THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case 2025-125411

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL, NATIONAL HEALTH DEPARTMENT	Second Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY TRADE UNION	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Fifth Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SOUTH AFRICA	Seventh Respondent
THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Eighth Respondent
HEALTH FUNDERS ASSOCIATION NPC	Ninth Respondent
SAKELIGA NPC	Tenth Respondent

NOTICE OF MOTION: APPLICATION TO FILE SUPPLEMENTARY SUBMISSIONS

PLEASE TAKE NOTICE that the Health Funders Association NPC ("**HFA**") will make application to this Court at 10h00 on 23 February 2026, or as soon thereafter as counsel may be heard, for an order in the following terms:

1. The HFA is granted leave to file supplementary submissions.
2. The costs of this application, including the costs of counsel, are to be paid jointly and severally by any respondents opposing it.
3. Granting further and/or alternative relief.

TAKE NOTICE FURTHER THAT the founding affidavit of **DARREN BAND**, filed together with this Notice of Motion, will be used in support of this application.

Kindly enroll the matter accordingly.

DATED at **SANDTON** on the 11th day of **FEBRUARY 2026.**



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Ninth Respondent's Attorneys (HFA)
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TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
Pretoria

AND TO: **KGOSANA ATTORNEYS**
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AND TO: **KWV INC**
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THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case 2025-125411

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL, NATIONAL HEALTH DEPARTMENT	Second Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY TRADE UNION	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Fifth Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SOUTH AFRICA	Seventh Respondent
THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Eighth Respondent
HEALTH FUNDERS ASSOCIATION NPC	Ninth Respondent
SAKELIGA NPC	Tenth Respondent

FOUNDING AFFIDAVIT: APPLICATION TO FILE SUPPLEMENTARY SUBMISSIONS

I, the undersigned,

DARREN BAND

state the following under oath:

1 I am an adult male attorney of the High Court of South Africa, duly admitted and practicing with the firm Edward Nathan Sonnenbergs Inc ("**ENS**") at The MARC, Tower 1, 129 Rivonia Road Sandton, Johannesburg.

2 ENS are the attorneys of record for the applicant, the Health Funders Association NPC ("**HFA**"). I depose to this affidavit in support of the HFA's application for leave to file supplementary submissions, and am authorised to do so.

3 The facts set out below fall within my personal knowledge, unless otherwise indicated, and are, to the best of my knowledge and belief, true and correct.

4 The HFA seeks leave to file supplementary submissions illustrating the possible duration of the stay of proceedings sought by the applicants.

5 A copy of the supplementary submissions is attached as "**DB1**".

6 The supplementary submissions are 7 pages long. Their purpose is simply to illustrate the possible duration of the stay, including in light of the recent directions issued by the Constitutional Court on 9 February 2026, which postponed, *sine die*, the hearing of the applications for leave to appeal against

the judgment of Twala J, pending the determination of public participation challenges. I attach copies of these directives as "**DB2"** and "**DB3**".

7 In the premises, the HFA prays for an order as set out in the notice of motion.

DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at SANDTON on this the 11th day of FEBRUARY 2026, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

CERTIFIED A TRUE COPY OF THE ORIGINAL
ZE'EV DAVID BLIEDEN
EX OFFICIO
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA
11 ALICE LANE
SANDTON

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DB1

Case 2025-125411

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL OF HEALTH	Second Applicant
and	
THE PRESIDENT OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS SA	Fifth Respondent
SA PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SA	Seventh Respondent
TSA MEDICAL ASSOCIATION	Eighth Respondent
HEALTH FUNDERS ASSOCIATION	Ninth Respondent

HFA'S ILLUSTRATION OF POSSIBLE STAY

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1 This is not a prediction of the duration of the stay. It is an illustration of its possible duration.

2 Phase 1: Pending Constitutional Court Applications for Leave to Appeal

2.1 Pending the outcome of the President and Minister's applications for leave to appeal to the Constitutional Court, the stay will operate in terms of prayers 2.1 and 2.2 of the notice of motion.

