

REPUBLIC OF SOUTH AFRICA



PREVENTION OF AND TREATMENT FOR SUBSTANCE ABUSE BILL

(Minister of Social Development)

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 their treatment and training in such treatment centres; to provide for the establishment of a research and information management framework; to provide for the establishment of the Central Drug Authority; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the rapid globalisation of the drug trade has ensured that no country is immune to the problem of substance abuse;

AND WHEREAS substance abuse in South Africa is becoming such a serious problem that renewed efforts must be made to deal with it;

AND WHEREAS South Africa is committed to the combating of substance abuse by reducing both the supply of illegal substances and the demand for them through a wide range of actions and programmes;

AND WHEREAS it is necessary to effect changes in the existing laws dealing with the prevention of and treatment for substance abuse and the rehabilitation and reintegration of substance abusers so as to ensure that they are treated within communities and institutions and their reintegration into their communities in order to fully assume their responsibilities in the community;

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

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CHAPTER 1

INTERPRETATION AND OBJECTS OF ACT

Interpretation

1. In this Act, unless the context otherwise indicates –

“**aftercare**” means care that offers ongoing 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 enhance self reliance and optimal social functioning;

“**Central Drug Authority**” means the Central Drug Authority, established in terms of section 51;

“**child**” means a person under the age of 18 years;

“**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 intervention provided to people abusing substances while remaining within their families and communities as well as to persons affected by substance abuse;

“**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;

“Director-General” means the head of the Department;

“halfway house” means a public or private halfway house established in terms of section 15 or registered in terms of section 16;

“in-patient service” refers to a 24-hour treatment service provided in a treatment centre;

“involuntary service user” means a service user admitted to a treatment centre in terms of a court order;

“judicial officer” means a magistrate, an additional magistrate or an assistant magistrate;

“magistrate”, includes an additional magistrate and assistant magistrate;

“manager” means the head of a treatment centre or halfway house;

“management structure”, in relation to any treatment centre and halfway house means the management of such treatment centre or halfway house;

“member of the South African Police Service” means a member of the South African Police Service as defined in section 1 of South African Police Service Act, 1995 (Act 68 of 1995);

“Mental Health Care Act” means the Mental Health Care Act, 2002 (Act No. 17 of 2002);

“mental health practitioner” includes a professional staff member such as 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 and includes an accredited traditional healer;

“**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 and demand of drugs in the country;

“**out-patient service**” means a service provided to those who abuse substances and persons affected by substance abuse and managed for the purpose of providing a holistic treatment service, excluding overnight accommodation;

“**Persons affected by substance abuse**” means any member of a family or community not addicted to substances of abuse but who requires a service related to substance abuse;

“**prescribed**” means prescribed by regulation or rule;

“**private treatment centre**” means a treatment centre established and owned by private organisations 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 12;

“**regulation**” means any regulation made in terms of this Act;

“**rehabilitation**” means a process that facilitates an individual to reach and maintain his or her optimal physical, sensory, intellectual, psychiatric or social functional levels;

“rehabilitation services” means services provided to service users to restore functions or compensate for the loss or absence of a function, but excludes medical care;

“rule” means a rule made in terms of this Act;

“service user” means a person dependent on or addicted to substances of abuse who have been admitted to a treatment centre;

“social auxiliary worker” means a person registered and authorised in accordance with the Social Service Professions Act, 1978 (Act 110 of 1978), to practise social auxiliary work;

“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;

“substance abuser” means a person dependent on or addicted to substances of abuse;

“substances of abuse” means a chemical, psychoactive substance such as alcohol, tobacco and over the counter drugs and prescription drugs or 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 Substances Control Act, 1965 (Act No. 101 of 1965) and” drug” in the context of this Act has a similar meaning;

“this Act” includes the regulations made in terms of this Act;

“treatment centre” means a public or private facility that offers intensive treatment and rehabilitation to service users;

“voluntary service user” means any person admitted to a treatment centre in terms of section 28;

“volunteer” means any person appointed in terms of section 23; and

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

Objects of Act

2. The objectives of the Act are -

- (a) to provide for a coordinated effort to combat substance abuse;
- (b) to provide for the conditions for registration of all programmes including those in treatment centres and halfway houses;
- (c) to provide for the conditions and procedures for the admission of persons to treatment centres and the release of persons from treatment centres;
- (d) to provide for early intervention, treatment and reintegration programmes for vulnerable persons;
- (e) to establish a research and information management framework in the field of substance abuse; and

- (f) to establish a Central Drug Authority whose powers and duties are to monitor and oversee the implementation of the National Drug Master Plan.

CHAPTER 2

COMBATING OF SUBSTANCE ABUSE

Programmes for combating substance abuse

3.(1) The Minister must in consultation with the Minister of Finance, out of moneys appropriated by Parliament for that purpose, establish programmes for the combating of substance abuse in areas of the Republic determined by the Minister by notice in the Gazette.

(2) Programmes for the combating of substance abuse must include: -

(a) Prevention programmes which provide for-

- (i) services that facilitate the prevention of substance use and contain information, education and communication about the risks associated with the use of substances of abuse and how to avoid the use thereof; and
- (ii) proactive measures that must target individuals, families and communities before the onset of use of substances of abuse, which may lead to abuse and also to prevent persons from moving into the other levels of addiction;

- (b) Early intervention programmes which provide for the early identification of the problem and the availability and accessibility of services and facilities for substance abusers;
 - (c) Treatment programmes for substance abusers including counselling to the families of service users; and
 - (d) Aftercare and reintegration programmes for substance abusers which provide for-
 - (i) the utilisation and management of existing community facilities and structures as community centres;
 - (ii) the development of integrated community services and support systems;
 - (iii) the development of a research plan, an information management system and a communication network;
 - (iv) the re-integration of substance abusers into their communities after treatment; and
 - (v) the promotion of a collaborative approach between Government departments involved in the combating of substance abuse.
- (3) The Minister must prescribe conditions for the training and accreditation of persons involved in programmes for substance abuse.

Development of and compliance with minimum norms and standards

4.(1) The Minister may, from time to time, by notice in the Gazette, prescribe minimum norms and standards-

- (a) in order to define the acceptable levels of prevention and early intervention services that may be provided to service users and persons affected by substance abuse;
- (b) relating to the protection of children in treatment centres;
- (c) for prevention programmes in order to standardise services;
- (d) for community-based services in order to standardise such services;
- (e) for the establishment and management of halfway houses;
- (f) for the establishment and management of treatment centres;
- (g) for the monitoring and assessment of treatment centres and halfway houses;
- (h) for the registration, monitoring and evaluation of out-patient services;
- (i) for standardising the monitoring and evaluation of reintegration programmes; and

- (j) for any other matter which the Minister deems necessary in order to achieve the objects of this Act.

