

REPUBLIC OF SOUTH AFRICA

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

*(As presented by the Portfolio Committee on Social Development (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF SOCIAL DEVELOPMENT)

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BILL

To provide for a comprehensive national response for the combating of substance abuse; to provide for mechanisms aimed at demand and harm reduction in relation to substance abuse through prevention, early intervention, treatment and re-integration programmes; to provide for the registration and establishment of treatment centres and halfway houses; to provide for the committal of persons to and from treatment centres and for their treatment, rehabilitation and skills development in such treatment centres; to provide for the establishment of the Central Drug Authority; and to provide for matters connected therewith.

PREAMBLE

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

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

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

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

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

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS AND OBJECTS OF ACT

5

1. Definitions
2. Objects of Act

CHAPTER 2

COMBATING OF SUBSTANCE ABUSE

3. Interventions to combat substance abuse

10

CHAPTER 3**STRATEGIES AND PRINCIPLES FOR DEMAND AND HARM REDUCTION**

- | | | |
|----|---|---|
| 4. | Guiding principles for provision of services | |
| 5. | Intersectoral strategies for reducing demand and harm caused by substance abuse | 5 |
| 6. | Development of and compliance with minimum norms and standards | |
| 7. | Support for services delivered by service providers | |

CHAPTER 4**PREVENTION AND EARLY INTERVENTION SERVICES**

- | | | |
|-----|---|----|
| 8. | Programmes for prevention of substance abuse | 10 |
| 9. | Purpose of providing prevention programmes | |
| 10. | Establishment and purpose of programmes for early intervention | |
| 11. | Provision of prevention and early intervention services by various stakeholders | |

CHAPTER 5**COMMUNITY-BASED SERVICES** 15

- | | | |
|-----|---|----|
| 12. | Guidelines for community-based services | |
| 13. | Establishment and provision of community-based services | |
| 14. | Registration of community-based services | |
| 15. | Management structure of community based services | |
| 16. | Persons providing community-based services | 20 |

CHAPTER 6**CENTRE BASED AND OUT-PATIENT SERVICES**

- | | | |
|-----|---|----|
| 17. | Establishment and disestablishment of public treatment centre | |
| 18. | Purposes for which persons are admitted to treatment centres | |
| 19. | Registration and cancellation of registration of treatment centre | 25 |
| 20. | Establishment of public halfway house | |
| 21. | Registration of private halfway house | |
| 22. | Compliance with conditions for registration of treatment centre and halfway house | |
| 23. | Monitoring and assessment of treatment centre and halfway house | 30 |
| 24. | Staff of public treatment centre and public halfway house | |
| 25. | Appeals | |
| 26. | Death, serious injury or abuse of service user or any person affected by substance abuse in treatment centre or halfway house | |
| 27. | Establishment of out-patient services | 35 |
| 28. | Children abusing substances or affected by substance abuse | |
| 29. | Management structure of treatment centre and halfway house | |

CHAPTER 7**AFTERCARE AND REINTEGRATION SERVICES**

- | | | |
|-----|---|----|
| 30. | Establishment of aftercare and reintegration services | 40 |
| 31. | Support groups | |

CHAPTER 8**ADMISSION, TRANSFER AND REFERRAL TO TREATMENT CENTRE**

- | | | |
|-----|---|----|
| 32. | Admission of voluntary service user to treatment centre | |
| 33. | Admission of involuntary service user to treatment centre | 45 |
| 34. | Admission and transfer of children | |

35.	Committal of person to treatment centre after enquiry	
36.	Committal of person to treatment centre after conviction	
37.	Court may order inquiry in terms of this Act	
38.	Estimation of age of person	
39.	Postponement of order	5
40.	Temporary custody of person pending enquiry or removal to treatment centre	
41.	Appeal against and review of certain orders	
42.	Admission or transfer to treatment centre	
43.	Transfer of involuntary service user from and to treatment centre	
44.	Transfer of involuntary service user from prison, child and youth care centre, alternative care or health establishment to public treatment centre	10
45.	Retransfer from public treatment centre to prison, child and youth care centre, alternative care or health establishment	
46.	Leave of absence from treatment centre	
47.	Involuntary service user of treatment centre may be released on licence or discharged	15
48.	Revocation of licence	
49.	Admission to treatment centre of persons who are not South African citizens or permanent residents	
50.	Service user to have access to management and <i>vice versa</i>	20

CHAPTER 9

DISCIPLINARY INTERVENTION AND APPEAL PROCEDURE

51.	Maintenance of discipline in treatment centre, halfway house, out-patient services and community-based services	
52.	Method of dealing with absconder from treatment centre	25

CHAPTER 10

CENTRAL DRUG AUTHORITY AND SUPPORTING STRUCTURES

53.	Establishment and functions of Central Drug Authority	
54.	Executive committee	
55.	Secretariat of Central Drug Authority	30
56.	Powers and duties of Central Drug Authority	
57.	Establishment of Provincial Substance Abuse Forums	
58.	Functions of Provincial Substance Abuse Forums	
59.	Executive committee of Provincial Substance Abuse Forums	
60.	Establishment of Local Drug Action Committees	35
61.	Functions of Local Drug Action Committees	
62.	Compliance with implementation of National Drug Master Plan by various government departments, entities and stakeholders	

CHAPTER 11

GENERAL PROVISIONS 40

63.	Offences and penalties	
64.	Delegation	
65.	Regulations	
66.	Repeal of laws and savings	
67.	Short title and commencement	45

CHAPTER 1

DEFINITIONS AND OBJECTS OF ACT

Definitions

1. In this Act, unless the context indicates otherwise—
- “**abuse**” means the sustained or sporadic excessive use of substances and includes any use of illicit substances and the unlawful use of substances; 5
- “**aftercare**” means ongoing professional support to a service user after a formal treatment episode has ended in order to enable him or her to maintain sobriety or abstinence, personal growth and to enhance self-reliance and proper social functioning; 10
- “**Central Drug Authority**” means the Central Drug Authority established by section 53;
- “**child**” means a person under the age of 18 years;
- “**child and youth care centre**” means a “child and youth care centre” as defined in the Children’s Act; 15
- “**Children’s Act**” means the Children’s Act, 2005 (Act No. 38 of 2005);
- “**community-based services**” means services provided to persons who abuse or are dependent on substances and to persons affected by substance abuse while remaining within their families and communities;
- “**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977); 20
- “**Department**” means the Department of Social Development in the national sphere of government;
- “**detoxification**” means a medically supervised process by which physical withdrawal from a substance is managed through administration of individually prescribed medicines by a medical practitioner in a health establishment, including a treatment centre authorised to provide such a service under the National Health Act; 25
- “**Director-General**” means the head of the Department;
- “**halfway house**” means a public or private halfway house that has been established or registered to provide a sober living environment for service users who have completed a formal treatment programme for substance abuse and require a protected living environment in order to prepare them for reintegration into society; 30
- “**health establishment**” means “health establishment” as defined in section 1 of the National Health Act;
- “**Health Professions Act**” means the Health Professions Act, 1974 (Act No. 56 of 1974);
- “**HOD**” means a provincial head of department responsible for social development; 40
- “**Immigration Act**” means the Immigration Act, 2002 (Act No. 13 of 2002);
- “**in-patient service**” means a residential treatment service provided at a treatment centre;
- “**involuntary service user**” means a person who has been admitted to a treatment centre upon being— 45
- (a) convicted of an offence and has in addition to or in lieu of any sentence in respect of such offence been committed to a treatment centre or community based treatment service by a court;
- (b) committed to an in-patient treatment centre by way of a court order after such court has held an enquiry; or 50
- (c) transferred from a prison, child and youth care centre, alternative care or health establishment, for treatment of and rehabilitation for substances;
- “**local drug action committee**” means the committee established by the municipality to give effect to the National Drug Master Plan; 55
- “**magistrate**” includes an additional magistrate and assistant magistrate;
- “**management structure**”, in relation to any treatment centre and halfway house, means the management structure of such treatment centre or halfway house established in terms of section 29;

“MEC” means the member of the Executive Council responsible for social development in the province;

“medical practitioner” means “medical practitioner” as defined in section 1 of the Health Professions Act;

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

“mental health care user” means “mental health care user” as defined in section 1 of the Mental Health Care Act;

“mental health practitioner”, for the purposes of this Act, means a psychiatrist or registered medical practitioner or a nurse, occupational therapist, psychologist or social worker who has been trained to provide psycho-social, mental health care, treatment and rehabilitation services;

“Mini Drug Master Plan” means the strategy by national departments, provincial substance abuse forums and local drug action committees that sets out measures to control and reduce the supply of, demand for and harm caused by substances;

“Minister” means the member of Cabinet responsible for social development;

“National Drug Master Plan” means the plan referred to section 3(4);

“National Health Act” means the National Health Act, 2003 (Act No. 61 of 2003);

“out-patient service” means a non-residential service provided by a treatment centre or halfway house to persons who abuse substances and to persons affected by substance abuse and which is managed for the purposes of providing a holistic treatment service;

“persons affected by substance abuse” means any member of a family or community not abusing or dependent on substances but who requires services related to substance abuse;

“police official” means a member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);

“prescribed” means prescribed by regulation;

“private halfway house” means a halfway house that is privately owned and registered to provide a sober living environment for service users who have completed a formal treatment programme for substance abuse and who require a protected living environment in order to prepare them for reintegration into society;

