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

CASE NO: **2025-125411**

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR-GENERAL, NATIONAL DEPARTMENT OF HEALTH	Second Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
AND EIGHT OTHERS	Second to Ninth Respondents

In re

Case no. 2024-057449

SOLIDARITY TRADE UNION	Applicant
and	
THE MINISTER OF HEALTH	First Respondent
AND FOUR OTHERS	Second to Fifth Respondents

AND SEVEN OTHER MATTERS (CASE NUMBERS 2024-058172; 2024-11209; 2025-020969; 2025-045340; 2025-083348; 2025-134493; 2025-147065)

SECOND SUPPLEMENTARY ANSWERING AFFIDAVIT BY THE HOSPITAL ASSOCIATION OF SOUTH AFRICA

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I, the undersigned,

DUMISANI SIZWE BOMELA

do hereby make oath and say that:

1. I am the Chief Executive Officer of the Hospital Association of South Africa (**HASA**). HASA is the seventh respondent in this application, and the applicant in case no. 2025-020969, one of the applications that the Minister of Health (**the Minister**) and the Director-General of the Department of Health (**the DG**) (the applicants in this matter) seek to have stayed.

2. I am duly authorised to depose to this affidavit on behalf of HASA.

3. The facts in this affidavit fall within my personal knowledge, save where the contrary appears from the context. They are true and correct to the best of my knowledge and belief. Where I make submissions of law, I do so on the advice of HASA's legal representatives.

4. I deposed to HASA's answering affidavit (on 12 August 2025) and supplementary answering affidavit (on 3 September 2025). I use the terms defined in those affidavits in this affidavit.

INTRODUCTION

5. On 16 September 2025, in a case management meeting, this Court directed the Minister to file a replying affidavit in this application by 17 September 2025, and to file an amended notice of motion by 26 September 2025. This Court also granted the respondents leave to file supplementary answering affidavits by 24 October 2025.

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6. On 17 September 2025, the Minister filed a replying affidavit.

7. On 26 September 2025, the Minister filed an amended notice of motion.

8. HASA files this second supplementary affidavit in terms of this Court's directive made at the case management meeting of 16 September 2025. The purpose of this affidavit is twofold.

9. **First**, it addresses the contents of the Minister's amended notice of motion and the contents of that amended notice of motion as addressed in the Minister's replying affidavit.

10. **Second**, the Minister's replying affidavit introduces new factual issues, which HASA is required to address and respond to in this affidavit. While HASA has been given leave to file a supplementary answering affidavit, to the extent required, HASA seeks leave under rule 6(5)(e) of the Uniform Rules of Court to file this affidavit to address these new factual issues.

11. HASA does not address every allegation in the Minister's replying affidavit. HASA's failure to address any allegation in the Minister's affidavit should thus not be considered as an admission of that allegation. Allegations should be taken as denied to the extent that they are inconsistent with HASA's founding affidavit in its direct challenge application, and its answering and supplementary answering affidavit in this application.

THE AMENDED NOTICE OF MOTION

12. The Minister explains in his replying affidavit that Sakeliga NPC (**Sakeliga**) on 27 August 2025 filed an application with this Court directly challenging the constitutionality of the NHI Act (para 16.1). Its case number is 2025-147065.

13. The Minister also explains that on 2 September 2025 the Premier of the Western Cape Government (**the Premier**) filed an application with the Constitutional Court to challenge the constitutionality of the NHI Act on procedural grounds (para 16.2).

14. The amended notice of motion, filed by the Minister on 26 September 2025, includes Sakeliga's application as one of the applications the Minister seeks to stay (paragraph 1.7). The amended notice does not seek to consolidate Sakeliga with the other direct challenge applications (there was no amendment made to paragraph 7, to add Sakeliga's application to the list of matters to be consolidated), but HASA assumes this is an omission made in error.

15. The amended notice of motion also includes the application brought by the Premier in the Constitutional Court as one of the applications upon which the stay depends (para 2.7).