2.2 The Constitutional Court originally set those applications down for hearing on 26 February 2026. However, in terms of directions issued on 9 February 2026, the Court has postponed the applications *sine die*, while it hears and determines the public participation challenges brought by the Board of Healthcare Funders and the Western Cape Government.

2.3 The public participation challenges have now been set down from 5 to 7 May 2026.

2.4 As HASA notes in its answering affidavit, many Constitutional Court judgments on important issues are only delivered 6 to 12 months after the hearing.[1]

2.5 Assuming, generously, that the Court delivers judgment in the public participation challenges 6 months after the hearing, the judgment will be handed down in November 2026.

2.6 In the event that the public participation challenges fail, the Court will set down the President and Minister's applications for direct leave to appeal against the judgment of Twala J. Assuming that the matters are

[1] HASA AA, p006-39, para 72.

set down in the next court term, they will be set down during the February/March 2027 term.

2.7 Assuming that the Court delivers judgment in the applications for leave to appeal 6 months after the hearing, the judgment will be handed down around September 2027.

3 Phase 2: High Court Leave to Appeal

3.1 If the Constitutional Court dismisses the applications for direct leave to appeal, and declines to entertain BHF's and SAPPF's challenges by way of direct access, then this Court, per Twala J, will be called upon to consider the applications for leave to appeal lodged by the President and the Minister.

3.2 In terms of prayer 2.8 of the notice of motion, the stay will continue to operate pending the adjudication of those applications for leave to appeal.

3.3 We assume it will take Twala J a further month to adjudicate the applications for leave to appeal from when the Constitutional Court hands down its judgment, and so this period of the stay would endure until about October 2027.

4 Phase 3: Petitioning the Supreme Court of Appeal

4.1 If Twala J refuses the applications for leave to appeal, the President and the Minister may seek leave to appeal from the Supreme Court of Appeal.

4.2 In terms of prayers 2.8 and 2.9, the stay would continue to operate pending the adjudication of the application for leave to appeal and the appeal itself.

4.3 Assuming that the Supreme Court of Appeal grants leave to appeal:

4.3.1 it would likely take the Supreme Court of Appeal approximately two months to issue an order granting leave to appeal (i.e. by around December 2027);

4.3.2 it would thereafter take a period of 6.5 months for the parties to deliver the record and exchange heads of argument (i.e. by around August 2028);[2]

4.3.3 the matter would likely be set down for hearing, at the earliest, 2 terms after the heads of argument are filed (i.e. in the February 2029 term);

4.3.4 based on the four most recent Supreme Court of Appeal judgments, we estimate that it will take the Supreme Court of Appeal a further four months to adjudicate an appeal (i.e. to June 2029).[3]

---

[2] In terms of the SCA rules: the notice of appeal must be lodged within one month of the granting of leave to appeal; the record must be delivered within three months of lodging the notice of appeal; the appellants' heads of argument must be delivered six weeks after the filing of the record; and the respondents' heads of argument must be delivered one month after the appellants' heads of argument.

[3] *Moloi v Road Accident Fund (333/2024) [2026] ZASCA 13 (6 February 2026)* was heard on 18 November 2025; *Matsi and Another v South African Legal Practice Council (Gauteng Province) (184/2024) [2026] ZASCA 12 (6 February 2026)* was heard on 15 September 2025; *Lutzkie v Commissioner for the South African Revenue Service (1135/2023) [2026] ZASCA 11 (6 February 2026)* was heard on 22 August 2025 and *Lewis Stores Proprietary Ltd v Pepkor Holdings Ltd and Others* (CCT316/25) [2026] ZACC 4 (30 January 2026) was heard on 7 November 2025.

5 Phase 4: Appeal to the Constitutional Court

5.1 If the Supreme Court of Appeal dismisses the appeal, the President and the Minister may seek leave to appeal from the Constitutional Court.