“programme” means activities that give effect to the services defined in this Act;

“public halfway house” means a halfway house that is owned and financed by the government or an organ of state to provide a sober living environment for service users who have completed a formal treatment programme for substance abuse and who require a protected living environment in order to prepare them for reintegration into society;

“private treatment centre” means a treatment centre that is privately owned and registered for the treatment and rehabilitation of service users who abuse or are dependent on substances;

“Provincial Substance Abuse Forum” means the forum established in terms of section 57 by an MEC in order to give effect to the National Drug Master Plan;

“public treatment centre” means an in-patient or out-patient treatment centre that is owned and financed by the government or an organ of state and established for the treatment and rehabilitation of service users who abuse or are dependent on substances;

“regulation” means a regulation made in terms of section 65;

“rehabilitation” means a process by which a service user is enabled to reach and maintain his or her own optimal physical, psychological, intellectual, mental, psychiatric or social functional levels, and includes measures to restore functions or compensate for the loss or absence of a function;

“services” means prevention, early intervention, treatment, reintegration and after care and any other interventions ;

“service user” means a person who is abusing or dependent on substances and who, following assessment, receives services in a treatment centre, halfway house or community based service;

“social auxiliary worker” means a person registered and authorised in terms of the Social Service Professions Act;

“Social Service Professions Act” means the Social Service Professions Act, 1978 (Act No. 110 of 1978);

“social worker” means any person registered as a social worker under the Social Service Professions Act;

- “**substances**” means chemical, psychoactive substances that are prone to be abused, including tobacco, alcohol, over the counter drugs, prescription drugs and substances defined in the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), or prescribed by the Minister after consultation with the Medicines Control Council established by section 2 of the Medicine and Related Substance Control Act, 1965 (Act No. 101 of 1965), and “**drugs**” in the context of this Act has a similar meaning; 5
- “**supply**” means the production and distribution of illicit substances;
- “**this Act**” includes any regulation;
- “**treatment**” means the provision of specialised social, psychological and medical services to service users and to persons affected by substance abuse with a view to addressing the social and health consequences associated therewith; 10
- “**treatment centre**” means a private or public treatment centre registered or established for the treatment and rehabilitation of service users who abuse or are dependent on substances; 15
- “**voluntary service user**” means any service user who—
- (a) has applied for admission;
 - (b) has submitted himself or herself for admission; or
 - (c) is a child in respect of whom a parent or guardian has applied for such child’s admission, 20
- at a treatment centre or for any other service and has been admitted to such a treatment centre for skills development, treatment of and rehabilitation for substances;
- “**vulnerable persons**” includes children, youth, older persons, people with disabilities and service users recovering from substance abuse; 25
- “**youth**” means “youth” as defined in section 1 of the National Youth Commission Act, 1996 (Act No. 19 of 1996).

Objects of Act

2. The objects of this Act are to—
- (a) combat substance abuse in a coordinated manner; 30
 - (b) provide for the registration and establishment of all programmes and services, including community based services and those provided in treatment centres and halfway houses;
 - (c) create conditions and procedures for the admission and release of persons to or from treatment centres; 35
 - (d) provide prevention, early intervention, treatment, reintegration and after care services to deter the onset of and mitigate the impact of substance abuse;
 - (e) establish a Central Drug Authority to monitor and oversee the implementation of the National Drug Master Plan;
 - (f) promote a collaborative approach amongst government departments and other stakeholders involved in combating substance abuse; and 40
 - (g) provide for the registration, establishment, deregistration and disestablishment of halfway houses and treatment centres.

CHAPTER 2

COMBATING OF SUBSTANCE ABUSE 45

Interventions to combat substance abuse

3. (1) The Minister and the ministers responsible for the departments and state organs listed in section 53(2)(a) to (t), must take reasonable measures within the scope of their line functions and available resources to combat substance abuse through the development and coordination of interventions that fall into three broad categories, 50 namely—
- (a) demand reduction, which is concerned with services aimed at discouraging the abuse of substances by members of the public ;
 - (b) harm reduction, which for the purposes of this Act is limited to the holistic treatment of service users and their families, and mitigating the social, 55 psychological and health impact of substance abuse; and

- (c) supply reduction, which refers to efforts aimed at stopping the production and distribution of illicit substances and associated crimes through law enforcement strategies as provided for in the applicable laws.
- (2) The ministers and organs of state contemplated in subsection (1) must adopt a multifaceted and integrated approach to enhance coordination and cooperation in the management of substance abuse and ensure the effective implementation of the National Drug Master Plan . 5
- (3) Cabinet must adopt a National Drug Master Plan, containing the national drug strategy and setting out measures to control and manage the supply of and demand for drugs in the Republic. 10
- (4) The Minister must co-ordinate the implementation of the National Drug Master Plan aimed at the combating of substance abuse.

CHAPTER 3

STRATEGIES AND PRINCIPLES FOR DEMAND AND HARM REDUCTION

Guiding principles for provision of services 15

4. All services rendered to service users and to persons affected by substance abuse must be provided in an environment that—
- (a) recognises the educational, social, cultural, economic and physical needs of such persons;
 - (b) ensures access to information regarding the prevention of substance abuse; 20
 - (c) promotes the prevention of exploitation of such persons;
 - (d) promotes the respect for the person, human dignity and privacy of service users and persons affected by substance abuse;
 - (e) prevents stigmatisation against service users;
 - (f) promotes the participation of service users and persons affected by substance abuse in decision making processes regarding their needs and requirements; 25
 - (g) recognises the special needs of people with disabilities;
 - (h) ensures that services are available and accessible to all service users, including women, children, older persons and persons with disabilities without any preference or discrimination; 30
 - (i) ensures that service users are accepted as human beings in need of help and with the potential to change;
 - (j) coordinates the educational needs of children with the relevant education department;
 - (k) strives to render effective, efficient, relevant, prompt and sustainable services; 35
 - (l) respects the confidentiality of the information relating to the treatment and rehabilitation of service users and persons affected by substance abuse;
 - (m) respects the right of service users and persons affected by substance abuse to give written consent to participate in any research related to their treatment and rehabilitation; and 40
 - (n) ensures that services are appropriate to the ages of children and youth.

Intersectoral strategies for reducing demand and harm caused by substance abuse

5. (1) The Minister must, together with the National Youth Commission and the Ministers of Finance, Education, Health, Justice and Constitutional Development, Arts and Culture, Sports and Recreation, Local and Provincial Government, Correctional Services and Safety and Security, develop and implement comprehensive intersectoral strategies aimed at reducing the demand and harm caused by substance abuse. 45
- (2) These strategies must include four categories of services, namely—
- (a) prevention that provides for—
 - (i) measures aimed at skills development for individuals, families and communities to enable them to enjoy a better quality of life; 50
 - (ii) anticipatory actions to reduce the likelihood of undesirable conditions which may expose people to substance abuse, including information, communication and education of members of the public about the risks associated with substance abuse; 55

- (iii) proactive measures targeting individuals, families and communities to avoid the abuse of substances and to prevent persons from moving into higher levels of substance abuse; and
 - (iv) the creation of opportunities for and promotion of healthy lifestyles;
 - (b) early intervention that provides for— 5
 - (i) the identification of risky behaviour that is associated with and predisposes people to substance abuse;
 - (ii) the detection of conditions such as poverty and other environmental factors that contribute to crime and the abuse of substances;
 - (iii) diversion of service users to programmes that promote alternative 10 lifestyles;
 - (iv) programmes to interrupt progression of the abuse of substances, such as recreational drug use, to the higher levels of dependence through skills development and developmental socio-therapeutic interventions; and
 - (v) referral to treatment programmes, where appropriate, to reduce the 15 social, health and economic consequences for service users;
 - (c) treatment that provides for—
 - (i) medical interventions that address the physiological and psychiatric needs of the service user;
 - (ii) psycho-social programmes that address the emotions, feelings, attitudes, 20 beliefs, thoughts and behaviour patterns of service users;
 - (iii) provision of interventions that target the environmental factors in the space of the service user, including the family and community; and
 - (iv) the preparation of service users for reintegration into society through developmental programmes, including skills development; and 25
 - (d) aftercare and reintegration that provide for—
 - (i) the integration of people who have undergone the formal treatment episode into their families and communities;
 - (ii) individuals to be equipped with additional tools to maintain their 30 treatment gains, sobriety and avoid relapse;
 - (iii) the establishment of mutual support groups to enhance their self-reliance and optimal social functioning; and
 - (iv) the link between service users and resources for their further development and well being.
- (3) The Minister must, after consultation with the ministers and state organs referred 35 to in subsection (1), develop and implement comprehensive intersectoral strategies for treatment services contemplated in subsection (2)(c).

Development of and compliance with minimum norms and standards

6. (1) The Minister must, after consultation with the relevant ministers and by notice 40 in the *Gazette*, prescribe minimum norms and standards—
- (a) for programmes that give effect to prevention and early intervention services;
 - (b) relating to the protection of children and service users in treatment centres and halfway houses;
 - (c) for the registration and management of community-based services;
 - (d) for the establishment, management, monitoring and assessment of halfway 45 houses and treatment centres;
 - (e) for the registration, monitoring and evaluation of out-patient services; and
 - (f) for the establishment of the monitoring and evaluation of reintegration programmes and services.
- (2) Any treatment centre, halfway house or person that intends to manage or is 50 managing any treatment, rehabilitation, skills development, prevention, intervention, aftercare or reintegration programmes for substance abuse must comply with the applicable minimum norms and standards contemplated in this section.
- (3) No person may be involved in the treatment, rehabilitation and skills development of people abusing substances or affected by substance abuse unless such person has 55 completed an accredited training.
- (4) The accreditation contemplated in subsection (3) must be provided in terms of the South African Qualification Authority Act, 1995 (Act No. 58 of 1995).