(2) Any person who provides a service in relation to substance abuse must comply with the minimum norms and standards referred to in subsection (1).

Support for services delivered by third parties

5.(1) The Minister may –

- (a) in consultation with the Minister of Finance, from funds appropriated by Parliament for that purpose, provide financial awards to service providers that provide services in relation to substance abuse;

- (b) for the purposes of paragraph (a) prioritise certain needs 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) establish substance abuse services different levels of service delivery including community-based treatment programmes.
- (2) The Minister must-
- (a) prescribe conditions for the receiving of financial awards referred to in subsection (1)(a), including accounting measures and compliance measures; and
 - (b) prescribe remedies for failure to comply with the prescribed conditions contemplated in paragraph (a).
- (3) The Minister must open and maintain a register of all assets bought by service providers with Government funds and prescribe conditions for the management of such assets.

Guiding principles for provision of services

6. All services rendered to persons affected by substance abuse must be provided in an environment that –
- (a) recognizes the social, cultural, economic, physical challenges, age and gender of such persons;
 - (b) ensures access to information regarding 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 themselves.

CHAPTER 3

PREVENTION OF SUBSTANCE ABUSE

Establishment of programmes for prevention of substance abuse

7.(1) The Minister must establish programmes for the prevention of substance abuse in the Republic.

- (2) The programmes referred to in subsection (1) may include elements, which-
 - (a) address the values, perceptions, expectations and beliefs that the 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 regarding the use of substances of abuse.

Purpose of providing prevention services and programmes

8.(1) The purpose of the provision of prevention services and programmes is to prevent a person from using or continue to use substances of abuse that may result in addiction.

- (2) Prevention services and programmes must focus on the following:
- (a) the preservation of the family structure of the persons affected by substance abuse;
 - (b) the establishment of appropriate interpersonal relationships within the family of the affected persons;
 - (c) the promotion of the well-being of the service user and the realization of his or her full potential;
 - (d) the link between substance abuse and HIV and AIDS;
 - (e) the promotion of the sustainability of State intervention;
 - (f) the prevention of the recurrence of problems in the family environment of the service user that may contribute to substance abuse;
 - (g) the diversion of a child using substances away from the child and youth care system and the criminal justice system;
 - (h) the building of resistance to substances of abuse; and
 - (i) the promotion of healthy lifestyles.

Provision of prevention and early intervention services by various stakeholders

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

(2) Prevention and early intervention services provided by an organ of state or any organisation or service provider only qualify for financial support in terms of section 5 of this Act if such services comply with the prescribed minimum norms and standards.

(3) Early intervention services focusing on preventing serious harm to a person using substances must be made available to such a person.

CHAPTER 4

COMMUNITY-BASED SERVICES

Establishment of community-based services

10.(1) The Minister may after consultation with any other Minister establish community-based services which must provide for preventative programmes, early intervention and treatment services and economic development.

(2) The Minister must prescribe the services contemplated in subsection (1) and prescribe conditions for the registration of such services.

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

CHAPTER 5

CENTRE-BASED AND OUT-PATIENT SERVICES

Establishment and abolishment of public treatment centre

11.(1) The Minister must, with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for the purpose establish, maintain and manage at

least one treatment centre in each province of the Republic for the reception and treatment, including any training of such service users referred to in sections 28 and 29 and service users who are transferred or admitted thereto in terms of this Act.

(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 commencement of this Act, is, from such commencement, deemed to be a treatment centre established under subsection (1).

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

Purpose for which persons are admitted in treatment centre

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

Registration and abolishment of private treatment centre

13.(1) No person may 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.

(2) Any person who desires to manage a private treatment centre referred to in subsection (1) must apply in the prescribed manner to the Director-General for registration thereof.

(3) The Director-General may -

- (a) after consideration of such application and such other information as he or she may obtain; and
- (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 referred to in section 29 and the powers conferred by this Act on the management of a private treatment centre, may be entrusted to or conferred on the management of that treatment centre; and
 - (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 specify those conditions to the applicant in the prescribed manner.

(5) The conditional registration contemplated in subsection (4) may not be extended for more than 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 (4).

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

(8) The Director-General must refuse or decline the application 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 as referred to in subsection (3).

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

(10) In the refusal of an application or the cancellation of a registration certificate the manager must take reasonable steps to ensure that all the service users are accommodated in another registered facility or with persons who, in the opinion of a social worker, are fit and proper persons for accommodating the service user.

(11) The amendment or cancellation of such registration certificate must be effected by notice in writing addressed to the holder thereof, and will come into operation on a date specified in the notice, not being earlier than three months after the date of the notice, unless the Director-General and the holder of the registration certificate agree otherwise.

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

(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 in respect of any service user must devolve upon the Director-General.

(14) Every private treatment centre registered under a law repealed by this Act, and which is in existence at the commencement of this Act, is from such commencement deemed to be a treatment centre 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 imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Establishment of halfway houses

14.(1) The Minister may, with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for the purpose, establish, maintain and manage halfway houses for the purpose of providing homes for -

- (a) service users who have , in terms of the provisions of this Act, been discharged from a public or private treatment centre or have been granted leave of absence there from;
- (b) service users who have been discharged from the effect of an order made under this Act;
- (c) persons referred to in sections 31 and 33;
- (d) service users referred to in section 28 and 29;
- (e) persons who are receiving or undergoing treatment for dependency on drugs in a facility of a provincial administration or who have received or undergone such treatment in any facility approved by the Director-General.

(2) A service user may not be admitted to a halfway house for a period exceeding twelve months, but if there is a need for an extension the manager of the facility may

apply to the Director-General and give reasons for such extension for a further period not exceeding six months.

(3) The management of a halfway house must submit to the Minister programmes regarding-

- (a) the relapse prevention in respect of substance abuse;
- (b) information to the community on the dangers of substance abuse;
- (c) the education of children, youth and families regarding the dangers of substance abuse; and
- (d) skills development for service users and their re-integration into society.

(4) Every 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 commencement of this Act, is, as from such commencement, deemed to be a halfway house established under this section.

