and make recommendations to Cabinet for approval;
- (l) must organise a bi-annual summit on substance abuse to enable role-players in the field of substance abuse to share information; and 55
- (m) may exercise such powers and must perform such duties as may be determined by the Minister from time to time.



### Establishment of Provincial Substance Abuse Forums

- 53.** (1) The Minister must establish a Provincial Substance Abuse Forum for each province.
- (2) A Provincial Substance Abuse Forum may consist of representatives from—
- (a) various government departments; 5
  - (b) community action groups;
  - (c) law enforcement agencies;
  - (d) research institutions;
  - (e) treatment institutions;
  - (f) non-governmental organisations; 10
  - (g) the business community; and
  - (h) any other structure considered relevant by the Minister.
- (3) Adequate and sustained funding must be provided by the Department.
- (4) Any member of a Provincial Substance Abuse Forum who is not employed in the public service, must be paid by the Director-General for travelling and subsistence allowances while attending meetings of such Forum. 15

### Functions of Provincial Substance Abuse Forums

- 54.** A Provincial Substance Abuse Forum must—
- (a) strengthen member organisations to carry out functions related directly or indirectly to addressing the problem of substance abuse; 20
  - (b) encourage networking and the effective flow of information between members of the Forum in question;
  - (c) assist Local Drug Action Committees established in terms of section 56 in the performance of their functions;
  - (d) compile and submit an integrated Drug Master Plan for the province for which it has been established; and 25
  - (e) submit a report and inputs annually to the Central Drug Authority for purposes of the annual report of the Central Drug Authority.

### Executive committee of Provincial Substance Abuse Forums

- 55.** (1) Each Provincial Substance Abuse Forum must establish an executive committee. 30
- (2) The executive committee contemplated in subsection (1) must consist of members responsible for—
- (a) treatment and aftercare of service users;
  - (b) prevention of substance abuse and education of service users and members of the public; 35
  - (c) community development; and
  - (d) research and information dissemination on substance abuse.
- (3) The executive committee may, subject to the directions of the relevant Provincial Substance Abuse Forum, during periods between meetings of such Forum, exercise all the powers and perform all the duties of the Provincial Substance Abuse Forums. 40
- (4) Subsection (2) does not empower the executive committee to set aside or amend any decision of the Provincial Substance Abuse Forum.
- (5) Any decision taken or act performed by or on the authority of the executive committee is of full force and effect, unless it is set aside or amended by the relevant Provincial Substance Abuse Forum at its first meeting following the meeting of the executive committee at which such decision was taken or such action was authorised. 45
- (6) The executive committee may make rules in relation to the holding of its meetings.

### Establishment of Local Drug Action Committee

- 56.** (1) A municipality may, in consultation with the Director-General, establish a Local Drug Action Committee, to represent such municipality and to give effect to the National Drug Master Plan. 50
- (2) The Local Drug Action Committee must consist of interested persons and stakeholders who are involved in organisations dealing with the combating of substance abuse in the municipality in question. 55

- (3) The members of a Local Drug Action Committee must be appointed by the Mayor of the Municipality and must consist of—
- (a) officials from government departments represented at local level;
  - (b) a member of the South African Police Service nominated by the Commissioner of Police; 5
  - (c) a correctional official nominated by the Commissioner of Correctional Services;
  - (d) a representative from an educational institution in the area nominated by the Mayor of the relevant local municipality;
  - (e) a representative from prevention, treatment and aftercare services within the municipality nominated by the Mayor of the relevant municipality; 10
  - (f) a representative from the local health authority nominated by the Mayor of the relevant local municipality;
  - (g) a representative of the local business sector nominated by the Mayor of the relevant local municipality; 15
  - (h) a legal professional from the local community nominated by the regional head of the Department of Justice; and
  - (i) a representative from the local traditional authority.
- (4) A Local Drug Action Committee must designate a member of the committee as chairperson of that committee. 20
- (5) The provincial coordinator from the Department must assist in the development of these structures.
- (6) A Local Drug Action Committee may co-opt additional members with special skills or expertise, as and when required.
- (7) A Local Drug Action Committee must be linked to the Provincial Substance Abuse Forum established for the relevant province and must represent substance abuse forums at local government level. 25
- (8) The municipality in which a Local Drug Action Committee is situated, the Department and any other relevant departments must contribute resources towards a Local Drug Action Committee. 30
- (9) A Local Drug Action Committee may make rules in relation to the holding of, and procedure at, its meetings.