Support for services delivered by service providers

7. (1) The Minister may—
- (a) from funds appropriated by Parliament for that purpose, provide financial assistance to service providers that provide services in relation to substance abuse; 5
 - (b) for the purposes of paragraph (a) prioritise certain needs of and services for persons affected by substance abuse;
 - (c) in the prescribed manner, enter into contracts with service providers to ensure that the services contemplated in paragraph (b) are provided; and
 - (d) provide assistance to persons who establish substance abuse services. 10
- (2) The Minister must—
- (a) prescribe conditions for the receiving of financial assistance referred to in subsection (1)(a), including accounting and compliance measures;
 - (b) prescribe remedies for failure to comply with the conditions contemplated in paragraph (a); 15
 - (c) establish and maintain a register of all assets bought by service providers with Government funds; and
 - (d) prescribe conditions for the management and disposal of assets contemplated in paragraph (c).
- (3) Service providers who procure any immovable property with the funds 20 appropriated in terms of subsection (1) must ensure that the Registrar of Deeds makes the necessary entries in the title deed indicating the state ownership of such property.

CHAPTER 4**PREVENTION AND EARLY INTERVENTION SERVICES****Programmes for prevention of substance abuse 25**

8. (1) The Minister must, in consultation with the National Youth Commission, South African Police Services and the Ministers of Education, Health, Justice and Constitutional Development, Arts and Culture, Provincial and Local Government, Correctional Services and Sports and Recreation, facilitate the establishment of integrated programmes for the prevention of substance abuse. 30
- (2) The programmes contemplated in subsection (1) may include elements which—
- (a) address the values, perceptions, expectations and beliefs that a community associates with substances; and
 - (b) develop the personal and social skills of people, especially children, to increase their capacity to make informed and healthy choices. 35

Purpose of providing prevention programmes

9. (1) The purpose of prevention programmes is to prevent a person from using or continuing to use substances that may lead to abuse or result in dependence.
- (2) Prevention programmes must focus on—
- (a) preserving the family structure of the persons affected by substance abuse and those who are dependent on substances; 40
 - (b) developing appropriate parenting skills for families at risk;
 - (c) creating awareness and educating the public on the dangers and consequences of substance abuse;
 - (d) engaging young people in sports, arts and recreational activities and ensuring the productive and constructive use of leisure time; 45
 - (e) peer education programmes for youth;
 - (f) enabling parents and families to recognise the early warning signs with regard to substance use and equipping them with information on appropriate responses and available services; and 50
 - (g) empowering communities to understand and to be proactive in dealing with challenges related to substance abuse, and its link to crime, HIV and AIDS and other health conditions.

Establishment and purpose of programmes for early intervention

10. (1) The Minister must, in consultation with the ministers and organs of state referred to in section 8(1) facilitate the establishment of programmes for early intervention.

(2) The purpose of programmes for early intervention is to identify and treat potentially harmful substance use prior to the onset of overt symptoms associated with dependency on substances. 5

(3) Programmes for early intervention must give effect to section 2(b).

(4) Programmes for early intervention must focus on—

- (a) identification of individuals, families and communities at risk; 10
- (b) screening for problematic substance use to facilitate early detection and appropriate interventions;
- (c) enabling affected persons to recognise the warning signals of substance abuse and conditions related thereto;
- (d) providing families and communities with information to enable them to access resources and professional help; 15
- (e) involving and promoting the participation of children, youth, parents and families, in identifying and seeking solutions to their problems;
- (f) promoting appropriate interpersonal relationships within the family of the affected persons; 20
- (g) promoting the well-being of the service user and the realisation of his or her full potential;
- (h) sensitising users and their families about the link between substance abuse, crime, HIV and AIDS and other health conditions;
- (i) promoting the diversion of children and other users away from the criminal justice system; and 25
- (j) skills development and economic empowerment of users and persons affected by substance abuse.

Provision of prevention and early intervention services by various stakeholders

11. (1) The Minister must, in consultation with the ministers and organs of state referred to in section 8(1), facilitate the establishment of the types of prevention and early intervention services and the manner in which such services must be provided in order to prevent substance abuse. 30

(2) Prevention and early intervention services provided by an organ of state or any service provider only qualify for financial assistance in terms of section 7 if those services comply with the minimum norms and standards contemplated in section 6. 35

(3) A service provider involved in the provision of early intervention services may not refuse to provide treatment to a person using substances if such refusal may result in serious harm to such person.

CHAPTER 5

40

COMMUNITY-BASED SERVICES

Guidelines for community-based services

12. (1) The Minister, in consultation with the National Youth Commission, South African Police Services and Ministers of Education, Arts and Culture, Health, Provincial and Local Government, Correctional Services and Sports and Recreation, must develop guidelines for the establishment of community based services. 45

(2) The Minister, in consultation with the ministers and organs of state referred to in subsection (1), must prescribe—

- (a) national norms and standards for community based services; and
- (b) the type of community-based services and the manner in which such services must be provided. 50

(3) The MEC may, in consultation with the relevant provincial departments, develop an integrated provincial strategy for community based services.

(4) The MEC may, in consultation with the members of the Executive Council responsible for Health, Education, Sports and Recreation, Safety and Security and Local 55

Government in the province in question and from moneys appropriated by the provincial legislature for that purpose, fund community based services for the province.

(5) Community based services rendered by non-governmental organisations qualify for funding from money appropriated by the provincial legislature if they comply with the registration requirements contemplated in subsection (2). 5

(6) The community based strategy must target children and youth whether in and out of school, people with disabilities, older persons, families and communities in both rural and urban areas.

(7) Community structures must be involved and participate in the rendering of community based services. 10

Establishment and provision of community-based services

13. (1) The MEC, after consultation with the departments referred to in section 12(4) and local municipalities, must facilitate the establishment of community-based services with special emphasis on under-serviced areas.

(2) The MEC, in collaboration with the relevant departments contemplated in subsection (1) and with local municipalities, may provide or fund community-based services from moneys appropriated by the provincial legislature for that purpose. 15

(3) Community-based services contemplated in subsection (1) must—

- (a) be managed and maintained in accordance with this Act; and
- (b) comply with the prescribed norms and standards contemplated in section 6(1) 20 and such other requirements as may be prescribed.

(4) Community-based services must—

- (a) include community-based treatment programmes subject to sections 33, 36 and 39;
- (b) establish or utilise existing facilities and infrastructure, including primary 25 health care centres to provide integrated community based treatment programmes;
- (c) consist of a multidisciplinary team consisting of a social worker, professional nurse and any other mental health practitioner registered with the relevant 30 statutory body;
- (d) provide professional and lay support within the home environment;
- (e) establish recreational, cultural and sports activities to divert young people from substance abuse; and
- (f) provide for support groups for service users and those affected by substance 35 abuse.

Registration of community-based services

14. (1) No person may provide community-based services unless the services are registered in terms of this section.

(2) Any person who wishes to provide a community-based service must apply to the HOD for the registration of such service. 40

(3) The Minister must, in consultation with the ministers and organs of state referred to in section 12(1), prescribe conditions for the registration of community-based services, including application for registration, approval of registration, temporary registration, withdrawal and termination of registration.

(4) Registration granted in terms of this section is not transferable to another person. 45

(5) If the provider of a service for any reason intends to stop providing the service, the provider must, prior to stopping the service in question—

- (a) notify the HOD of the intention and the implications of such stoppage for the affected persons;
- (b) inform the persons affected of the intended stoppage of the service; and 50
- (c) take reasonable steps to ensure that the persons benefiting from the service are not adversely affected or put at risk and, where appropriate, are referred to a person providing similar services.

(6) A person who renders a community-based service that has not been registered in terms of this section is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. 55

Management structure of community-based services

- 15.** (1) Management structures must be established for each community-based service.
- (2) The Minister may prescribe guidelines for the—
- (a) functioning and composition of management structures; 5
 - (b) election, appointment, qualification, terms of office and grounds for removal from office of members of the structure; and
 - (c) number of and procedure at meetings of a management structure.
- (3) The management structure established in terms of subsection (1) must ensure that— 10
- (a) it provides quality service;
 - (b) it creates opportunities for training of staff;
 - (c) it applies sound financial management principles;
 - (d) there is proper and effective management of services; and
 - (e) appropriate complaints mechanisms and procedures are in place. 15

Persons providing community-based services

- 16.** (1) All mental health practitioners must be registered with the appropriate statutory body responsible for the relevant profession.
- (2) Any person who contravenes or fails to comply with this section is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. 20

CHAPTER 6

CENTRE-BASED AND OUT-PATIENT SERVICES

Establishment and disestablishment of public treatment centre

- 17.** (1) The Minister must, in consultation with the MEC, from funds appropriated by Parliament for that purpose, establish, maintain and manage at least one public treatment centre in each province for the reception, treatment, rehabilitation and skills development of service users contemplated in sections 32, 33, 36 and 44. 25
- (2) The Minister may, in consultation with the MEC and after giving three months notice and providing reasons for his or her decision, disestablish a public treatment centre. 30

Purposes for which persons are admitted to treatment centres

- 18.** A service user is admitted to a public treatment centre for the purposes of receiving or undergoing treatment and rehabilitation, including skills development.