16. HASA does not object to the addition of Sakeliga's and the Premier's applications to the notice of motion in this application. As the Minister notes, this is a "technical amendment" to the notice of motion (para 16.3).

17. However, HASA maintains its opposition to the stay and consolidation sought by the Minister in his amended notice of motion, for the reasons given in its answering and supplementary answering affidavits.

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18. In addition to those reasons, HASA respectfully submits:

18.1. As with the second BHF CC application, the Premier's application before the Constitutional Court is fundamentally different to the direct challenge applications. The Premier challenges the NHI Act on a procedural basis. He contends that Parliament failed in its duty to facilitate public participation, and that Parliament failed to consult properly with the Western Cape Government. This is a challenge to Parliament's facilitation of public participation to which the substance of the NHI Act is irrelevant.

18.2. HASA is not a party to the Premier's application. It has no say in or control over those proceedings.

18.3. As I explained in paragraph 29 of HASA's supplementary answering affidavit with reference to BHF's second CC application, including the Premier's application in the stay could lengthen the duration of the stay by around two years. If the Constitutional Court decides to hear the Premier's application before or after determining the other NHI Act matters, then the stay could be in place for up to **eleven years** in a worst-case scenario, and at least **six and a half years** (discounting remittal to the High Court).

19. I deny the Minister's allegation that the existence or possibility of "new applications" warrants granting a stay (paras 17 and 18). Merely because other parties might bring their own applications does not mean that HASA's application

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cannot proceed. The risk of "new" applications always exists. On the Minister's argument, HASA's application could be indefinitely delayed.

20. The interests of justice demand that HASA's application, and the other direct challenge applications, proceed forthwith. If other parties initiate proceedings at a later stage, then those new applications will be managed, considering the nature of those applications and the readiness of the existing direct challenge applications. HASA's application cannot grind to a halt only because someone else ***might*** bring a similar case in the future.

21. I address below the severe prejudice caused by the Minister's (new) NHI Act's implementation plan set out in his replying affidavit. I, therefore, deny his allegation that an order requiring him to file an affidavit annually on the NHI Act's implementation addresses the prejudice experienced by HASA and the public during the stay (para 19.4). I also reiterate the allegation HASA made in its answering affidavit that the possibility of lifting the stay does not mitigate prejudice in this matter, because even if the stay is lifted, HASA's application remains months if not years away from final judgment (HASA AA para 99).

THE NEW FACTUAL ISSUES

22. The balance of this affidavit addresses the new issues the Minister raises in his replying affidavit. To the extent necessary, HASA seeks leave to file this affidavit to address these new factual issues. As will become apparent below, HASA's responses to the Minister's new factual allegations are relevant and ought to be admitted and considered by this Court.

23. The Minister raises at least **two** new factual issues in reply.

23.1. *First*, the Minister alleges that only specific provisions of the NHI Act will be brought into force and implemented during the period of the stay. He lists these provisions and provides a timeline for their commencement or implementation (paras 69 to 81). He alleges, based on this timeline, that implementation of the NHI Act during the stay will cause no serious prejudice to the direct challenge applicants during the stay.

23.2. *Second*, he alleges that the respondents, including HASA, "have adopted a strategy of lawfare" (para 51.4) and "wish to tie up the Minister and the department in litigation to impede the implementation of the NHI Act" (para 51.5).

24. I address these two issues below.

A NEW IMPLEMENTATION PLAN

25. If the Minister's stay is granted, what will happen with the NHI Act in the meantime?

26. In this part of the affidavit, I explain how the Minister answered this question differently in his reply than how he answered it in his founding papers. I then address three problems with the Minister's new position:

26.1. *First*, the new position is unlawful.

26.2. *Second*, the new position is contradictory and impermissibly vague.

26.3. *Third*, even if implemented, and interpreted in its best possible light, the Minister's new position will still cause immense prejudice to HASA's members and the public during the stay.