Registration of private halfway house

15.(1) No person may manage a private halfway house or other place maintained mainly for the accommodation of persons referred to in section 15(1), except a halfway house maintained by the State, unless such halfway house or place is registered under this section.

(2) Any person who desires to manage a private halfway house referred to in subsection (1) must apply in the prescribed manner to the Director-General for registration thereof.

(3) The Director-General may -

- (a) after consideration of an application for registration in the prescribed manner 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-
 - (i) the reception, maintenance, rehabilitation ,professional support and training of service users may properly be 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.

(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 specify those conditions to the applicant in the prescribed manner.

(5) The conditional registration contemplated in subsection (4) may not be extended for more than 12 months under the same conditions

(6) The Minister may at any time after one month's notice of his or her intention to do so, and after consideration of any representations received by him or her during such month, amend or cancel the conditional registration certificate issued in terms of subsection (4).

(7) The Minister may, after three month's notice of his or her intention to do so and providing reasons therefore, and after consideration of any written representations received by him or her during such period, amend or cancel a registration certificate issued under subsection (3).

(8) The amendment or cancellation of such registration certificate must be effected by notice in writing to the holder thereof and will come into operation on a date specified in the notice, not being 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 or decline 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 as referred to in subsection (3).

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

(b) The holder of such registration certificate may after three months' written notice surrender such registration certificate to the Director-General.

(11) The management of private halfway houses must submit to the Director-General programmes regarding its activities for prevention, treatment, rehabilitation, training and reintegration.

(12) No service user may be accommodated in a private halfway house for longer than six months and where there is a need for an extension the facility manager must motivate for such extension for a period not exceeding a further six months.

(13) Every private halfway house registered under a law repealed by this Act, and which is in existence at the commencement of this Act, is, as from such commencement, deemed to be a private halfway house registered under subsection (3).

(14) Any person who contravenes or fails to comply with any provision of this section, or any condition imposed there under, 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 such fine and imprisonment.

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

16.(1) If there is a reason to believe that any of the conditions contemplated in section 14(4) and 16(4) have not been complied with, the Minister may order specific measures to be adopted to facilitate compliance with those conditions.

(2) The manager of a private treatment centre or private halfway house must, at all times, report to the Minister any circumstance which may result in his or her inability to comply fully with any condition contemplated in section 14(4) and 16(4).

(3) If the registration of the private treatment centre or private halfway house has been cancelled in terms of section 14 (9) and 16(7), or if the manager of the private treatment centre or private halfway house wishes to close down that service, the manager must-

- (a) prior to any decision to close down that 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 (3) is guilty of an offence.

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, private or public

halfway house and assess, evaluate and monitor compliance with the prescribed requirements and minimum norms and standards in relation to-

- (a) records and documents appertaining thereto;
- (b) any service users admitted or accommodated therein; and
- (c) programmes available in the treatment centres and halfway houses.

(2) The monitoring and assessment team may interview any service user accommodated therein and cause such service user to be examined by a medical practitioner, psychologist, professional nurse or psychiatrist.

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

(4) The monitoring and assessment team acting in terms of subsection (3) need not give notice of its visit to the treatment centre or halfway house if there is reason to believe that the life of a service user in the treatment centre or halfway house is threatened or where the treatment centre or halfway house is managed in such a way that it is a danger to the service users accommodated therein.

(5) Any person who-

- (a) obstructs or hinders the monitoring and assessment team in the exercise of any power conferred upon it under subsection (1); or
- (b) fails to produce any book or document, which the monitoring and assessment team has demanded,

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 such fine and imprisonment.

(6) The composition and the duties of the monitoring and assessment team will be as prescribed.

Staff of public treatment centre and public halfway house

18.(1) The Director-General may, subject to the laws governing the public service, appoint the staff necessary for the proper management and control of public treatment centres and public halfway houses and must appoint for every public treatment centre or public halfway house a social worker, medical practitioner, psychiatrist, clinical psychologist or nurse as manager.

(2) The powers and duties of staff so appointed will be as prescribed.

(3) The manager of every public treatment centre or public halfway house must be assisted in the treatment and training of service users and in the determination of the treatment and training which service users or a particular service user receive or undergo or the work to be performed by such service user, by the social worker, medical practitioner, psychiatrist, clinical psychologist or nurse who may be attached to or assigned to the public treatment centre or public halfway house.

Death of service user in treatment centre or halfway house

19.(1) If a service user dies on the premises of a treatment centre or halfway house, the manager of the treatment centre or halfway house must immediately after the death of the service user report such death to a member of the South African Police Service and to the Director-General.

(2) Any manager who fails to comply with subsection (1) is guilty of an offence.

(3) The member of the South African Police Service must ensure that the circumstances of the death of such service user is investigated and inform the Director-General on the outcome of the investigation and make recommendations for further action, if any.

Establishment of out-patient services

20. The Minister may establish out-patient services at all the public treatment centres to be established and prescribe registration processes for the said services.

Types of out-patient services

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

- (a) prevention programmes, which among others include education, training, information-sharing and campaigns;
- (b) early intervention programmes, which includes diversion for adults and children; and
- (b) holistic treatment services which include family programmes, treatment services, therapeutic intervention, after care and reintegration.

Dealing with a child addicted to substances of abuse

22. The provisions of section 105 of the Children's Act, 2005 (Act No. 38 of 2005) applies with the necessary changes in respect of dealing with a child addicted to substances of abuse.

Conditions of service for volunteers

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

- (a) minimum qualifications;
- (b) remuneration and compensation for expenses incurred;
- (c) registration and termination of their services; and
- (d) any other matter which is necessary for the proper performance of their functions.

Management structure of treatment centre and halfway house

24.(1) A management structure must be established for each treatment centre and halfway house.

(2) The Minister must prescribe-

- (a) the composition of the structure which must include representatives of beneficiaries of the service, members of staff of the relevant treatment centre and half way house and members of the public;
- (b) the election, appointment, qualification, terms of office and grounds for removal from office of members of the structure and the filling of vacancies; and
- (c) the number of and procedure 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;
- (b) provides opportunities for training of staff working in the treatment centre or halfway house;
- (c) applies principles of sound financial management and submits annual progress and financial reports to the Director-General; and
- (d) does everything necessary for the effective functioning of the centre.