Registration and cancellation of registration of treatment centre 35

- 19.** (1) No person may establish or manage any treatment centre maintained for the treatment, rehabilitation and skills development of service users or in which such persons receive mainly physical, psychological, spiritual or social treatment unless such treatment centre is registered in terms of this section.
- (2) Any person who desires to establish or manage a treatment centre contemplated in subsection (1) must apply in the prescribed manner to the Director-General for the registration of such centre. 40
- (3) The Director-General may—
- (a) after consideration of an application contemplated in subsection (2) and such other information as he or she may obtain; and 45
 - (b) if he or she is satisfied that such treatment centre is or will be managed and conducted in such a way that the reception, maintenance, treatment, rehabilitation and skills development of service users complies with the prescribed requirements,
- grant the application for registration and issue a registration certificate. 50

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

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

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

(7) A registration certificate granted by the Director-General is valid for a period of five years, and is renewable every five years on application by the owner or manager of a treatment centre six months prior to the expiry date. 10

(8) The Director-General may refuse an application for registration in terms of subsection (2) or (7) if, after consideration of such application, he or she is not satisfied that such treatment centre is or will be managed or conducted in the manner 15 contemplated in subsection (3).

(9) If an application for a registration certificate is refused or if such certificate is cancelled, the owner or manager concerned must take reasonable steps to ensure that all service users admitted in the treatment centre concerned are admitted in another registered facility or with persons who, in the opinion of a social worker, are fit and proper persons for accommodating such service users. 20

(10) The amendment or cancellation of a registration certificate contemplated in this section must be effected by notice in writing addressed to the holder thereof and comes into operation on a date specified in the notice, which date may not be earlier than three months after the date of the notice, unless the Director-General and the holder of the registration certificate have agreed otherwise. 25

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

(12) (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. 30

(b) Whenever a registration certificate is cancelled under subsection (8) or surrendered under paragraph (a), the powers and duties conferred or imposed under this Act on the holder thereof devolve upon the Director-General.

(13) A person who contravenes or fails to comply with this section, or any condition imposed thereunder, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. 35

Establishment of public halfway house

20. (1) The Minister may, in consultation with the MEC, from funds appropriated by Parliament for that purpose, establish, maintain and manage halfway houses to provide homes for— 40

(a) service users who, in terms of this Act, have been discharged from a treatment centre or have been granted leave of absence from any such centre;

(b) service users referred to in section 32 and 33;

(c) persons referred to in sections 35 and 37; and 45

(d) persons who are receiving or undergoing treatment for dependency on substances 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 be admitted to a public halfway house for a period not exceeding 12 months which may be extended for a further period not exceeding six months, if there is a need for such extension and upon application by the manager of the facility to the Director-General and upon furnishing reasons for such extension. 50

(3) The manager of a public halfway house must submit to the Director-General programmes established by the manager regarding—

(a) relapse prevention in respect of substance abuse; 55

(b) skills development for service users and their re-integration into society; and

(c) the dissemination of information to the community and service users about the dangers of substance abuse, including links between substance abuse, HIV and AIDS and other health conditions.

Registration of private halfway house

21. (1) No person may establish or manage a private halfway house unless such halfway house has been issued with a registration certificate contemplated in subsection (3).
- (2) Any person who desires to establish or manage a private halfway house contemplated in subsection (1) must apply in the prescribed manner to the Director-General for the registration of such halfway house. 5
- (3) The Director-General may—
- (a) after consideration of an application contemplated in subsection (2) and such other information as he or she may obtain; and 10
 - (b) if he or she is satisfied that such private halfway house is or will be managed and conducted in such a way that the reception, maintenance, rehabilitation, professional support and skills development of service users complies with the prescribed requirements,
- grant the application for registration and issue a registration certificate. 15
- (4) The Director-General may grant a conditional registration on such conditions as he or she may deem fit for a maximum period of 12 months and must specify those conditions to the applicant in the prescribed manner.
- (5) The conditional registration contemplated in subsection (4) may be extended for a maximum period of 12 months under the same conditions. 20
- (6) The Director-General may at any time after three months' notice of his or her intention to do so, and after consideration of any representation received by him or her during such period, amend or cancel a registration certificate issued in terms of subsection (3) or (4).
- (7) The amendment or cancellation of a registration certificate contemplated in this section must be effected by notice in writing to the holder thereof and comes into operation on a date specified in the notice, which date may not be earlier than three months after the date of the notice, unless the Director-General and the holder of the registration certificate have agreed otherwise. 25
- (8) The Director-General must refuse the application in terms of subsection (2) if, after consideration of such application, he or she is not satisfied that such private halfway house is or will be managed or conducted in the manner contemplated in subsection (3). 30
- (9) A registration certificate issued under subsection (3) or (4) is not transferable.
- (10) 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. 35
- (11) The manager of a private halfway house must submit to the Director-General programmes established by it regarding its activities for prevention, treatment, rehabilitation, skills development and reintegration of persons contemplated in section 14(1). 40
- (12) A service user may be admitted in a private halfway house for a period not exceeding six months, which period may, if there is a need for an extension of the period of admission, be extended for a further period not exceeding six months and if the manager concerned has furnished reasons for such extension to the Director-General. 45
- (13) Any person who contravenes or fails to comply with this section, or any condition imposed thereunder, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

Compliance with conditions for registration of treatment centre and halfway house 50

22. (1) If there is reason to believe that any of the conditions contemplated in section 19(4) or 21(4) have not been complied with, the Director-General may implement measures to facilitate compliance with those conditions.
- (2) The manager of a treatment centre or halfway house must report to the Director-General any circumstance which may result in his or her inability to comply with any condition contemplated in section 19(4) or 21(4). 55
- (3) If the registration of a treatment centre or halfway house has been cancelled in terms of section 19(6) or 21(6), or if the owner or manager of a treatment centre or halfway house wishes to discontinue his or her service, the owner or manager must—

- (a) prior to any decision to discontinue the relevant service, consult with the Director-General on the matter;
- (b) furnish the Director-General 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 where appropriate. 5

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

(5) A person convicted of an offence contemplated in this section, may not manage or operate a treatment centre or halfway house. 10

Monitoring and assessment of treatment centre and halfway house

23. (1) A monitoring and assessment team, consisting of such appropriately qualified persons as the Director-General may determine, may, subject to subsection (3), enter any treatment centre or halfway house and assess and monitor compliance with any prescribed requirements and applicable minimum norms and standards in relation to— 15

- (a) the records and documents of such treatment centre or halfway house;
- (b) any service users admitted or accommodated in such treatment centre or halfway house; and
- (c) the programmes provided by such treatment centre or halfway house. 20

(2) The monitoring and assessment team may—

- (a) interview any service user or persons affected by substance abuse admitted in such treatment centre or halfway house; and
- (b) with the consent of any service user or persons affected by substance abuse, cause such persons to be medically examined by a medical practitioner in a health establishment. 25

(3) The members of the monitoring and assessment team must be furnished with a certificate authorising such members to give effect to the provisions of subsection (1), signed by the Director-General, which must be produced at the request of any person affected by such monitoring and assessment. 30

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

- (a) the life of a service user in the treatment centre or halfway house is threatened or in danger; or
- (b) the treatment centre or halfway house is managed in a way that constitutes a danger or threat to the service users admitted in such a centre or house. 35

(5) After conclusion of the assessment and monitoring, the team must compile a report of its findings and recommendations to the Director-General.

(6) Upon receipt of the report referred to in subsection (5) the Director-General may, if he or she has reason to believe that— 40

- (a) the health and safety of service users or persons engaged in the provision of services at a treatment centre or halfway house is at risk;
- (b) there is imminent danger to the health and safety of service users or persons engaged in the provision of services at a treatment centre or halfway house; or
- (c) the treatment centre or halfway house has failed to comply with the minimum norms and standards and the prescribed requirements, 45

take steps to ensure compliance with minimum norms and standards, or amend or cancel a registration certificate contemplated in sections 19(6) and 21(6).