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The Minister's new version

27. In his founding affidavit, the Minister explained:

27.1. The NHI Act has not yet commenced (para 172).

27.2. Once the NHI Act commences, it will be implemented progressively in terms of section 57 (para 173).

27.3. However, the Minister will be *obliged* to implement the Act (para 179.2).

27.4. Implementation "will largely start with the establishment of the administrative and governance structures for the Fund, the process of which will take years" (para 174).

27.5. Decisions about budget allocation "will be made by those constitutionally empowered bodies, considering, insofar as it is relevant, any risk that pending litigation may pose to the outcomes of that expenditure" (para 174).

27.6. The Minister will implement measures "like strengthening the public health system and continuing to build the health information systems that already exist" (para 175).

27.7. The Minister will not implement section 33 within the next 10 to 15 years (para 182).

28. That was all the Minister said.

29. The Minister gave no specifics regarding the implementation of the NHI Act's provisions, other than section 33. The Minister (and the President) provided no

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indication as to when commencement might occur. The Minister never indicated whether the NHI Act would commence in its entirety or whether provisions would be brought into force on different dates. The Minister and the President suggested that they would commence implementation without delay (Minister FA para 179.5; President AA para 82).

30. In HASA's answering affidavit, echoing the correspondence it sent to the Minister before he filed his founding affidavit, HASA stated that the Minister cannot obtain a stay while the executive pushes on with implementation (AA para 16). HASA explained how, once the NHI Act comes into force, it will cause immense prejudice to a suite of constitutional rights and principles (AA para 87). This prejudice arises from numerous provisions in the NHI Act—not just section 33 (AA para 94.4).

31. In reply, the Minister introduces an NHI Act implementation plan or proposal, including proposed timelines and specific provisions of the legislation that are intended to be implemented shortly. There are five elements to this proposal.

32. **First**, the Minister introduces elements of the NHI Act that will be the "focus" of "initial implementation" (para 69). These are:

    32.1. Sections 57(2)(a)(iv) and 57(4)(f), which include enhancing healthcare for the vulnerable groups of children, women, people with disabilities, the elderly, and rural communities.

    32.2. Sections 12 and 57(2)(a), which require the establishment of institutions "to administer national health insurance", like the Board of the Fund.

32.3. "Health system strengthening initiatives, including capital investment in public healthcare infrastructure".

33. **Second**, the Minister reveals—for the first time—that the President "will in the near future be requested to bring into effect" a selection of provisions in the NHI Act (para 70):

33.1. Section 1, which includes the definitions.

33.2. Section 2, which sets out the purposes of the NHI Act, which include establishing the Fund which will serve "as the single purchaser and single payer of health care services in order to ensure the equitable and fair distribution and use of health care services".

33.3. Sections 12 to 18, which establish the Board of the Fund **(the Board)** and define its powers.

33.4. Sections 19 to 22, which primarily concern the appointment and functions of the Chief Executive Officer of the Board.

33.5. Sections 23 to 24, which regulate committees established by the Board.

33.6. Sections 25 to 30, which govern the establishment of the Benefits Advisory Committee, the Health Care Benefits Pricing Committee, and the Stakeholder Advisory Committee.

33.7. Section 31, which gives the Minister broad powers as the "steward" responsible for the national health system.

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33.8. Section 49(1), which entitles the Fund to money appropriated annually by Parliament, section 49(2)(a)(i) which requires Parliament to collect this money from "general tax revenue, including the **shifting of funds** from national government departments and agencies and **the provincial equitable share and conditional grants into the Fund**", and section 49(2)(a)(ii) which requires Parliament to collect this money from the "**reallocation of funding for medical scheme tax credits** paid to various medical schemes towards the funding of National Health Insurance" (emphasis added).

33.9. Section 57, which concerns transitional provisions (except section 57(4)(h) which requires the initiation of legislative reforms to enable NHI, including the amendment of other legislation).