CHAPTER 6

AFTERCARE AND REINTEGRATION SERVICES

Establishment of programmes for aftercare and reintegration services

25.(1) The Minister may establish aftercare and reintegration programmes which must focus on the successful reintegration of a service user to society, the workforce and family and community life.

- (2) The programmes referred to in subsection (1) must include elements, which-
 - (a) allow service users interaction with other service users, their families and communities;
 - (b) promote the design of specific aftercare and relapse prevention programmes;
 - (c) allow service users to share long term sobriety experiences;
 - (d) promote group cohesion among service users;

- (e) enable service users to stay clean from substance abuse; and
- (f) are based on structured programmes.

Accreditation

26. No person or organization must manage any reintegration programme for substance abuse unless such programme complies with the prescribed minimum norms and standards.

Support groups

27.(1) Support groups which focus on supporting the service user in his or her recovery process may be established-

- (a) in the form of organised aftercare structures for professional support services and skills development; or
- (b) by the service users and include people affected by substance abuse.

(2) The purpose of such support groups will be to-

- (a) provide a safe, substances of abuse-free group experience where service users can practice re-socialisation skills;
- (b) facilitate access to recovered substance abusers who can serve as role models for service users who are still in the beginning or middle stages of the recovery process; and
- (c) encourage service users to broaden their support system of sober and recovering friends.

CHAPTER 7

ADMISSION, TRANSFER AND REFERRAL PROCEDURE TO TREATMENT CENTRES

Admission of voluntary service user to treatment centre

28.(1) An application for admission of a voluntary service user to a treatment centre may be made in the prescribed manner, by-

- (a) the voluntary service user himself or herself or by any other person acting on his or her behalf; or
- (b) where the voluntary service user is a child, by 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 services is entitled to appropriate treatment, rehabilitation and skills development services.

(3) The application must be accompanied by a report of a social worker regarding the applicant's or child's social circumstances, including any medical or psychiatric report which the manager of the treatment centre may deem necessary and if the social worker is not available his or her 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 declaration in writing is made 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-

- (a) squanders his or her means;
- (b) injures his or her health;
- (c) endangers the peace;
- (d) in any other manner does harm to his or her own welfare or the welfare of his or her family;
- (e) fails to provide for his or her own support or for that of any dependant whom he or she is legally liable to maintain; or
- (f) commits a criminal act to support his or her substance abuse habit.

(2) The clerk of the court must, at the request of the public prosecutor, issue and deliver to a member of the South African Police Service a summons to be served on such person calling on him or her to appear before a magistrate within such area at a time and place stated therein.

(3) If the public prosecutor does not request the issue of such a summons, a magistrate of the court in question may, on the application of the public prosecutor, issue a warrant directing that such person be arrested and as soon thereafter as practicable be brought before a magistrate within such area.

(4) A public prosecutor may not in terms of subsection (2) 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, unless he or she has obtained from a social worker a report as to the

social circumstances of the person concerned and any other relevant matter affecting him or her.

(5) The provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) 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) the arrest, detention, 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 necessary changes in respect of warrants of arrest and summonses issued under this section.

Admission and transfer of children

30. The provisions of section 152 of the Children's Act, 2005 applies with the necessary changes in respect of the admission and transfer of a child to a treatment centre.

Committal of person to treatment centre after enquiry

31.(1) Subject to the provisions of this section, a magistrate before whom any person is brought in terms of section 29(1) must, in the presence of that person enquire whether he or she is such a person as is described in that section.

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

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

(a) is entitled to be represented by an advocate or attorney;

(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 because why an order must not be made under subsection (8).

(4) Save as is otherwise provided in this Act, the laws governing criminal trials in magistrates' courts will with the necessary changes apply in respect of securing the attendance of witnesses at such enquiry, the examination of witnesses, the recording of evidence, the payment of allowances to witnesses and the production of books, documents and other relevant material.

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

(b) Section 159 (1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in so far as it relates to the holding of a criminal trial in the absence of an accused person, must with the necessary changes apply 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), must with the necessary changes apply in respect of proceedings in connection

with an enquiry held in terms of this section as if those proceedings are those of a court contemplated in the said section 108.

(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.

(6) The magistrate holding the enquiry -

(a) must, before he or she makes any order under subsection (8), direct the public prosecutor or other person appearing at the enquiry in terms of subsection (2) , to submit to him or her the report obtained from a social worker in terms of section 29(4); and

(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 cause all steps (including the use of force) which may be necessary for the carrying out of such examination to be taken and may call upon the medical officer, psychiatrist or clinical psychologist to furnish him or her with a report showing the results of the examination.

(7) The contents of any report submitted or furnished in terms of subsection (6) must be disclosed to the person concerned, and he or she or his or her legal representative must be given an opportunity, if he or she so desires, to cross-examine the person by whom it was made in relation to any matter arising out of the report and of refuting any allegation contained therein.

(8) If it appears to the magistrate, on consideration of the evidence and of any report submitted or furnished to him or her in terms of subsection (6) -

- (a) that the person concerned is such a person as is described in section 29(1);
and
- (b) that he or she is a person who requires and would probably benefit by the treatment and training provided in a public or private treatment centre; or
- (c) that it would be in his or her own 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 in a public or private treatment centre,

he or she may, order that the person concerned be admitted in a public or private treatment centre designated by the Director-General.

(9) The magistrate who makes an order under subsection (8) that a person must be admitted in a treatment centre for a period not exceeding 120 days, may also order that such person be admitted in custody or released on bail or warning as provided in section 36 until such time as effect can be given to the order the court has made.

Committal to treatment centre after conviction

32.(1) A court convicting any person of any offence may in addition and in lieu of sentence in respect of such offence, order that such person be detained at a treatment centre if the court is satisfied from evidence given that such person is a person as is described in section 29(1) and such order shall for the purposes of this Act be deemed to have been made in terms of section 31, but such order must 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.

(2)(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, such person may be dealt with in accordance with the provisions of section 276A(4) of the Criminal Procedure Act.

(b) For the purposes of the provisions of paragraph (a) the expression “probation officer or the Commissioner” in section 276A (4) of that Act will be construed as the manager of the treatment centre or a person authorised by him or her

Court may order inquiry in terms of this Act

33. Section 255 of the Criminal Procedure Act applies with the necessary changes in 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 the said Act, it appears to the judge or judicial officer presiding at the trial that such person is probably a person described in section 29(1).