(7) Notwithstanding subsection (6) the Director-General may, upon receipt of a report contemplated in subsection (5) and if he has reason to believe that there is imminent danger to the health and safety of any service user or person engaged in the services or the treatment centre or halfway house, apply to the court for immediate closure of the treatment centre or halfway house. 50

(8) Upon cancellation of a registration certificate or closure of the treatment centre or halfway house, the Director-General must ensure that service users in such treatment centre or halfway house are transferred to another treatment centre or halfway house. 55

(9) Any person who—

- (a) obstructs or hinders the monitoring and assessment team in the exercise of any power conferred upon it in terms of this section; or
- (b) fails to produce any relevant document or record required by the monitoring and assessment team for the investigation, 60

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

Staff of public treatment centre and public halfway house

- 24.** (1) The Director-General may, subject to the laws governing the public service, appoint— 5
- (a) a suitably qualified person, as prescribed, as a manager of a public treatment centre or halfway house; and
 - (b) such staff as may be required for the proper management and control of a public treatment centre and public halfway house.
- (2) The powers and duties of staff appointed in terms of subsection (1) must be prescribed. 10
- (3) (a) In the event that the manager is not a social worker, medical practitioner, psychiatrist, psychologist or nurse he or she must be assisted by a social worker, medical practitioner, psychiatrist, psychologist or a nurse.
- (b) The manager must also be assisted in the— 15
 - (i) determination of treatment, rehabilitation and skills development in respect of service users or persons affected by substance abuse; and
 - (ii) treatment, skills development and rehabilitation of service users or persons affected by substance abuse.
 - (c) A social worker, medical practitioner, psychiatrist, psychologist or nurse contemplated in paragraph (a) may be attached to the public treatment centre or public halfway house in question or may be assigned to such treatment centre or halfway house by the Director-General. 20

Appeals

- 25.** Any person who is aggrieved by any decision of the Director-General contemplated in sections 17, 19, 21, or 23(6) may appeal to the Minister in the prescribed manner. 25

Death, serious injury or abuse of service user or any person affected by substance abuse in treatment centre or halfway house

- 26.** (1) In the event of a natural or an unnatural death of a service user in a treatment centre or halfway house, the manager of such centre or house must immediately report such death to— 30
- (a) the Director-General;
 - (b) the next of kin; and
 - (c) the parent or guardian of the child. 35
- (2) In the event of an unnatural death of a service user in a treatment centre or halfway house, the manager of such centre or house must, in addition to the persons referred to in subsection (1), immediately report such death to a police official.
- (3) The police official must, upon receipt of the report in terms of subsection (2), cause an investigation into the circumstances surrounding the death of the service user or any persons affected by substance abuse to be conducted by the South African Police Service. 40
- (4) If a service user or any persons affected by substance abuse is seriously injured or allegedly abused while at a treatment centre or halfway house, the manager of such centre or house must report such injury or abuse to the Director-General, who must cause an investigation to be conducted into the circumstances of such injury or abuse. 45
- (5) A manager who fails to comply with subsection (1), (2) or (4) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

Establishment of out-patient services 50

- 27.** The manager of a treatment centre may establish any of the following out-patient services:
- (a) services consisting of prevention programmes, including programmes on education, skills development, information-sharing and campaigns;
 - (b) services consisting of early intervention programmes; 55

- (c) programmes for adults and children who have been diverted from the criminal justice system; and
- (d) holistic treatment services, including family programmes, treatment services, therapeutic intervention, aftercare and reintegration.

Children abusing substances or affected by substance abuse 5

28. (1) Section 110 of the Children’s Act applies with the changes required by the context in respect of children abusing substances or affected by substance abuse.

(2) Children that are dependent on substances must be treated in separate facilities and apart from adults, whether within treatment centres or in facilities designated for children. 10

(3) Section 191 of the Children’s Act applies with the changes required by context in respect of children admitted to child and youth care centres that offer treatment for substance abuse and dependence.

(4) Any child and youth care centres contemplated in subsection (3) must comply with conditions for registration, and norms and standards for the establishment of treatment centres. 15

(5) Section 148 of the Children’s Act applies in relation to court ordered early intervention programmes for children.

(6) Section 167 of the Children’s Act applies with the necessary changes required by context in respect of children placed in alternative care for substance abuse related offences. 20

Management structure of treatment centre and halfway house

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

(2) The Minister must prescribe the— 25

- (a) composition of the structure, which must include representatives of the beneficiaries of the service, staff of the relevant treatment centre or half way house and members of the public;
- (b) election, appointment, qualification, terms of office and grounds for removal from office of members of the structure and the filling of vacancies; and 30
- (c) number of and procedure to be followed at meetings of a management structure.

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

- (a) provide a quality service; 35
- (b) provides opportunities for the training of staff;
- (c) applies principles of sound financial management;
- (d) if it is a treatment centre or a halfway house registered in terms of Non Profit Organisation Act, 1997 (Act No. 71 of 1997), comply with section 18 of that Act; 40
- (e) if it is a company registered in terms Companies Act ,1973 (Act No 61 of 1973), comply with section 302 of that Act; and
- (f) functions effectively.

CHAPTER 7

AFTERCARE AND REINTEGRATION SERVICES 45

Establishment of aftercare and reintegration services

30. (1) The Minister must, in consultation with the ministers and organs of state referred to in section 8(1), prescribe integrated aftercare and reintegration services aimed at the successful reintegration of a service user into society, the workforce and family and community life. 50

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

- (a) allow service users to interact with other service users, their families and communities;
- (b) allow service users to share long term sobriety experiences;
- (c) promote group cohesion among service users; 55

- (d) enable service users to abstain from substance abuse;
- (e) are based on structured programmes;
- (f) must focus on successful reintegration of a service user into society and family and community life; and
- (g) prevent the recurrence of problems in the family environment of the service user that may contribute to substance abuse. 5

Support groups

- 31.** (1) Service users and persons affected by substance abuse may, as prescribed, establish support groups that focus on integrated ongoing support to service users in their recovery. 10
- (2) The purpose of the establishment of support groups is to—
- (a) provide a safe and substance free group experience where service users can practice re-socialisation skills;
 - (b) facilitate access by service users to persons in recovery or have recovered from substance abuse who can serve as role models to service users who are in the beginning or middle stages of the recovery process; and 15
 - (c) encourage service users to broaden their support system from persons contemplated in paragraph (b).
- (3) Support groups may be established at community level by a professional, non-governmental organisation or a group of service users or persons affected by substances abuse. 20

CHAPTER 8

ADMISSION, TRANSFER AND REFERRAL TO TREATMENT CENTRE

Admission of voluntary service user to treatment centre

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

Admission of involuntary service user to treatment centre

- 33.** (1) An involuntary service user, except those referred to in sections 32 and 40, may not be provided with treatment, rehabilitation and skills development at a treatment centre unless a sworn statement is submitted to a public prosecutor by a social worker, community leader or person closely associated with such a person, alleging that the involuntary service user is within the area of jurisdiction of the magistrate's court to which such prosecutor is attached and is a person who is dependent on substances and— 50
- (a) is a danger to himself or herself or to the immediate environment or causes a major public health risk;
 - (b) in any other manner does harm to his or her own welfare or the welfare of his or her family and others; or

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

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

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

(4) A public prosecutor may request a clerk of the court to issue a summons in respect of any person or request a magistrate to issue a warrant for the apprehension, only after he or she has obtained a report from a social worker regarding the social circumstances of the person concerned and any other matter that the prosecutor may consider relevant. 10

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

(a) the form and manner of execution of warrants of arrest; 15

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

(c) arrest, detention and searching; and

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

Admission and transfer of children

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

Committal of person to treatment centre after enquiry

35. (1) Subject to this section, a magistrate before whom any person is brought in terms of section 33(2) or (3) must, in the presence of that person, enquire whether he or she is a person contemplated in section 33(1). 25

(2) A public prosecutor, or another fit and proper person designated by the magistrate concerned, must appear at the enquiry, and such prosecutor or other person may call witnesses to give evidence at the enquiry and may cross-examine such witnesses. 30

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

(a) is entitled to legal representation;

(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 35

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

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

(b) Section 159(1) of the Criminal Procedure Act, in so far as it relates to the holding of a criminal trial in the absence of an accused person, applies with the changes required by the context in respect of an enquiry held in terms of this section. 40

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

(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. 45

(5) The magistrate holding the enquiry—

(a) must, before he or she makes an order in terms of subsection (7), direct the public prosecutor or other person appearing at the enquiry contemplated in subsection (2), to submit to him or her the report obtained from a social worker in terms of section 33(4); and 50

(b) may direct that the person in respect of whom the enquiry is being held be examined by a medical practitioner, psychiatrist or clinical psychologist designated by the magistrate; 55

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

(d) may consider the views of a victim of crime committed by such person.

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

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

- (a) the person concerned is a person contemplated in section 33(1);
- (b) such person requires and is likely to benefit from treatment and skills development provided in a treatment centre; or 10
- (c) it would be in such a person's interest or in the interest of his or her dependents, if any, or in the interest of the community that he or she be admitted to a treatment centre, the magistrate may order that the person concerned be admitted to a treatment centre designated by the Director-General for a period not exceeding 12 months. 15

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

(9) A magistrate who makes an order in terms of subsection (7) must before referring an involuntary service user to a treatment centre order that such service user be admitted for detoxification at a health establishment or treatment centre authorised in terms of the National Health Act to provide detoxification. 20

(10) An order made in terms of subsection (7) does not preclude the reporting of a criminal offence, if any, by the victim of such an offence to the police official. 25

Committal of person to treatment centre after conviction

36. (1) A court convicting a person of any offence may in addition or in lieu of any sentence in respect of such offence order that such person be committed to a treatment centre if the court is satisfied that such person is a person contemplated in section 33(1) and such order, for the purposes of this Act, must be regarded as having been made in terms of section 35. 30

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

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

(b) For the purposes of paragraph (a), the expression “probation officer or the Commissioner” in section 276A(4) of the Criminal Procedure Act must be construed as the manager of the treatment centre or a person authorised by him or her for the purposes of this Act. 40

Court may order enquiry in terms of this Act

37. Section 255 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies with the changes required by the context to an enquiry ordered by the court if, in any court during a trial of a person who is charged with an offence other than an offence referred to in section 18 of the said Act, it appears to the officer presiding at the trial that such person is probably a person contemplated in section 33(1). 45

Estimation of age of person

38. (1) Whenever in connection with any proceedings in terms of this Act— 50

- (a) the age of a person is a relevant fact of which no or insufficient evidence is available, the presiding officer in legal proceedings or a medical practitioner in other proceedings may estimate the age of that person by his or her appearance or from any information which is available, and the age so estimated is, for the purposes of this Act, deemed to be the true age of that person; and 55