33.10. Section 59, which in subsection 59(1) empowers the President to fix a date for proclamation, and which provides in subsection 59(2): "Subject to section 57, different dates may be fixed in respect of the coming into effect of different provisions of this Act".

34. The Minister says that no other provisions will come into force in this financial year (2025/2026 — ending 31 March 2026) (para 73).

35. **Third**, the Minister now makes various allegations regarding the allocation of funding for NHI implementation.

35.1. The Minister alleges that no funds will be allocated under section 49(1) and (2)(a) before the establishment of the NHI Fund (which, as I explain below, the Minister says will occur in the 2027/2028 financial year ending

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31 March 2028). Until then, NHI activities will be funded by the annual budget (para 71).

35.2. The Minister alleges that "there will be no additional demand on the public purse during the 2025/2026 and 2026/2027 financial years, arising from NHI" (para 78).

35.3. The Minister alleges that the earliest "change" to the budget regarding the NHI Act will be in 2027/2028, and this will include the "systematic reallocation of funding for medical scheme tax credits in section 49(2)(a)(ii)" (para 79). The Minister states that the only category of individuals who will be at risk of losing these tax credits are those who are high income earners (para 80).

35.4. The Minister alleges that no "taxpayers will pay for both their medical schemes and the establishment of the NHI Fund" (para 192).

36. **Fourth**, the Minister alleges that the President "will" proclaim other NHI provisions upon the Minister's request, depending on resource availability and institutional readiness (para 72). The Minister provides a timeline for when he intends to request the President to commence certain provisions. In 2026/2027 (ending 31 March 2027), the following provisions will commence (para 75):

36.1. Section 3, which concerns the application of the Act, provides that the Act trumps legislation with which it conflicts (except the funding and functions of organs of state in respect of health care services), and exempts the Fund from the application of the Competition Act.

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36.2. Section 5, which requires people to register as users with the Fund to be eligible for health care services.

36.3. Section 32, which concerns the role of the Department under the NHI Act and the requirement that the functions of provincial departments be amended to comply with the NHI Act.

36.4. Section 34, which establishes a national health information system maintained by the Fund.

36.5. Section 37, which establishes the Contracting Unit for Primary Health Care, whose duties include managing contracts with health care service providers, and to "facilitate the integration of public and private health care services within the sub-district" for which that unit is responsible.

36.6. Section 58, which repeals and amends existing laws, but "in very limited respects not affecting medical schemes or correctional services".

37. In 2027/2028 (ending 31 March 2028), the Minister intends to request the commencement of sections 9 to 11 of the NHI Act, which establish the Fund, clothe it with wide-ranging powers, and entail the transfer of staff from the National Department of Health (para 76). The Fund's wide-ranging powers include implementing best practices of "the purchase of health care services and procurement of medicines, health goods and health related products on behalf of users". Once these sections commence, the Minister intends to allocate revenue to the Fund under sections 49(1), (2)(a)(i) and (2)(a)(ii) (para 71).

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38. In 2029/2030, the Minister intends to request the commencement of section 35, which obliges the Fund to purchase health care services (para 76).

39. In 2030/2031, the Minister envisages the commencement of section 49(2)(a)(iii), which requires Parliament to fund the NHI through a payroll tax (employer and employee).

40. In 2040/2041, the Minister contemplates the commencement of section 49(2)(a)(iv), which requires Parliament to fund the NHI with a surcharge on personal income tax.

41. **Fifth**, the Minister explains that he will not request the President to "implement" (i.e., proclaim) sections 4(2) and (5) because of the concerns HASA has raised regarding the constitutionality of those provisions' treatment of asylum seekers and foreigners (para 77). The Minister suggests that Parliament will need to amend this section, indicating he "will not request the President to implement either section 4(2) or 4(5) until they have been amended to address any alleged unconstitutionality."

42. This is a new glide path for implementing the NHI Act. The Minister did not make the above five points—certainly not in as much detail—in his founding affidavit. He failed to do so even though HASA, in correspondence sent to the Minister before he filed his founding affidavit, foreshadowed the allegations HASA made in its answering affidavit.