Estimating of age of person

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

(a) the age of any person is a relevant fact of which no or insufficient evidence is available, the presiding officer in legal proceedings or a medical officer 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

- (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 must not, if it was made in good faith, affect any decision given or order made in the course of those proceedings.

(2) The age of a person estimated as provided in 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 under section 31 that the person in respect of whom the enquiry is being held is such a person as is referred to in subsection (8) of that section, the magistrate may make an order postponing for a period not exceeding three years, the making of an order in terms of that subsection and release the person concerned on condition that he or she must –

- (a) submit himself or herself to supervision by a social worker or a probation officer, specialising in substance abuse;
- (b) undergo any prescribed treatment; and
- (c) comply with such prescribed requirements as the magistrate may determine.

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

(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 unconditionally discharge him or her.

(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 any member of the South African Police Service, and any magistrate may then make an order in terms of section 31(8) as if the making of such an order had never been postponed.

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

(c) The provisions of section 36(4) must with the necessary changes apply in respect of any person detained in custody in a place referred to in the said section in terms of paragraph (b).

(d) A copy of an order made under 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 subsection (2), (3), (4) or (5) of this section, on the mere production thereof be prima facie proof of the fact that such order was so made against such person.

Temporary custody of persons pending enquiry or removal to treatment centre

36.(1) A magistrate holding an enquiry under 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 in 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 under subsection (1) be admitted in custody for a continuous period of longer than 28 days.

(4) The Minister may, with the concurrence of the Minister of Finance, 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.

Appeals against and review of certain orders

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

Court-ordered admission in treatment centre

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

- (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 the provisions of this Act and of the particulars of such release;
 - (b) if a 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, report fully to the Director-General and give reasons 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 why he or she must not be discharged.

(3) The Director-General may, if he or she deems it in the interest of any involuntary service user, at any time by order in writing discharge that involuntary service user from the effect of any order made under this Act.

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

(5) If any person under the age of 18 years is, in terms of the provisions of this Act, to be placed in a public or private treatment centre, the Director-General may direct that he or she be placed in a child and youth care centre according to the provisions of the Children's Act, and, if he or she is so placed, such child and youth care centre must in relation to such person be deemed to be a public or private treatment centre for the purpose of this Act.

Transfer of involuntary service user from and to treatment centre

39.(1) Subject to the provisions of subsection (2), the Director-General may, at any time after consultation with the management concerned -

- (a) transfer an involuntary service user from one public treatment centre to another public treatment centre; or
- (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 will in his or her opinion benefit or probably benefit by the treatment or training provided at the public or private treatment centre to which he or she is so transferred.

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

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

40.(1) Despite anything to the contrary contained-

- (a) in the Correctional Services Act, 1998 or in any other law, 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 prison which is subject to the provisions of the said Act;
- (b) in the Children's Act, 2005 or in any other law, the Minister may, by order in writing, transfer to a public treatment centre any child who is undergoing a period of placement in that child and youth care centre and alternative care; or
- (c) in the Mental Health Care Act, 2002 or in any other law, 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 person detained in that mental health care facility,

if, in his or her opinion -

- (i) 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
- (ii) such person is a person who will or probably benefit by the particular kind of treatment and training provided in the public treatment centre.

(2) A person transferred to a public treatment centre in terms of subsection (1) is deemed to be discharged from the provisions of the Act governing the facility from

which he or she was transferred and is subject, with the necessary changes, 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.

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

41. (1) The Minister may,

- (a) in consultation with the Minister of Correctional Services, retransfer to the prison from which he or she was originally transferred, or to any other prison designated by the Minister of Correctional Services, any person transferred to a public treatment centre under section 40(1)(a); or
- (b) retransfer to the child and youth care centre and alternative care from which he or she was originally transferred or placed, or to any other child and youth care centre, alternative care placement, any child transferred to a public treatment centre under section 40(1)(b); or
- (c) in consultation with the Minister of Health, retransfer 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, any person transferred to a public treatment centre under section 40(1)©;

if in his or her opinion, on representations made by the relevant Minister, such person has proved to be unsuited to or is not likely to benefit by the kind of treatment and training provided in the public treatment centre.

(2) Any involuntary service user retransferred to a prison, mental health care facility or child and youth care centre in terms of subsection (1), is deemed to be discharged

from the provisions of this Act, and is thereafter subject to the law governing the facility to which he or she has been transferred.

(3) Any child retransferred to a child and youth care centre or alternative care in terms of subsection (1) (b), must not be placed in a child and youth care centre beyond the expiration of the period for which he or she could, under the order of the court which authorized his or her placement, have been detained in a child and youth care centre had he or she not been transferred.

(4) For the purpose of calculating the period for which an involuntary service user retransferred to a prison in terms of subsection (1) (a) must be detained therein under 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 transfer to that prison must count as part of his or her sentence.

Leave of absence from treatment centre

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.

(2) The written notice of leave of absence must state the-

(a) starting and return date of the leave of absence; and

(b) conditions to be complied with during the period of leave of absence.

(3) The manager may, at any time during the period of leave of absence, if he or she has reason to believe that the service user does not comply with the conditions applicable to such leave, cancel the leave and direct the service user to return to the treatment centre.

(4) If the service user fails to return to the treatment centre on the return date he or she will be deemed to have absconded.

Service user of treatment centre may be released on licence

43.(1) The manager of a treatment centre may release a service user on licence subject to such conditions as he or she may stipulate or if so directed by the Director-General.

(2) The manager may at any time after giving notice thereof to the service user vary the conditions of such release.

(3) A service user who has been released on licence must in accordance with the regulations remain under the supervision of a social worker 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 a provision of this Act.

(4) The Director-General may 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 management of a treatment centre may, if it has reason to believe that a service user who has been released on licence -

- (a) fails 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 the normal life of the community,

revoke the service user's licence and direct that the service user return to the treatment centre.

(2) If the need for recalling a service user is so urgent that it ought not to be deferred until the management has dealt with the matter, the manager may exercise all powers of the management under this subsection.

(3) A service user recalled to a treatment centre and who fails to return on the return date, will be deemed to have absconded and may be arrested in terms of section 48(1).

(4) Any service user arrested in terms of section 48(1) may be admitted in custody until he or she can be taken back or returned to the treatment centre in question.

(5) Any person recalled to a treatment centre in terms of subsection (1) who has returned thereto must be admitted therein until he or she is released or discharged again in terms of this Act.