#### **Functions of Local Drug Action Committees**

- 57.** A Local Drug Action Committees must—
- (a) ensure that effect is given to the National Drug Master Plan in the relevant municipality; 35
  - (b) compile an action plan to combat substance abuse in the relevant municipality in cooperation with provincial and local governments;
  - (c) ensure that its action plan is in line with the priorities and the objectives of the National Drug Master Plan and that it is aligned with the strategies of government departments; 40
  - (d) implement its action plans;
  - (e) annually provide a report to the relevant Provincial Substance Abuse Forum concerning actions, progress, problems and other related events in its area; and 45
  - (f) provide such information as may from time to time be required by the Central Drug Authority.

#### **Compliance with implementation of National Drug Master Plan by various government departments, entities and stakeholders**

- 58.** (1) The Central Drug Authority must take measures to commit the responsible government departments and entities to provide human and financial resources to ensure the implementation of the National Drug Master Plan. 50
- (2) The Central Drug Authority must request responsible government departments and Provincial Substance Abuse Forums to submit annual reports and such other reports as may be required. 55
- (3) The Central Drug Authority may request Cabinet, through the Minister, to intervene in cases where government departments or entities do not comply with the requirements set out in the National Drug Master Plan.

(4) The Central Drug Authority must develop systems and monitoring mechanisms to ensure implementation of the National Drug Master Plan and reporting by all government departments, entities and stakeholders.

## CHAPTER 10

### GENERAL PROVISIONS

5

#### Offences and Penalties

**59.** (1) A person or organisation that contravenes or fails to comply with any provision of this Act in respect of which no penalty has been prescribed, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 12 months or both a fine and such imprisonment. 10

(2) After an inspection by the person authorised by the Director-General in terms of section 17(1) of any treatment centre or halfway house, the Director-General may, if he or she has *prima facie* evidence that the safety of any service user or person engaged in the services or the treatment centre or halfway house is at risk, apply to the court for immediate closure of the treatment centre or halfway house. 15

(3) Any person convicted in terms of this Act may not manage and operate a treatment centre or halfway house.

#### Delegation

**60.** (1) The Minister may—

(a) delegate to any officer of the Department any power conferred on the Minister by this Act, except the power contemplated in section 61; and 20

(b) authorise any such officer to perform any duty imposed upon the Minister by this Act.

(2) The Minister may, with the concurrence of the Premier of a province—

(a) delegate to the member of the Executive Council of that province responsible for social development matters in that province any power conferred on the Minister by this Act, except the power contemplated in section 62; and 25

(b) authorise that member of the Executive Council to perform any duty imposed on the Minister by this Act.

(3) The member of the Executive Council of a province responsible for social development matters in that province may— 30

(a) delegate to any officer of the provincial administration concerned any power delegated to that member under subsection (2); and

(b) authorise any such officer to perform any duty which that member is authorised to perform under subsection (2). 35

(4) The Director-General may—

(a) delegate to any officer of his or her Department any power conferred on the Director-General by this Act; and

(b) authorise any such officer to perform any duty imposed upon the Director-General by this Act. 40

(5) The Director-General may, with the concurrence of the relevant Director-General of a provincial administration—

(a) delegate to the Head of Department of that province responsible for social development any power conferred on the Director-General by this Act; and

(b) authorise that Head of Department to perform any duty imposed on the Director-General by this Act. 45

(6) A Head of Department may—

(a) delegate to any other officer of the provincial administration concerned any power delegated to him or her under subsection (5); and

(b) authorise any such officer to perform any duty which he or she is authorised to perform under subsection (5). 50

(7) Any person to whom any power has been delegated or who has been authorised to perform a duty under this section must exercise that power or perform that duty subject to such conditions as the person who effected the delegation or granted the authorisation considers necessary. 55

(8) Any delegation of a power or authorisation to perform a duty under this section—

(a) must be in writing;

- (b) does not prevent the person who effected the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and
- (c) may at any time be withdrawn in writing by that person.

## **Regulations** 5

- 61.** (1) The Minister may make regulations regarding—
- (a) any matter which may or must be prescribed in terms of this Act;
  - (b) any form that is required in the administration of the provisions in terms of this Act; and
  - (c) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 10

(2) Any regulation made under subsection (1) which may result in expenditure for the State, must be made in consultation with the Minister of Finance.

(3) (a) Regulations made under subsection (1) may prescribe penalties for any contravention thereof or of any rules prescribed by the management of a treatment centre under powers conferred upon it by regulation. 15

(b) Such penalties must, in so far as they relate to persons who are not service users, not exceed a fine of R200, and in so far as they relate to service users, may take the form of any one or both of the following: 20

- (i) Forfeiture of one or more specified privileges for a specified period;
- (ii) increase in normal hours of labour by not more than one hour per day for a period not exceeding two days.