43. The Minister has not presented this plan publicly anywhere else. It contradicts the implementation plan his department presented to NEDLAC on 12 August

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2025 (HASA AA para 14.2) which envisaged commencement of the NHI Act by the end of August 2025.

The principled difficulties with the Minister's new plan

44. There are two principled difficulties with the Minister's new plan.

45. **First**, the Minister fails to appreciate that the President has the power to decide when to proclaim the commencement of the entire NHI Act. The Minister alleges that because section 57 of the NHI Act "locks in" two periods of 2023 to 2026 and 2026 to 2028, the President cannot delay the commencement of the statute (paras 103 and 175). For this reason, the Minister argues, the President cannot undertake not to proclaim the Act's commencement as proposed by HASA (HASA AA para 15).

46. However, there is a difference between section 59(1) and (2) of the Act.

    46.1. Section 59(1) provides that the NHI Act "takes effect on a date fixed by the President by proclamation in the *Government Gazette*".

    46.2. Section 59(2) provides that if the President fixes different dates for the commencement of different provisions of the Act, then that partial or staggered commencement is "[s]ubject to section 57".

    46.3. Section 59(1) is not subject to section 57; section 59(2) is.

    46.4. In turn, the dates in section 57 do not limit the President's power to proclaim the *entire* NHI Act's commencement under section 59(1). The dates in section 57 apply only if the President fixes different dates for commencement under section 59(2).

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47. Moreover, the Minister's position is contradictory. He alleges that the President is "bound" to bring the Act into force (para 103). In the same breath, he alleges that the President can delay commencing the Act, and that the President has the discretion to commence the Act "on the advice of the Minister" (para 103). The Minister cannot have it both ways. Either the President was obliged to commence the Act in 2023, or the President has a discretion to delay the entire Act's commencement on a rational basis.

48. Accordingly, HASA's proposal, that the President undertake not to proclaim the commencement of the entire NHI Act, given the serious challenges to the constitutionality of the entire Act, is plainly rational and lawful. The Minister's new plan rests on an erroneous contrary assumption.

49. **Second**, the Minister's new plan is contrary to sections 57 and 59(2). While section 59(1) is not subject to section 57, partial proclamations under section 59(2) are subject to section 57. When the President proclaims the commencement of parts of the NHI Act on different dates, the dates in section 57 (2023 to 2026 and 2026 to 2028) operate as firm deadlines. All partial proclamations must adhere to those dates.

50. The deponent to the Minister's affidavit (Dr Crisp, the Deputy Director General: National Health Insurance) in his presentation to the Parliamentary Portfolio Committee on Health on 10 October 2025, confirmed that the Department accepts these firm date deadlines for each Phase set in the Act. He stated that:

> "The Act does not have three phases. It has only two phases. So, maybe just to clarify what is there. **The first phase ends at the end of 2026**. So, 2023 to 2026 and so we are on track for the five targets that are set in Section 57, which is the transitional arrangements for the National Health Insurance. We are working on

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those five. Some of them have already been fully implemented and others are in progress.

So, in terms of phase 1, as outlined in the Act, I think we can be fairly confident that we are not behind schedule. **The second phase is between 2026 and 2028** and the intention, if one reads what is outlined and it's quite high level in the descriptions in the section of the Act, is to get the machinery of the NHI, not the office of the NHI, that's in phase 1, **but to get the machinery of the implementation of the NHI starting to work and it's in those years, between 2026 and 2028, that the first funds will go to the National Health Insurance**.

(emphasis added—I attach a copy of the relevant pages of the transcript of the presentation marked **DB1**).

51. The Minister's new plan envisages partial proclamation by the President. I explain below why the Minister's new plan is impermissibly vague. But even if one assumed that the new plan could be interpreted with reasonable clarity, the partial proclamation envisaged by the Minister frustrates and fails to achieve within the required dates or periods the mandatory objectives set for each phase in section 57(4) and (5)—contrary to section 59(2).