Admission to treatment centre of persons from territories outside the Republic

45.(1)(a) The Government of the Republic, represented by the Minister may, in consultation with the Minister of Foreign Affairs, enter into an agreement with the government of any country for the admission to and the detention in 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 the said territory according to the law in force therein.

(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.

(2) The Minister may, with due regard to the provisions of 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 territory with the government of which the Government of the Republic has entered into an agreement referred to in subsection (1).

(3) Any person admitted to a treatment centre by order of the Minister under subsection (2) may be admitted therein until he or she is discharged in terms of a provision of this Act, but not longer than the expiration of the period fixed by the court which, or officer who, ordered the said person's admission in the treatment centre.

(4) Subject to the provisions of subsection (3), the provisions of this Act and of any rule must apply in respect of a person admitted to a treatment centre under this section as if his or her admission in that treatment centre had been ordered under any other provision of this Act but –

- (a) the management concerned must not grant to such person leave of absence under section 42 without the approval of the Director-General;
- (b) subject to the provisions of the agreement, if any, in terms of which such person was admitted to the treatment centre in question, such person must be discharged there from, only if the Minister approves his or her discharge.

Service user to have access to management and vice versa

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

CHAPTER 8

BEHAVIOUR MANAGEMENT AND DISCIPLINARY INTERVENTIONS

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 regulation or any rule, the manager or a person designated by him or her may-

- (a) after holding the prescribed inquiry, take the prescribed disciplinary steps against that service user according to the prescribed procedure; and
- (b) impose on the service user any intervention prescribed for the contravention thereof or of such rules.

(2) Whenever the manager or the person referred to in subsection (1), institutes disciplinary steps against a service user in terms of subsection (1) he or she must keep a record of the proceedings.

(3) If the service user is not satisfied with the outcome of the disciplinary hearing, he or she may appeal to the appeal committee within seven days of the outcome of the disciplinary hearing.

(4) The Minister must prescribe measures and procedures for the establishment, structure, composition and duties of the appeal committee to deal with the disputes, which could not be resolved, through the measures prescribed in this section

(5) If it appears to the members of the appeal committee, on consideration of the papers submitted to them, that the disciplinary action taken against the service user is unjustified, they must-

- (a) set aside or correct the proceedings, and may reduce or vary the disciplinary action; and
- (b) return the record with instructions thereon to the manager or designated person concerned.

(6) If the service user commits a serious crime the manager must report the matter to a member of the South African Police Service to deal with the matter in terms of the Criminal Procedure Act, 1977.

Method of dealing with absconders from treatment centre

48. (1) For the purposes of this section, a service user who 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 from which he or she was granted such leave, and a service user who without permission absents himself or herself from any hospital to which he or she may have been admitted at the instance of the management of a treatment centre, is deemed to have absconded from the treatment centre from which he or she was granted leave of absence or from which he or she was admitted to such hospital.

(2) A service user who has absconded from a treatment centre may be arrested without warrant by any member of the South African Police Service, social worker or member of the 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.

(3) Any person who obstructs or hinders a member of the South African Police Service, social worker or member of the staff of the treatment centre in the exercise of any power conferred upon him or her under 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 such fine and such imprisonment.

(4) A service user arrested in terms of subsection (2) may be placed in custody in any place referred to in section 36 (1) until he or she can be brought before the said magistrate.

(5) A magistrate before whom any such service user is brought must, after having enquired into the reasons why the service user absconded, order that the service user-

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

and must in either case forthwith report to the Director-General the result of his or her enquiry, and any order which he or she made under this subsection.

(6) On consideration of the magistrate's report 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-

- (a) direct that the service user be returned to the treatment centre or hospital from which he or she absconded;
- (b) deal with him or her under section 39 (1);

- (c) direct that the service user be released on licence in terms of section 43; or
- (d) direct that he or she be discharged from the effect of an order made under this Act.

(7) The provisions of section 36 (4) apply with the necessary changes in respect of any person placed in custody in a place referred to in the said section in terms of subsection (4) or in pursuance of an order made under subsection (5) (b).

CHAPTER 9

RESEARCH AND INFORMATION MANAGEMENT

Research and information management

49. The Minister must prescribe mechanisms for research and systems for information management in the field of substance abuse which must ensure the following:

- (a) ongoing monitoring of research and information regarding substances of abuse related issues within a social developmental context;
- (b) development and management of information management policy on substance abuse within a developmental context;
- (c) facilitation of new research to be undertaken on substance abuse; and
- (d) management of information to be submitted by all service providers involved with services to substance abusers.

Objectives of research and information management

50. The research and information management referred to in section 49 has the following objectives:

- (a) to provide for evidence based policy making and programme development;
- (b) to ensure monitoring and evaluating of trends to inform planning and intervention strategies; and
- (c) to identify and address gaps in service delivery.

CHAPTER 10

CENTRAL DRUG AUTHORITY AND SUPPORTING STRUCTURES

Establishment and functions of Central Drug Authority

51.(1) There is hereby established a body to be known as the Central Drug Authority, which may exercise the powers and must perform the duties conferred or imposed on it by this Act.

(2) The members of the Central Drug Authority is appointed by the Minister and consist of –

- (a) an official of the Department of Social Development nominated by the Minister;
- (b) an official of the Department of Justice and Constitutional Development nominated by that Department;

- (c) a member of the South African Police Service nominated by the South African Police Service;
- (d) an officer of the Department of Health nominated by that Department;
- (e) an officer of the Department of Education nominated by that Department;
- (f) an officer of the Department of Home Affairs nominated by that Department;
- (g) an officer of the Department of Foreign Affairs nominated by that Department;
- (h) an officer of the Department of Trade and Industry nominated by that Department;
- (i) a person in the service of the South African Revenue Service nominated by the South African Revenue Services;
- (j) an officer of the Department of Correctional Services nominated by that Department;
- (k) an officer of the Department of Labour nominated by that Department;
- (l) an officer of the Department of Finance nominated by that Department;
- (m) an officer of the Department of Arts and Culture nominated by that Department;
- (n) an officer of the Department of Sports and Recreation nominated by that Department;

- (o) an officer of the Department of Agriculture nominated by that Department;
 - (p) an officer of the Department of Transport;
 - (q) a member of the Secretariat for Safety and Security nominated by that Secretariat;
 - (r) a representative of the National Youth Commission nominated by that Commission;
 - (s) a representative of the Medicines Control Council nominated by that Council;
 - (t) a representative from the National Prosecuting Authority nominated by that Authority;
 - (u) not more than 12 other members who must be persons who have special knowledge of or experience in the problem relating to the abuse of substances or who are able to make a substantial contribution to the combating of such problem.
- (3) The members referred to in subsection (2)(u) must 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;
 - (b) the Minister has appointed the other members of the Central Drug Authority;
- and

(c) The Parliamentary Committees for Social Development of the National Assembly and the National Council of Provinces have made recommendations to the Minister in relation thereto after a transparent and open process of considering persons so nominated.