5.2 In terms of prayers 2.8 and 2.9, the stay would continue to operate pending the adjudication of this application for leave to appeal, and the appeal itself.

5.3 Assuming that the Constitutional Court hears the matter:

5.3.1 it would likely take the Constitutional Court not less than 3-4 months to issue directions for the exchange of heads of argument (i.e. until October 2029);

5.3.2 the matter would likely be set down for hearing in the term after such directions are issued (i.e. in the February 2030 term); and

5.3.3 assuming that the Court delivers judgment six months after the hearing, the judgment will be handed down in August 2030.

6 The stay may accordingly endure until approximately August 2030. This is a stay of four years and six months from today.

7 Phase 5: Resumption of the reviews

7.1 If the President and the Minister ultimately fail in their appeals to the Supreme Court of Appeal and Constitutional Court, they will be back before this Court for the resumption of the review applications.

7.2 The Minister suggests in paragraph 50.4 at page 001-216 of his founding affidavit that he will then seek a further stay pending the determination of the review.

7.3 Such a stay would operate pending the adjudication of the review applications, and any further interlocutory applications in those matters, including, for example, concerning the reasonably anticipated dispute about the content of the Rule 53 record and whether it should contain all legal advice furnished to the President. Those interlocutory disputes may take several years to be finally adjudicated.[4]

7.4 As pointed out by the SAPPF in paragraph 88.6 at page 005-31/2 of its answering affidavit, for the reviews to be ready to be heard, a Rule 53 record must be filed. SAPPF and the BHF would need to supplement their founding papers. The respondents would have to file their answering papers. SAPPF and the BHF would then be entitled to reply. The parties would need to file written submissions.

7.5 On the most optimistic timetable, assuming compliance by all parties with the timelines in the Uniform Rules and no interlocutory disputes,

[4] The Constitutional Court's final decision concerning the delivery of the Rule 53 record in *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC) was granted three years and seven months after the High Court granted judgment on this issue.

these steps would take approximately four and a half months, after which a hearing date may be applied for. The most recent lead time for hearing dates for opposed motions published by this Court is 17 weeks. Assuming that this Court delivers judgment six months after the hearing, this Court will grant judgment in November 2031.

7.6 After this Court adjudicates the reviews, the unsuccessful parties may seek leave to appeal to the Supreme Court of Appeal. If their applications for leave to appeal are dismissed by the High Court, and they petition the Supreme Court of Appeal, the Supreme Court of Appeal would likely deliver judgment not less than 16 months from the date of the petition, in around March 2033.

7.7 The unsuccessful parties may then seek leave to appeal from the Constitutional Court. If the Constitutional Court sets the matter down for hearing, it would likely deliver judgment not less than 14 months after the application for leave to appeal, in around May 2034.

8 This is a stay of eight years and three months from today.

9 Although one cannot make the prediction with any certainty, in our experience predictions regarding the duration of litigation invariably fall far short of its actual duration.

Wim Trengove SC
Michael Mbikiwa
Daniel Sive
Counsel for the HFA
11 February 2026



DB2

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 128/25

In the matter between:

MINISTER OF HEALTH	Applicant
and	
BOARD OF HEALTHCARE FUNDERS NPC	First Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Second Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent
MINISTER OF FINANCE	Fourth Respondent
NATIONAL TREASURY	Fifth Respondent

Case CCT 129/25

In the matter between:

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Applicant
and	
BOARD OF HEALTHCARE FUNDERS NPC	First Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Second Respondent
MINISTER OF HEALTH	Third Respondent
MINISTER OF FINANCE	Fourth Respondent

NATIONAL TREASURY Fifth Respondent

DIRECTIONS

The Chief Justice has issued the following directions:

1. The Court has considered the parties' representations concerning the possible removal of these matters (presidential assent cases) from the roll on Thursday, 26 February 2026. The Court has concluded that the interests of justice and considerations of judicial economy make it appropriate to remove the matters from the roll.
2. Accordingly, the matters are removed from the roll and the hearing thereof is postponed *sine die*.
3. Simultaneously with the issuance of these directions, the Chief Justice will be issuing directions in cases CCT 251/25 and CCT 269/25 (public participation cases) in which the Board of Healthcare Funders NPC and the Premier of the Western Cape Government respectively seek orders declaring inter alia that Parliament's adoption of the National Health Insurance Bill was invalid due to an alleged breach by Parliament of the duties imposed by sections 59(1)(a) and 72(1)(a) of the Constitution to facilitate public involvement.
4. In terms of the simultaneous directions in the public participation cases, those cases are to be heard on Tuesday, Wednesday and Thursday, 5-7 May 2026.
5. If both of the public participation cases are unsuccessful, the presidential assent cases will be set down for hearing without further delay.
6. If one or both of the public participation cases are successful, further directions will be issued in the presidential assent cases requiring the parties to make submissions on mootness and on the further conduct of those cases.
7. Further directions may be issued.

BOYBOY MOLOI
REGISTRAR
CONSTITUTIONAL COURT

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DB3

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 251/25

In the matter between:

BOARD OF HEALTHCARE FUNDERS NPC	Applicant
and	
SPEAKER OF THE NATIONAL ASSEMBLY	First Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Second Respondent
MINISTER OF HEALTH	Third Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent
DIRECTOR-GENERAL, NATIONAL DEPARTMENT OF HEALTH	Fifth Respondent
MINISTER OF FINANCE	Sixth Respondent
SPEAKER OF THE EASTERN CAPE PROVINCIAL LEGISLATURE	Seventh Respondent
SPEAKER OF THE FREE STATE PROVINCIAL LEGISLATURE	Eighth Respondent
SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE	Ninth Respondent
SPEAKER OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE	Tenth Respondent
SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE	Eleventh Respondent

SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE	Twelfth Respondent
SPEAKER OF THE NORTH WEST PROVINCIAL LEGISLATURE	Thirteenth Respondent
SPEAKER OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE	Fourteenth Respondent
SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT	Fifteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, EASTERN CAPE	Sixteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, FREE STATE	Seventeenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, GAUTENG	Eighteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, KWAZULU-NATAL	Nineteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, LIMPOPO	Twentieth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, MPUMALANGA	Twenty-first Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, NORTH WEST	Twenty-second Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, NORTHERN CAPE	Twenty-third Respondent
MEMBER OF THE EXECUTIVE COUNCIL	



FOR THE DEPARTMENT OF HEALTH, WESTERN CAPE	Twenty-fourth Respondent

Case CCT 269/25

In the matter between:

PREMIER OF THE WESTERN CAPE GOVERNMENT	Applicant

and

CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	First Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Second Respondent
SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT	Third Respondent
SPEAKER OF THE EASTERN CAPE PROVINCIAL LEGISLATURE	Fourth Respondent
SPEAKER OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE	Fifth Respondent
SPEAKER OF THE NORTH WEST PROVINCIAL LEGISLATURE	Sixth Respondent
SPEAKER OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE	Seventh Respondent
SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE	Eighth Respondent
SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE	Ninth Respondent
SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE	Tenth Respondent
SPEAKER OF THE FREE STATE PROVINCIAL LEGISLATURE	Eleventh Respondent
MINISTER OF HEALTH	Twelfth Respondent



DIRECTIONS

The Chief Justice has issued the following directions:

1. These applications are set down for hearing together on Tuesday, 5 May 2026 to Thursday, 7 May 2026.

2. Any respondents who have filed notices of opposition but not answering affidavits must file their answering affidavits on or before Monday, 23 February 2026, together with applications for condonation.

3. The applicants in both matters must file replying affidavits, if any, on or before Monday, 9 March 2026.

4. Written argument must be lodged by—

   (a) the applicants in both matters, on or before Monday, 23 March 2026; and

   (b) the respondents in both matters, on or before Wednesday, 8 April 2026.