52. The Minister's proposal envisages the proclamation of the Fund's powers to procure health care services at the earliest in 2029/2030 (para 76). The Minister alleges that no additional funds will be allocated to the Fund before 2027/2028 (para 78), and that allocation via payroll and income tax revenue will occur only in 2030/2031 and 2040/2041 respectively (para 81).

53. These delayed proclamations imply that the Minister's proposed partial proclamation schedule contradicts section 57, in at least three ways.

54. **First**, procurement of healthcare and hospital services by the Fund is a mandatory requirement for Phase 1 (sections 57(2)(a)(ii), 57(4)(h), and 57(4)(g)).

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Such procurement must occur by 2026. But if the plan is that the President will commence the Fund's procurement powers in the 2029/2030 financial year ending 31 March 2030, then the Fund would not have commenced procuring health care services by 2026. The President would have partially proclaimed the Act contrary to section 57.

55. **Second**, the objectives set out in section 57(4), which the Fund must achieve by 2026, include purchasing personal healthcare services for vulnerable groups "from contracted public and private providers" (section 57(4)(f)) and purchasing hospital services (section 57(4)(g)). There appears to be no practical way for the Minister to achieve these objectives by 2026, as he says, the Fund will not receive any additional revenue until the 2027/2028 financial year ending 31 March 2028, and the Fund cannot exercise the power to purchase health care services until 2029/2030. The partial proclamation envisaged by the Minister is thus contrary to section 59(2).

56. **Third**, by the end of Phase 2, which is 2028, the Act requires the Fund to be a purchaser of healthcare services through a system of mandatory prepayment. Yet, the Minister intends to request commencement of the Fund's procurement powers in 2029/2030. More importantly, he evidently does not intend to immediately request the commencement of those provisions that supply the Fund with additional revenue and set up a system of mandatory prepayment—he alleges that some revenue sources, like income tax surcharges, will commence only in fifteen years. But mandatory prepayment means "compulsory payment for health services before they are needed in accordance with income levels" (section 1)—in other words, it *requires* the taxation of the public as

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provided for and required by section 49(2) (including payroll tax and surcharges on personal income tax), to fund the Fund's procurement of services for the public. On the Minister's argument (assuming he were entitled to instruct the President which sections to bring in force and when, which he is not), the Fund will not be established as a purchaser of healthcare services *through a system of mandatory prepayment* by 2028. In these circumstances, the partial proclamation envisaged by the Minister would violate section 57(5).

57. By no means is HASA conceding or admitting that "nothing" will happen with the implementation of the NHI Act pending the stay. That is not the point. The point is that, not only is the proposal vague and inconsistent as discussed below, but the Minister envisages implementing the NHI Act by impermissibly directing the President how to act and claiming he will obey the direction, contrary to the requirements of the NHI Act. This creates difficulty at a level of principle (the plan would be unlawful for its variance with section 57). It also introduces the material risk of the Minister changing his plan or speeding up implementation should he realise that the NHI Act requires implementation at a far greater pace.

The impermissible vagueness of the proposal

58. The Minister's proposed plan for implementing the NHI Act is vague in at least three ways.

59. **First**, the Minister alleges that the initial implementation of the NHI Act (pending the stay) will focus on enhancing healthcare for vulnerable groups (para 69.1) and strengthening the healthcare system (para 69.3).

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59.1. The Minister provides no details regarding these steps and precisely how "healthcare for vulnerable groups" will be achieved and how the healthcare system will be strengthened following the initial implementation of the NHI Act.

59.2. It is also unclear how initial implementation can or will proceed given the Minister's allegations that the Fund will not result in additional budgetary expenditure until the 2027/2028 financial year, and that the Fund will not have the power to procure healthcare services until the 2029/2030 financial year.