(c) If any form of punishment referred to in paragraph (b) is prescribed, the regulations must specifically provide that no such form of punishment may be imposed unless the medical officer responsible for the medical care of the service user concerned has certified that such punishment will, in his or her opinion, not be harmful to the health of that service user. 25

(4) Different regulations may be made under subsection (1) in respect of different public or private treatment centres or private or public halfway houses or different categories of public or private treatment centres or public or private halfway houses, and the regulations may differentiate between different groups of service users in such treatment centres and halfway houses generally or in any particular treatment centre or halfway house. 30

## **Repeal of laws and savings** 35

**62.** (1) Subject to subsection (2), the Prevention and Treatment of Drug Dependency Act, 1992 (Act No. 59 of 1992), is hereby repealed.

(2) Any proclamation, regulation, rule, notice, order, appointment, authorisation, leave of absence, licence, agreement, payment or certificate issued, made, prescribed, given, granted or entered into and any other action taken under any provision of a law repealed by subsection (1), must be regarded as having been issued, made, prescribed, given, granted, entered into or taken under the corresponding provision of this Act. 40

## **Short title and commencement**

**63.** This Act is called the Prevention of and Treatment for Substance Abuse Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 45

## **MEMORANDUM ON THE OBJECTS OF THE PREVENTION OF AND TREATMENT FOR SUBSTANCE ABUSE BILL, 2008**

### **1. INTRODUCTION**

A concerted effort is required from the three tiers of government and civil society to strive towards a drug-free society. This goal can be achieved through integrated intervention from all government departments and key stakeholders. Participation of all stakeholders, including health-care professionals, traditional healers, traditional institutions, religious organisations, schools, parents, sports groups, the media and the private sector is essential.

The Bill proposes the establishment of programmes for the combating of substance abuse and guidelines in managing the diversity of programmes ranging from prevention and early intervention services to community-based services. The review process of the Prevention and Treatment of Drug Dependency Act, 1992, was informed by the new Policy on the Management of Substance Abuse and the National Drug Master Plan (2006-2011).

### **2. OBJECTS OF BILL**

The objects of the Bill are to—

- (a) provide for a coordinated effort to combat substance abuse;
- (b) provide for the conditions for registration of all programmes, including those in treatment centres and halfway houses;
- (c) provide for the conditions and procedures for the admission of persons to treatment centres and the release of persons from treatment centres;
- (d) provide for early intervention, treatment and reintegration programmes for vulnerable persons; and
- (e) establish a Central Drug Authority, whose powers and duties are to monitor and oversee the implementation of the National Drug Master Plan.

### **3. CONSULTATION**

Consultative workshops on the provisions of the Bill were held with the nine provinces and key stakeholders. A number of national departments, such as the Departments of Health, Education, Correctional Services, Justice and Constitutional Development and, South African Police Service, also participated in the workshops and gave valuable input, which led to the drafting of the Bill.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

4.1 The Department of Social Development has considered the financial implications posed by the Bill, and the necessary budgetary provision will be factored into the Medium Term Expenditure Framework.

4.2 A consultant has been appointed to do a scoping exercise of the preliminary costing of the Bill with a view to identifying the intergovernmental fiscal implications and budgetary implications of the Bill, taking into consideration—

- fiscal risks (provisions that create implicit or explicit obligations on government);
- administrative costs and cost drivers (e.g. additional processes, personnel, management practices and procedures, information and reporting); and
- institutional arrangements (e.g. Central Drug Authority, Units, Associations), delegation and assignment of functions to provincial or local government.

A report on the outcome will be made available by the Department.

4.3 The Department of Social Development has also embarked on the broader costing process of the Bill, aimed at—

- evaluating the social costs and benefits of the Bill;
- identifying direct private cost implications of the Bill (i.e. any direct costs that the Bill imposes on private individuals and entities);
- understanding and analysing the full fiscal and budgetary implications of the Bill.

4.4 The summary of cost drivers for various sectors will be as follows:

- (a) Department of Social Development: The cost of providing basic services; the establishment of programmes (prevention, treatment, early intervention, aftercare and reintegration and community-based) and facilities for the combating and prevention of substance abuse; research and information management; establishment of Central Drug Authority and its supporting structures; and intergovernmental fiscal implications.
- (b) Justice Sector The responsibilities associated with holding of enquiries and issuing of summonses and related services.
- (c) Health Sector Funding of basic health services and assessment of treatment programmes.

## **5. PARLIAMENTARY PROCEDURE**

5.1 The State Law Advisers and the Department of Social Development are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely “Welfare Services”.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.