5. The applicants are not required to prepare physical records. The CaseLines electronic evidence management platform (CaseLines) will instead be used. There will be separate records on CaseLines for these two cases. In that regard:

   (a) the Registrar will upload onto CaseLines all papers filed prior to the issuance of these directions;

   (b) any party filing a document subsequent to the issuance of these directions must upload it onto the applicable CaseLines record.

6. In preparation for the hearing

   (a) the legal representatives for each party to the proceedings are, if not already registered, required to register accounts on CaseLines through https://sajustice.caselines.com;

   (b) the legal representatives for each party to the proceedings must email the name, surname and email address of each legal representative, who should be granted access to the matter on CaseLines, to Mr Asanele Diko at dikoa@concourt.judiciary.org.za, no later than Thursday 12 February 2026;



(c) each legal representative will be granted full access to this matter on CaseLines upon request.

7. Should any party identify missing or duplicated material, they must notify Mr Diko immediately.

8. As to the hearing:

(a) Subject to what is said hereinafter, legal representatives are required to prepare for and participate in the hearing with full familiarity of the functionalities of CaseLines, including viewing, navigating and presenting documents electronically.

(b) Parties must ensure that their respective legal representatives have appropriate access, equipment and connectivity to utilise CaseLines without technical interruption.

(c) The Court expects counsel to be sufficiently familiar with the layout and organisation of the CaseLines bundle to ensure efficient navigation.

(d) In the event that any party experiences connectivity or technical difficulties, they should contact Mr Diko.

9. As to pagination:

(a) To ensure efficient navigation of the record and pleadings during oral argument, parties must cite the CaseLines pagination.

(b) Each party must ensure that their written submissions and any supplementary documents make reference to the CaseLines pagination.

10. As to directing during oral argument:

(a) The legal representative presenting oral submissions must use the CaseLines "direct to page" functionality whenever the Court is referred to a specific page in the bundle.

(b) The "direct to page" function works as follows:

i) Select "view case list".

ii) Select "review evidence".

iii) Select the relevant document, or page, from the list of documents in the master bundle, located on the left-hand side of the screen.

(c) Select "present" at the top of the screen, which is located in-between "view" and "notes". This will produce a horizontal bar. On the right-hand side of this bar is a "page direction" section.

(d) Select "direct to page", which is located in-between "lawyers, judges, court staff" and "page direction history".

(e) Counsel must ensure that the relevant page has fully loaded on CaseLines before proceeding to make any substantive submissions on the contents of that page.

(f) Where a party relies on multiple pages, or documents, in quick succession, they must prepare a pre-identified list of such references to minimise delays during oral argument.

11. Further directions may be issued.

BOYBOY MOLOI
REGISTRAR
CONSTITUTIONAL COURT

TO: WERKSMANS ATTORNEYS
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AND TO: OFFICE OF THE STATE ATTORNEY, CAPE TOWN
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AND TO: KGOSANA ATTORNEYS
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AND TO: PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
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AND TO: MINISTER OF FINANCE
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AND TO: OFFICE OF THE STATE ATTORNEY, EAST LONDON
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AND TO: SPEAKER OF THE FREE STATE PROVINCIAL LEGISLATURE
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AND TO: SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE
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AND TO: GARLICKE AND BOUSFILED INCORPORATED
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AND TO: SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE
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AND TO: SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE
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AND TO: SPEAKER OF THE NORTH-WEST PROVINCIAL LEGISLATURE
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AND TO: SPEAKER OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE
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AND TO: SPEAKER OF THE WESTERN CAPE PROVINCIAL LEGISLATURE
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AND TO: MEMBER OF THE EXECUTIVE FOR THE DEPARTMENT OF HEALTH, LIMPOPO
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AND TO: MEMBER OF THE EXECUTIVE FOR THE DEPARTMENT OF HEALTH, NORTHWEST
Twenty-Second Respondent in CCT 251/25
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AND TO: OFFICE OF THE STATE ATTORNEY, CAPE TOWN
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