59.3. Several fundamental issues arise from the vagueness of the Minister's proposal, such as:

59.3.1. If taxpayers will not be responsible for funding the NHI Fund (para 192), then it remains unclear who will fund the initial implementation of the NHI Act.

59.3.2. The Minister's approach appears to violate section 57(5) of the NHI Act, which requires the Fund to be funded through mandatory prepayment, in other words, by specific taxation.

59.3.3. Precisely how will the Fund implement the initial steps outlined by the Minister without the Fund having the power to procure healthcare services?

59.3.4. How are these steps any different to what the Minister should do under other legislation to improve access to healthcare?

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59.4. To avoid any uncertainty, HASA has never suggested that the Minister cannot take steps to enhance vulnerable groups' access to healthcare. The Minister *must* do so under current legislation, given his constitutional duties. The Minister, should he not obtain a stay, could even do so under the NHI Act pending the finalisation of HASA's litigation. What the Minister cannot do is implement the NHI Act *and* stop HASA from proceeding with its challenge.

59.5. Waiting for the NHI litigation to be resolved should not stall progress to progressive realisation of access to health care. Health system strengthening is not contingent on the NHI. In fact, many of the challenges facing the public sector—such as staff shortages, equipment failures, poor management, and corruption—can and should be addressed now, using existing policy levers. However, investing in NHI institutions while the NHI Act's constitutionality is in question risks misallocation of public funds.

60. **Second**, as HASA explained in its founding affidavit (para 152), an impermissibly vague relationship exists between the "full implementation" envisaged in section 33 of the NHI Act and "the establishment and operationalisation of the Fund as a purchaser of health care services through a system of mandatory prepayment" required by section 57(5) at the end of Phase 2. As a result of this vagueness, the Minister cannot and does not say how the Fund will work by the end of Phase 2. The Minister must accept, as required by section 57(5), that the Fund will operate as a purchaser of health services through mandatory prepayment before

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the end of 2028. But he does not explain how this is linked to the "full implementation" envisaged in section 33.

61. **Third**, the Minister omits key provisions from his implementation plan.

61.1. For instance, he never says when he intends for section 7 to commence (the section that concerns the coverage of healthcare services and how users access those services). It is unclear how any provision of healthcare services under the NHI Act can occur without the commencement of section 7.

61.2. Similarly, there is no mention of section 39—the accreditation of service providers—despite section 57(4)(f) and (g) envisaging the fund procuring services from these providers in Phase 1 (and certainly by the start of Phase 2).

61.3. Additionally, now that the Minister accepts that sections 4(2) and (5) will need to be amended (without formally conceding their unconstitutionality) given their exclusionary treatment of foreigners and asylum seekers, the Minister provides no indication of the anticipated commencement date of sections 4(1), (3), and (4), which concerns the population coverage of the NHI Act, the rights of children, and proof of identity.

61.4. The Minister also fails to mention section 55, which empowers him to pass regulations. This is perhaps the most striking of omissions. The Minister has already purported to publish regulations for public comment (HASA AA para 14.1). Much of the NHI Act's implementation turns on regulations (which is a ground upon which HASA challenges the

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constitutionality of the Act—HASA FA paras 184 and 189). Yet the Minister does not say when it is intended that section 55 will commence.

62. This vagueness defeats any utility that the Minister's proposal may have had in the context of this stay. Even if the Minister had the power to direct the President in the exercise of the President's section 59 commencement powers—which he does not—this Court (and the public) does not have reasonable certainty regarding what will happen with the NHI Act pending the stay.

62.1. On the one hand, the Minister says nothing will happen, only bureaucratic scaffolding and the commencement of a small (arbitrary and impractical) array of provisions.

62.2. On the other hand, the Minister is obliged to establish an operational fund that purchases healthcare services through mandatory prepayment by 2028, and the Minister says that he will forthwith take steps to procure healthcare services for vulnerable persons (e.g. para 41).