(4)(a) A member of the Central Drug Authority must be appointed for a period not exceeding five years, and on such conditions as the Minister may determine at the time of making the appointment: Provided that the period of office of a member may at any time be terminated by the Minister for reasons which are just and fair.

(b) 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.

(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 the applicable provisions of 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 on the business of the Central Drug Authority, as the Minister may, with the concurrence of the Minister of Finance, determine.

(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.

(b) The vice-chairperson must, when acting in the place of the chairperson, in all respect have all the powers, perform all the duties and be paid the allowances normally paid to the chairperson.

(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 with the approval of the Minister may determine.

(10)(a) The Central Drug Authority must, as soon as may be 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 the Minister has approved them.

(11)(a) The Central Drug Authority must annually, not 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.

Executive committee

52.(1) The executive committee of the Central Drug Authority consist of the chairperson and vice-chairperson of the Central Drug Authority and so many other members of the Central Drug Authority as my be determined and designated by the Central Drug Authority.

(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.

(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 authorized.

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

Secretariat of Central Drug Authority

53.(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 administrative and support staff necessary for the performance of its functions.

(2).(a) The Director and staff referred to 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.

(b) If the Director or any staff 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.

(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;

(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 be reasonably necessary to assist the Secretariat, appointed by the Minister after consultation with the Minister of Finance.

Powers and duties of Central Drug Authority

54. 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;

- (c) must facilitate the rationalisation of existing resources and monitor their effective use;
- (d) must encourage government departments and the private institutions to draw up plans to address substance abuse in line with the goals of the National Drug Master Plan;
- (e) must ensure that each Department has its own performance indicators;
- (f) must facilitate the initiation and promotion of measures, including legislation, to combat the use of substances of abuse;
- (g) must facilitate and comment on psychoactive substance-related policies and programmes developed both nationally and internationally;
- (h) must ensure the establishment and maintenance of information systems which will support the implementation, evaluation and ongoing development of the National Drug Master Plan;
- (i) must submit an annual report, that will set out a comprehensive description of the national effort relating to the substance abuse problem;
- (j) must ensure the development of effective strategies on prevention, early intervention, reintegration and aftercare services ;
- (k) must liaise with Clusters of Ministries when requested to do so;
- (l) must act as an adviser to Government on policies and programmes in the field of substance abuse and drug trafficking;

- (m) must review the National Drug Master Plan on a five-yearly basis and amend it as and when necessary;
- (n) Must organise the bi-annual summit on substance abuse in order for the role players in the field of substance abuse to share information ; and
- (o) 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

55.(1) The Minister must establish provincial substance abuse forums for each province.

- (2) The substance abuse forums may consist of representatives from -
 - (a) various government departments;
 - (b) community action groups;
 - (c) law enforcement agencies;
 - (d) research institutions;
 - (e) treatment institutions;
 - (f) non-governmental organisations;
 - (g) the business community; and
 - (h) any other structure as may be deemed relevant by the Minister.

(3) Adequate and sustained funding at all levels will come from collaborating and related departments.

(4) Any member of the Provincial Substance Abuse Forum who is not an officer in the public service, must be paid travelling and subsistence allowances while attending meetings of the substance abuse forum.

Functions of Provincial Substance Abuse Forums

56. The main functions of the provincial substance abuse forum are-
- (a) to strengthen member organisations in carrying out their functions related directly or indirectly with addressing substance abuse on the public or political field;
 - (b) to encourage networking and the effective flow of information between members of the forum;
 - (c) to act as a spokesperson for member organisations;
 - (d) to put substance abuse on the public and political agenda;
 - (e) to assist the local drug action committees in the execution of their tasks;
 - (f) to compile and submit an integrated Mini Drug Master Plan for the Province;
and
 - (g) to annually submit a report and inputs to the Central Drug Authority for the annual report of the Central Drug Authority.

Executive committees of Provincial Substance Abuse Forums

57.(1) A provincial Substance Abuse Forums must establish the executive committee of the Provincial substance abuse forums.

(2) The executive committee referred to in subsection (1) must consist of members responsible for –

- (a) treatment and after-care;
- (b) prevention and education;
- (c) community development; and
- (d) research and information dissemination.

(2) The executive committee may, subject to the directions of the Provincial substance abuse forums, during periods between meetings of the Provincial substance abuse forums exercise all the powers and performs all the duties of the Provincial substance abuse forums.

(3) Subsection (2) does not empower the executive committee to set aside or amend any decision of the Provincial substance abuse forums.

(4) Any decision taken or act performed by or on the authority of the executive committee must be of full force and effect, unless it is set aside or amended by the Provincial substance abuse forums at its first meeting following the meeting of the executive committee at which such decision was taken or such action was authorized.

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

Establishment of Local Drug Action Committees

58.(1) Every local municipality must, in consultation with the Department, establish Local Drug Action Committees, to represent each municipality and to give effect to the National Drug Master Plan.

(2) Each such committee must consist of interested persons and stakeholders, who are involved in organisations that deal with the combating of substance abuse in that municipality.

(3) The members of the Local Drug Action Committee must be appointed by the Minister and must consist of any of the following:

- (a) officials from Government departments represented at local level;
- (b) a member of the South African Police Service nominated by the Commissioner of Police;
- (c) a probation and correctional services 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 Metropolitan Area;
- (e) a representative from prevention, treatment and after-care services within the municipality nominated by the Mayor of the relevant Metropolitan Area;
- (e) a representative from the local health authority nominated by the Mayor of the relevant Metropolitan Area; and
- (f) a representative of the local business sector nominated by the Mayor of the relevant Metropolitan Area.

(4) The Local Drug Acton Committee designates a member of the committee as chairperson of that committee.

(5) The provincial coordinator from the Department of Social Development must assist in the development of these structures.

(6) The committee may co-opt additional members with special skills, commitment or expertise, as and when required.

(7) The Drug Action Committees will be linked to the provincial substance abuse forums and will represent the substance abuse forums at local government level.