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

(2) The age of a person estimated in terms of subsection (1) is deemed to have been attained on the day when the estimate is made. 5

Postponement of order

39. (1) If it appears to a magistrate at an enquiry contemplated in section 35 that the person in respect of whom the enquiry is being held is a person contemplated in subsection (7) of that section, the magistrate may postpone the making of an order in terms of that subsection for a period not exceeding three years, and must release the person concerned on condition that he or she— 10

(a) submits himself or herself to supervision by a social worker or a probation officer specialising in substance abuse; and

(b) undergoes any prescribed treatment. 15

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

(3) Where the making of an order has been postponed for a period of less than three years, the Director-General may, after consideration of a report by a social worker, at any time before the expiry of such period make an order extending the period of postponement for such further period, not exceeding the difference between three years and the period for which the making of the order has been postponed, as he or she may deem fit. 20

(4) If at the end of the period for which the making of an order has been postponed in terms of this section the Director-General is satisfied that the person concerned has observed all the conditions subject to which he or she was released, the Director-General must discharge him or her unconditionally. 25

(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 apprehended without warrant by a police official, upon which an order in terms of section 35(7) may be made as if the making of such an order had never been postponed. 30

(b) A person apprehended in terms of paragraph (a) may be placed in custody in any place referred to in section 40(1) until he or she can be brought before a magistrate. 35

(c) Section 40(4) applies with the changes required by the context in respect of a person placed in custody in terms of paragraph (b).

(6) A copy of an order made in terms of subsection (1) purporting to be certified by the clerk of the court or any other officer having the custody of the records of the magistrate's court to which the magistrate who made the order is or was attached must, if the name of the person mentioned therein against whom such order was made, substantially corresponds with that of the person who is to be dealt with in accordance with the provisions of subsection (2), (3), (4) or (5), on the mere production thereof be regarded as *prima facie* proof of the fact that such order was so made against such person. 40
45

Temporary custody of person pending enquiry or removal to treatment centre

40. (1) A magistrate holding an enquiry contemplated in section 35 may, if he or she deems it necessary or expedient to postpone or adjourn the enquiry for periods determined by him or her having regard to the circumstances of the case, order that the person concerned be admitted in custody to a treatment centre, halfway house, health establishment or other place regarded by the magistrate as suitable. 50

(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. 55

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

(4) The Minister may out of money appropriated by Parliament for that purpose, contribute towards the maintenance of any person who is, in terms of subsection (1),

admitted or placed in a treatment centre, halfway house, child and youth care centre or any other place which is not maintained by the State.

Appeal against and review of certain orders

41. The law relating to appeals and any form of review in criminal cases applies with the changes required by the context in respect of any order made under section 35, 36 or 39 as if such order were a conviction made and sentence passed by a magistrate's court in a criminal case. 5

Admission or transfer to treatment centre

42. (1) A person who must be admitted to a treatment centre in terms of section 35 or who has been transferred to a treatment centre in terms of this Act, must be admitted to the treatment centre concerned until he or she is released on licence in terms of section 47 or he or she is discharged, transferred or returned to any other facility in terms of this Act. 10

(2) The manager of a treatment centre must notify the Director General—

- (a) when an involuntary service user is released on licence in terms of this Act and of the particulars of such release; 15
- (b) if an involuntary service user is released after the expiry of 12 months after an order referred to in section 35(7) was made, as to why—
 - (i) such involuntary service user must be not so discharged;
 - (ii) he or she has not yet been discharged from treatment centre concerned; and 20
 - (iii) every 12 months thereafter, if such involuntary service user has not been so discharged,

give further reasons as to why he or she must not be discharged.

(3) The magistrate may order the Director-General to discharge such involuntary service user after having considered the report from the Director-General if such report recommends that it is in the interest of an involuntary service user to be discharged. 25

(4) The discharge of an involuntary service user from the effect of any order made under this Act does not preclude the subsequent committal or transfer of the person concerned to a treatment centre. 30

(5) (a) If a child is to be placed in a treatment centre in terms of section 35(7) and (8), the Director-General may direct that the child be placed in a child and youth care centre in accordance with the provisions of the Children's Act.

(b) If a child is placed in a child and youth care centre, such centre must, subject to section 28(4), be regarded as a treatment centre for the purposes of this Act. 35

Transfer of involuntary service user from and to treatment centre

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

- (a) transfer an involuntary service user from one public treatment centre to another public treatment centre; 40
- (b) transfer an involuntary service user from a public treatment centre to a private treatment centre and *vice versa*; or
- (c) transfer an involuntary service user from one private treatment centre to another private treatment centre, if the involuntary service user concerned is likely to benefit from the treatment or skills development provided at the public or private treatment centre to which he or she is to be transferred. 45

(2) No person transferred to a public treatment centre in terms of section 44 may be transferred to a private treatment centre in terms of this section.

Transfer of involuntary service user from prison, child and youth care centre, alternative care or health establishment to public treatment centre 50

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

- (a) in the Correctional Services Act, 1998 (Act No. 111 of 1998), the Minister of Correctional Services may, in consultation with the Minister and by order in writing, transfer to a public treatment centre designated by the Minister any 55

- 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, the Minister may, by order in writing, transfer to a public treatment centre any child who is placed in a child and youth care centre or in alternative care; or 5
- (c) in the Mental Health Care Act, the Minister of Health may, in consultation with the Minister and by order in writing, transfer any mental health care user in a health establishment to a public treatment centre designated by the Minister.
- (2) No person may be transferred unless— 10
- (a) it is desirable that such person should, before he or she is returned to the community, receive or undergo treatment or skills development in a public treatment centre; and
- (b) such person is likely to benefit from the particular kind of treatment and skills development provided in the public treatment centre. 15
- (3) A person transferred to a public treatment centre in terms of subsection (1) must, subject to section 45(1), be regarded as having been discharged from the provisions of the Act governing the facility from which he or she was transferred and is subject, with the changes required by the context, to all the provisions of this Act as if he or she had in the first instance been committed to a public treatment centre under this Act. 20
- (4) The Minister must, in consultation with the Ministers of Correctional Services and Health, prescribe regulations for the transfer and retransfer of persons from prison, a health establishment, public treatment centre, child and youth care centre or alternative care, as envisaged in this section and section 45.

Retransfer from public treatment centre to prison, child and youth care centre, alternative care or health establishment 25

- 45.** (1) The Minister may—
- (a) in consultation with the Minister of Correctional Services, retransfer any person transferred to a public treatment centre in terms of section 44(1)(a) to the prison from which he or she was originally transferred, or to any other prison designated by the Minister of Correctional Services; 30
- (b) retransfer any child transferred to a public treatment centre in terms of section 44(1)(b) to the child and youth care centre or alternative care from which he or she was originally transferred or placed, or to any other child and youth care centre or alternative care; or 35
- (c) in consultation with the Minister of Health, retransfer any person transferred to a public treatment centre in terms of section 44(1)(c) to the health establishment from which he or she was originally transferred, or to any other health establishment designated by the Minister of Health, if such person or child is not likely to benefit from the kind of treatment and skills development provided in the public treatment centre. 40
- (2) An involuntary service user retransferred to a prison, health establishment or child and youth care centre in terms of subsection (1) must be regarded as having been discharged from the public treatment centre in terms of this Act, and is thereafter subject to the law governing the facility to which he or she has been retransferred. 45
- (3) A child retransferred to a child and youth care centre or alternative care in terms of subsection (1)(b) may not be placed in a child and youth care centre beyond the expiration of the period for which he or she could, in terms of the order of the court which authorised his or her placement, have been detained in a child and youth care centre had he or she not been transferred. 50
- (4) For the purposes of calculating the period for which an involuntary service user retransferred to a prison in terms of subsection (1)(a) must be detained in such prison in respect of the sentence passed upon him or her, the period between the date of his or her transfer to a public treatment centre and the date of his or her retransfer to that prison must be calculated as part of his or her sentence. 55

Leave of absence from treatment centre

- 46.** (1) The manager of a treatment centre may, and must if so directed by the Director-General in writing, grant leave of absence to any service user from a treatment centre for such period and on such conditions as she or he may prescribe.

(2) The manager may, subject to the conditions determined by the treatment centre during the period of leave of absence, if the service user is not complying with the conditions applicable to such leave, cancel the leave and direct the service user to return to the treatment centre as prescribed.

(3) An involuntary service user who fails to return to the treatment centre on the return date must be regarded as having absconded and must be dealt with in terms of section 52. 5

(4) An involuntary service user may not leave a treatment centre unless he or she has been granted leave of absence, released on licence or discharged.

(5) The manager of a treatment centre must put measures in place to ensure that involuntary service users do not abscond from a treatment centre. 10

Involuntary service user of treatment centre may be released on licence or discharged

47. (1) The manager of a treatment centre may release, and must, if so directed by the Director-General, release an involuntary service user on licence subject to such conditions as the manager may stipulate. 15

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

(3) An involuntary service user who has been released on licence remains under such supervision of a social worker as may be prescribed or a person approved by the Director-General, until such release expires or is cancelled in terms of this Act or he or she is discharged in terms of this Act. 20

(4) The Director-General, upon an order made by the magistrate, must discharge an involuntary 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. 25

Revocation of licence

48. (1) The manager of a treatment centre may revoke an involuntary service user's licence and direct that he or she return to the treatment centre if the management structure has reason to believe that such service user—

- (a) is failing to comply with any of the conditions of his or her release; or 30
- (b) has not proved himself or herself capable of adjusting properly to community life.