(8) The local municipality and Department and other relevant Departments will contribute resources towards Local Drug Action Committees.

(9) Any committee may make rules in relation to the holding of, and procedure at, its meetings.

Functions of Local Drug Action Committees

59. The functions of the Local Drug Action Committees are-

- (a) to ensure local action on the National Drug Master Plan in each community;

- (b) to draw up its own action plan to combat substance abuse in the municipality in cooperation with the provincial and local governments;

- (c) to ensure that its own 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 the government departments;

- (d) to implement its action plans;
- (e) to annually provide a report to the Provincial Forum concerning actions, progress, problems and other related events in its area; and
- (f) to provide information that the Central Drug Authority may require, from time to time.

Compliance with the implementation of the National Drug Master Plan by various Government departments, entities and stakeholders

60.(1) The Central Drug Authority must commit the responsible Government departments and entities to provide human and financial resources to ensure the implementation of the National Drug Master Plan through their Mini Drug Master Plans.

(2) The Central Drug Authority must request different Government departments and provincial forums to develop and submit Mini Drug Master Plans, annual reports and any other reports it may deem necessary, whenever required.

(3) Through the Minister of Social Development, the Central Drug Authority may request Cabinet to intervene in cases where Government departments and/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 tools to ensure implementation and reporting by all Government departments, entities and stakeholders.

CHAPTER 11

MONITORING AND EVALUATION

Monitoring and evaluation

61. The Department must in the prescribed manner and on an ongoing basis monitor and evaluate all programmes within the framework of approved minimum norms and standards for different levels of service.

Purpose of monitoring and evaluation programmes

62. Progress and achievement with regard to service delivery must be monitored and evaluated on an ongoing basis to:

- (a) ensure compliance with legislative requirements as well as minimum norms and standards for services on different levels and for this purpose efficient and accurate mechanisms must be developed, using the most efficient and cost-effective data collection methods available;
- (b) ensure effective implementation of legislation in a prescribed manner and in accordance with the prescribed minimum norms and standards;
- (c) identify problem areas and changes necessary to ensure effectiveness and efficiency in service delivery;
- (d) measure the extent of an impact of intervention strategies and programmes to reduce the demand for substances of abuse;
- (e) ensure timely feedback and indicate whether the needs of the people affected by substance abuse have been met; and

- (f) ensure effective monitoring and evaluation programmes which will also contribute to the improvement and review of policies and programmes.

Monitoring and evaluation at different levels

63.(1) Monitoring and evaluation of programmes must be undertaken at national, provincial and local level and by the Central Drug Authority and civil society in general irrespective of where the services are provided.

(2) The Department must develop an integrated information management system for the keeping of reliable data and information so as to plan and monitor services.

(3) The Minister may prescribe monitoring and evaluation tools and systems for monitoring services.

(4) The Central Drug Authority must ensure that the National Drug Master Plan is implemented in a coordinated, inter-sectoral and integrated way at national, provincial and local levels.

CHAPTER 12

GENERAL PROVISIONS

Offences and Penalties

64. Any person or organization who contravenes or fails to comply with the provisions of this Act, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 12 months or both such fine and imprisonment.

Delegation

65.(1) The Minister may –

- (a) delegate to any officer of his or her department any power conferred on him or her by this Act, except the power to make regulations referred to in section 67;
- (b) authorize any such officer to perform any duty imposed upon him or her 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 the province any power conferred on the Minister by this Act, except the power under section 67 to make regulations;
- (b) authorize 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 the province may –

- (c) delegate to any officer of the provincial administration concerned any power delegated to that member under subsection (2);
- (d) authorize any such officer to perform any duty which that member is authorised to perform under subsection (2).

(4) The Director-General may -

- (a) delegate to any officer of his or her Department any power conferred on him or her by this Act; and
- (b) authorize any such officer to perform any duty imposed upon the Director-General by this Act.

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

(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);
- (b) authorize any such officer to perform any duty which he or she is authorised to perform under subsection (5).

(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 authorization considers necessary.

- (8) Any delegation of a power or authorization to perform a duty under this section -
- (a) must be in writing;
 - (b) must not prevent the person who effected the delegation or granted the authorization from exercising that power or performing that duty himself or herself; and
 - (c) may at any time be withdrawn in writing by that person.

Transitional provision

66. Anything done in terms of a law repealed by this Act, which can be done in terms of a provision of this Act, must be regarded as having been done in terms of the corresponding provision of this Act.

Regulations

67.(1) The Minister may make regulations regarding –

- (a) any form required to be prescribed in terms of this Act;
 - (b) any matter which is required or permitted to be prescribed in terms of this Act; and
 - (c) any other matter which the Minister deems necessary or expedient to be prescribed in order to achieve the objects of this Act.
- (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.

(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 anyone or more of the following forms -

(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.

(4) Different regulations may be made under subsection (1) in respect of different public or private treatment centres or private or public halfway house or different categories of public or private treatment centres or public or private halfway house and the Minister may also in such regulations differentiate in any manner he or she deems fit between different groups of service users in those treatment centres and halfway house generally or in any particular treatment centre or halfway house.

Repeal of laws and savings

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

(2) Any proclamation, regulation, rule, notice, order, appointment, authorization, 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), is deemed to have been issued, made, prescribed, given, granted, entered into or taken under the corresponding provision of this Act.

Short title and commencement

69. This Act is called the Prevention of and Treatment for Substance Abuse Act, 2007, and takes effect on a date to be fixed by the President by proclamation in the Gazette.

MEMORANDUM ON THE OBJECTS OF THE PREVENTION OF AND TREATMENT FOR SUBSTANCE ABUSE BILL

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 Prevention of and Treatment for Substance Abuse Bill provides for 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

The objects of this Bill are -

- (a) to provide for a coordinated effort to combat substance abuse;
- (b) to provide for the conditions for registration of all programmes including those in treatment centres and halfway houses;
- (c) to provide for the conditions and procedures for the admission of persons to treatment centres and the release of persons from treatment centres;

- (d) to provide for early intervention, treatment and reintegration programmes for vulnerable persons;
- (e) to establish a research and information management framework in the field of substance abuse; and
- (f) to 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 Services also participated in workshops and gave valuable input which led to the drafting of this 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 the view to identifying the intergovernmental fiscal implications and budgetary implications of the proposed 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, after care 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

The State Law Advisors 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”.