(2) If the need for the return of an involuntary service user to the treatment centre is of such a nature that it cannot be deferred until the management structure has dealt with the matter, the manager may exercise all the powers of the management structure in terms of this section. 35

(3) An involuntary service user recalled to a treatment centre and who fails to return on the return date, must be regarded as having absconded and may be apprehended in terms of section 52(2).

(4) An involuntary service user apprehended in terms of section 52(2) must be admitted in custody until he or she can be returned to the treatment centre in question. 40

(5) A service user recalled to a treatment centre in terms of subsection (1) or (2) and who has returned to such centre must be admitted to that centre until he or she is released or discharged in terms of this Act.

Admission to treatment centre of persons who are not South African citizens or permanent residents 45

49. (1) (a) The Government, represented by the Minister in consultation with the Minister of Foreign Affairs, may, subject to section 17 of the Immigration Act, enter into an agreement with the government of any other country for the admission to any treatment centre in the Republic of any person whose admission in any treatment centre for a period of not more than one year has been ordered by a competent court or officer of such country according to that country's laws. 50

(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*. 55

(2) The Minister may, with due regard to section 35(8), order the admission to a treatment centre of any person whose admission in a treatment centre for a period of not

more than one year has been ordered by a competent court or officer of that country, the government of which has entered into an agreement contemplated in subsection (1) with the Government of the Republic.

(3) A person admitted to a treatment centre by order of the Minister in terms of subsection (2) may be admitted to such centre until he or she is discharged in terms of this Act, but not longer than the expiration of the period fixed by the court which, or officer who, ordered that person's admission to the treatment centre. 5

(4) This Act applies in respect of a person admitted to a treatment centre in terms of this section as if his or her admission in that treatment centre had been ordered in terms of this Act— 10

(a) but the manager concerned may not grant leave of absence to such person in terms of section 46 without the approval of the Director-General; and

(b) such person may only be discharged from the treatment centre in question if the Minister approves his or her discharge, subject to the provisions of the agreement, if any, in terms of which such person was admitted to the treatment centre in question. 15

(5) Any person who is not a South African citizen or a permanent resident may, subject to section 17 of the Immigration Act, apply for admission at a treatment centre for treatment, rehabilitation and skills development for substance abuse.

(6) The Minister may prescribe the condition for the administration or admission of a person who is not a South African citizen or a permanent resident into the Republic for treatment, rehabilitation or skills development. 20

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

50. A service user of a treatment centre has, subject to any prescribed conditions, the right of personal access to the management structure of the treatment centre and the management structure has a similar right of access to the service user. 25

CHAPTER 9

DISCIPLINARY INTERVENTION AND APPEAL PROCEDURE

Maintenance of discipline in treatment centre, halfway house, out-patient services and community-based services 30

51. (1) The treatment centre, halfway house, out-patient services and community-based services must, subject to the minimum norms and standards prescribed under this Act—

(a) establish rules to be complied with by service users;

(b) establish the disciplinary procedure to be followed in dealing with violations of such rules; 35

(c) determine the penalties or measures for the violation of such rules;

(d) determine the appeals procedure against the outcome of a disciplinary process; and

(e) determine the procedure to be followed in the lodging of complaints by service users. 40

(2) If a service user in a treatment centre, halfway house or community-based services contravenes any rule contemplated in this section, the manager or a person designated by the manager may after holding an enquiry in terms of the procedure referred to in subsection (1)(b)— 45

(a) take such disciplinary steps as may be determined in terms of subsection (1)(b), against that service user; and

(b) impose on the service user such measure or penalty, as determined, provided that such disciplinary steps, measures or penalties do not include cruel, inhumane or degrading treatment or corporal punishment. 50

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

(4) A service user who is not satisfied with the outcome of an inquiry and disciplinary steps taken or measures imposed against him or her may appeal to an appeal committee, established by the Minister, within seven days of the outcome of the inquiry. 55

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

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

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

(7) The manager of a treatment centre, halfway house or community-based services must report the commission of any offence by a service user to a police official to deal with the matter in terms of the Criminal Procedure Act, provided that such an offence is an offence that may not be dealt with in terms of subsections (1) and (2).

Method of dealing with absconder from treatment centre

52. (1) For the purposes of this section, an involuntary service user who—

- (a) has been granted leave of absence from a treatment centre and who, on the revocation or expiration of his or her leave of absence, fails to return to the treatment centre concerned; or
- (b) without permission absents himself or herself from any health establishment or treatment centre to which he or she may have been admitted at the instance of the management of a treatment centre, must be regarded as having absconded from such treatment centre or health establishment.

(2) An involuntary service user who has absconded from a health establishment or treatment centre may be apprehended by a police official and must as soon as possible be brought before the magistrate of the district in which he or she was apprehended.

(3) Notwithstanding subsection (2), the head of the health establishment or manager of a treatment centre may, if an involuntary service user has absconded as contemplated in subsection (1), request assistance from the South African Police Service to locate, apprehend and place the involuntary service user in any place contemplated in section 40(1).

(4) The South African Police Service must comply with a request contemplated in subsection (3).

(5) A police official may use such constraining measures as may be necessary and proportionate in the circumstances when apprehending any person or performing any function in terms of this section, provided that such measures do not include cruel, inhumane or degrading treatment or corporal punishment.

(6) An involuntary service user apprehended in terms of subsection (2) or (3) may be placed in custody in any place contemplated in section 40(1) until he or she is brought before a magistrate within a prescribed period.

(7) (a) A magistrate before whom an involuntary service user contemplated in subsection (2) or (3) is brought must, after having enquired into the reasons for the involuntary service user's abscondment, order that such service user be—

- (i) returned to the treatment centre or health establishment from which he or she absconded;
- (ii) placed in custody, pending the decision of the Director-General, or in any place contemplated in section 40(1) designated by the magistrate; or
- (iii) transferred to another treatment centre or health establishment.

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

(8) On consideration of the notification contemplated in subsection (7) and after any further enquiry which he or she may deem necessary, the Director-General must, if the magistrate has ordered that the involuntary service user be placed in custody pending the decision of the Director-General—

- (a) direct that such service user be returned to the treatment centre or health establishment from which he or she absconded;
- (b) deal with such service user in terms of section 43(1);
- (c) direct that such service user be released on licence in terms of section 47; or
- (d) direct that he or she be discharged from the effect of an order made under this Act.

(9) Section 40(4) applies with the changes required by the context in respect of any person placed in custody in a place referred to in section 36(1) or in pursuance of an order made under subsection (7)(a)(ii).

(10) Section 170 of the Children's Act applies with the changes required by the context in respect of a child absconding from alternative care or child and youth care centre.

CHAPTER 10

CENTRAL DRUG AUTHORITY AND SUPPORTING STRUCTURES 5

Establishment and functions of Central Drug Authority

- 53.** (1) There is hereby established a body known as the Central Drug Authority, which may exercise the powers and must perform the duties conferred or imposed on it by or in terms of this Act.
- (2) The Central Drug Authority consists of the following who shall be fit and proper persons and who, in respect of members referred to in paragraphs (a) to (t), are at least of a rank of a director or equivalent, namely —
- (a) a representative of the Department of Social Development appointed by the Minister;
 - (b) a representative of the Department of Justice and Constitutional Development appointed by that Department; 15
 - (c) a representative of the South African Police Service appointed by the South African Police Service;
 - (d) a representative of the Department of Health appointed by that Department;
 - (e) a representative of the Department of Education appointed by that Department; 20
 - (f) a representative of the Department of Home Affairs appointed by that Department;
 - (g) a representative of the Department of Foreign Affairs appointed by that Department; 25
 - (h) a representative of the Department of Trade and Industry appointed by that Department;
 - (i) a representative of the South African Revenue Service appointed by the South African Revenue Service;
 - (j) a representative of the Department of Correctional Services appointed by that Department; 30
 - (k) a representative of the Department of Labour appointed by that Department;
 - (l) a representative of the National Treasury appointed by the National Treasury;
 - (m) a representative of the Department of Arts and Culture appointed by that Department; 35
 - (n) a representative of the Department of Sport and Recreation appointed by that Department;
 - (o) a representative of the Department of Agriculture appointed by that Department;
 - (p) a representative of the Department of Transport appointed by that Department; 40
 - (q) a representative of the Department of Provincial and Local Government appointed by that Department;
 - (r) a representative of the National Youth Commission appointed by that Commission; 45
 - (s) a representative of the Medicines Control Council appointed by that Council;
 - (t) a representative from the National Prosecuting Authority appointed by that Authority; and
 - (u) not more than 13 other members who must be persons who have knowledge or experience in the management of the demand and supply of substances or who are able to make a substantial contribution to the combating of substance abuse. 50
- (3) The members contemplated in subsection (2)(u) may be appointed only after—
- (a) the Minister has through the media and by notice in the *Gazette* invited nominations of persons as members of the Central Drug Authority; and 55
 - (b) the Parliamentary Committees for Social Development of the National Assembly and the National Council of Provinces have made recommendations to the Minister in relation to such appointments after a transparent and open process of considering persons so nominated.

(4) (a) A member of the Central Drug Authority, except a member referred to in subsection 2(a) to (t), must be appointed for a period not exceeding five years on such conditions as the Minister may determine at the time of making the appointment.

(b) The Minister may terminate membership of any member for reasons which are just and fair. 5

(c) A member of the Central Drug Authority, except a member referred to in subsection 2(a) to (t), 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 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. 10

(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 with the concurrence of the Minister of Finance may determine. 15

(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. 20

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

(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. 25

(9) The first meeting of the Central Drug Authority must be held at a time and place to be determined by the Minister, and subsequent meetings must be held at least twice a year and at such times and places as the chairperson may determine.

(10) (a) 30

The Central Drug Authority must, as soon as is practicable after it has been established, draft rules governing its quorum, the procedure at meetings and, generally, the conduct of its functions, and may from time to time alter or revoke any such rules.

(b) Such rules have no force and effect unless approved by the Minister.

(11) (a) The Central Drug Authority must annually, by no later than the last day of August, 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, harm caused by and supply of, substances in the previous financial year. 35

(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. 40

Executive committee

54. (1) The executive committee of the Central Drug Authority consists of the chairperson and vice-chairperson of the Central Drug Authority and not less than four and not more than ten such other members of the Central Drug Authority as may be determined and designated by the Central Drug Authority. 45

(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. 50

(4) Any decision taken or act performed by or on the authority of the executive committee is of full force and effect, unless it is set aside or amended by the Central Drug Authority at its first meeting following the meeting of the executive committee at which such decision was taken or such action was authorised. 55

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

Secretariat of Central Drug Authority

55. (1) Work incidental to the performance of the functions of the Central Drug Authority must, subject to the control and directions of the Central Drug Authority, be performed by a secretariat consisting of the Director: Secretariat of the Central Drug Authority and such other administrative and support staff as may be required for the performance of its functions by the Central Drug Authority. 5

(2) (a) The Director and staff contemplated in subsection (1) must be suitably qualified and experienced persons appointed by the Minister on such terms and conditions as the Minister, with the concurrence of the Minister of Finance, may determine. 10

(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; 15
- (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 20
- (d) such other staff as may reasonably be required to assist the Secretariat, appointed by the Minister after consultation with the Minister of Finance.

Powers and duties of Central Drug Authority

56. The Central Drug Authority must—

- (a) oversee and monitor the implementation of the National Drug Master Plan; 25
- (b) facilitate and encourage the coordination of strategic projects;
- (c) facilitate the rationalisation of existing resources and monitor their effective use;
- (d) encourage government departments and private institutions to compile plans to address substance abuse in line with the goals of the National Drug Master Plan; 30
- (e) ensure that each department of state has its own performance indicators;
- (f) facilitate the initiation and promotion of measures to combat the use of substances;
- (g) ensure the establishment and maintenance of information systems which will support the implementation, evaluation and ongoing development of the National Drug Master Plan; 35
- (h) submit an annual report that sets out a comprehensive description of the national effort relating to the problem of substance abuse;
- (i) ensure the development of effective strategies on prevention, early intervention, reintegration and aftercare services, and in particular ensure the development of effective strategies regarding the prevention of HIV infection and other medical consequences related to substance abuse; 40
- (j) advise Government on policies and programmes in the field of substance abuse and drug trafficking; 45
- (k) recommended to Cabinet the review of the National Drug Master Plan every five years;
- (l) organise a biennial summit on substance abuse to enable role-players in the field of substance abuse to share information; and
- (m) may exercise such powers and must perform such duties as may be determined by the Minister from time to time. 50

Establishment of Provincial Substance Abuse Forums

57. (1) The MEC must establish a Provincial Substance Abuse Forum for his or her province.

(2) A Provincial Substance Abuse Forum may consist of representatives from— 55

- (a) relevant provincial 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 considered relevant by the MEC. 5

(3) The MEC appoints the representatives contemplated in subsection (2).

(4) Adequate and sustained funding must be provided by the Provincial Department responsible for Social Development.

(5) Any member of a Provincial Substance Abuse Forum who is not employed in the public service, must be paid by the HOD for travelling and subsistence allowances while attending meetings of the Provincial Substance Abuse Forum. 10

(6) The MEC must appoint suitably qualified staff to serve as a secretariat to the Provincial Substance Abuse Forum.

Functions of Provincial Substance Abuse Forums

58. A Provincial Substance Abuse Forum must— 15

- (a) strengthen member organisations to carry out functions related directly or indirectly to addressing the problem of substance abuse;
- (b) encourage networking and the effective flow of information between members of the Forum in question;
- (c) assist Local Drug Action Committees established in terms of section 60 in the performance of their functions; 20
- (d) compile and submit an integrated Mini Drug Master Plan for the province for which it has been established;
- (e) submit a report and inputs, not later than the last day of June annually, to the Central Drug Authority for the purposes of the annual report of the Central Drug Authority; and 25
- (f) assist the Central Drug Authority in carrying out its functions at a provincial level.

Executive committee of Provincial Substance Abuse Forums

59. (1) Each Provincial Substance Abuse Forum must establish an executive committee. 30

(2) The executive committee contemplated in subsection (1) must consist of—

- (a) members responsible for treatment and aftercare of service users;
- (b) members responsible for prevention of substance abuse and education of service users and members of the public; 35
- (c) members responsible for community development;
- (d) members responsible for research and information dissemination on substance abuse; and
- (e) representatives of persons abusing or dependent on substances and persons affected by substance abuse. 40

(3) The executive committee may, subject to the directions of the relevant Provincial Substance Abuse Forum, during periods between meetings of such forum, exercise all the powers and perform all the duties of the Provincial Substance Abuse Forums.

(4) Subsection (3) does not empower the executive committee to set aside or amend any decision of the Provincial Substance Abuse Forum. 45

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

(6) The executive committee may make rules in relation to the holding of its meetings. 50

Establishment of Local Drug Action Committees

60. (1) A municipality must establish a Local Drug Action Committee to represent such municipality and to give effect to the Mini Drug Master Plan.

(2) The Local Drug Action Committee must consist of interested persons and stakeholders who are involved in organisations dealing with the combating of substance abuse in the municipality in question. 55

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

Functions of Local Drug Action Committees

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

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

- 62.** (1) The Central Drug Authority must request responsible government departments and Provincial Substance Abuse Forums to submit annual reports by no later than the last day of June, and such other reports as may be required. 50
- (2) The Central Drug Authority may request Cabinet, through the Minister, to intervene in cases where government departments or entities do not comply with the requirements set out in the National Drug Master Plan. 55
- (3) The Central Drug Authority must develop systems and monitoring mechanisms to ensure implementation of the National Drug Master Plan and reporting by all government departments, entities and stakeholders.

CHAPTER 11

GENERAL PROVISIONS

Offences and penalties

63. Any person who obstructs or hinders a police official in the exercise of any power contemplated in section 52 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. 5

Delegation

- 64.** (1) The Minister may—
- (a) delegate to any officer of the Department any power conferred on the Minister by this Act, except the power contemplated in section 65; and 10
 - (b) authorise any such officer to perform any duty imposed upon the Minister by this Act.
- (2) The Minister may, with the concurrence of the Premier of the province—
- (a) delegate to the MEC matters in that province any power conferred on the Minister by this Act, except the power contemplated in section 65; and 15
 - (b) authorise that MEC to perform any duty imposed on the Minister by this Act.
- (3) The MEC may—
- (a) delegate to any officer of the provincial administration concerned any power delegated to that MEC under subsection (2); and 20
 - (b) authorise any such officer to perform any duty which that MEC 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 the Director-General by this Act; and 25
 - (b) authorise 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 HOD any power conferred on the Director-General by this Act; and 30
 - (b) authorise that HOD to perform any duty imposed on the Director-General by this Act.
- (6) An HOD may—
- (a) delegate to any other officer of the provincial administration concerned any power delegated to him or her under subsection (5); and 35
 - (b) authorise any such officer to perform any duty which he or she is authorised to perform under subsection (5).
- (7) The mayor of a municipality may—
- (a) delegate to any official of the municipality concerned any power conferred on him or her under this Act; and 40
 - (b) authorise any such official to perform any duty which he or she is authorised to perform under this Act.
- (8) Any person to whom any power has been delegated or who has been authorised to perform a duty under this section must exercise that power or perform that duty subject to such conditions as the person who effected the delegation or granted the authorisation considers necessary. 45
- (9) Any delegation of a power or authorisation to perform a duty under this section—
- (a) must be in writing;
 - (b) does not prevent the person who effected the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and 50
 - (c) may at any time be withdrawn in writing by that person.

Regulations

- 65.** (1) The Minister may make regulations regarding— 55
- (a) any matter which may or must be prescribed in terms of this Act;

(b) any form that is required in the administration of the provisions in terms of this Act; and

(c) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.

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(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 by any service user of any rules prescribed by the management of a treatment centre under powers conferred upon it by regulation.

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(b) Such penalties may take the form of any one or both of the following:

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

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(d) The penalty referred to in this subsection must not include corporal punishment or degrading, inhumane and cruel treatment.

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

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Repeal of laws and savings

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

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

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Short title and commencement

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

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

1. INTRODUCTION

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

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

2. OBJECTS OF BILL

The objects of the Bill are to—

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

3. CONSULTATION

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

4. FINANCIAL IMPLICATIONS FOR STATE

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

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

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

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

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

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

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

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

5. PARLIAMENTARY PROCEDURE

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

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