62.3. Not only are these two allegations contradictory, but they are each vague.

The prejudice caused by the proposal

63. The Minister's new implementation proposal hardly addresses the prejudice HASA and the public will suffer pending the stay.

64. **First**, even if the Minister's new glide path were clear and lawful (which, for the reasons above, it is not) and could be argued to mitigate the prejudice caused during the stay, which HASA denies, the Minister does not include in his undertaking (recorded in the Notice of Motion) that he will adhere to this plan (let

alone that the President will). The latest plan presented by the Minister is only that: a plan presented in a replying affidavit for the first time. It contradicts previous plans presented by the Minister. There is no commitment or guarantee that the Minister will stick to this plan, and that he will not change it as implementation progresses. It provides no assurance of a mitigation of prejudice.

65. **Second**, the establishment of governance structures under the NHI Act—such as the Board of the Fund and advisory panels—and other piecemeal implementation proposed by the Minister, while the constitutionality of the NHI Act is under judicial scrutiny, poses significant risks and prejudice to the health system, stakeholders (such as private hospitals represented by HASA) and the public.

65.1. First, proceeding with appointments and institutional setup under a contested legislative framework undermines legal certainty and public trust. This is particularly concerning given that the Minister has requested a stay on substantive constitutional challenges, while he continues to implement select provisions of the NHI Act. Such selective implementation creates a fragmented and incoherent policy environment.

65.2. Second, HASA has long cautioned against the dangers of piecemeal health reform. The private healthcare sector has already experienced the consequences of an incomplete regulatory framework under the Medical Schemes Act 131 of 1998. When the Medical Schemes Act was promulgated, the supporting policy instruments intended to ensure long-term sustainability — specifically, the Risk Equalisation Fund and the

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Social Health Insurance framework, which included mandatory membership for formally employed persons — were never implemented.

65.3. At the time, both the Department's own technical committees and independent actuarial advisors cautioned that without these mechanisms, the introduction of Prescribed Minimum Benefits, open enrolment, and community rating would distort the risk pool, place upward pressure on contribution rates, and threaten the overall financial viability of medical schemes.

65.4. This incomplete implementation has, over time, indeed produced many of the predicted distortions — including adverse selection, unsustainable cost escalation, and reduced scheme participation by younger and healthier members. The country has therefore already experienced the systemic risks and prejudice that arise from the piecemeal implementation of new health policy initiatives.

65.5. Implementing fragmented elements of the NHI Act in the absence of legal clarity and foundational reforms risks destabilising the entire health system.

65.6. In summary, the premature establishment of NHI institutions under legal uncertainty not only jeopardises the operational environment of private hospitals, but also risks entrenching inefficiencies and governance failures.

66. **Third**, even assuming the Minister and the President stick to the Minister's plan despite its violation of section 57, his plan causes immense prejudice to medical

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schemes and their beneficiaries during the stay. On his own version, the Minister intends to cut the tax credits for certain medical scheme beneficiaries in 2027/2028, well within the expected duration of the stay and long before HASA can expect a final judgment on its application if the stay lifts (para 79).

66.1. While the Minister says that he will target only those earning more than R1 000 000 a year, that hardly mitigates the harm *to those taxpayers*. Those taxpayers will be deprived, collectively, of millions of rands to fund an unconstitutional NHI Act. Taxpayers will *pay*, contrary to the Minister's allegations, and suffer prejudice due to the Minister's implementation of the NHI Act, which HASA contends is entirely unconstitutional.

66.2. Additionally, medical aid schemes will suffer. If tax credits are removed for those earning over R1 000 000 a year, then this could lead to a significant number of medical scheme members downgrading from more expensive plans to cheaper plans. This is either because members can no longer afford their plans without a tax credit, or because, while they earn less than R1 000 000 a year, their current medical aid rates increase due to wealthier members downgrading or withdrawing. This could affect the health and stability of scheme risk pools, the revenue of the entire scheme, with significant negative effects. This is contrary to the Minister's statement that "medical schemes may continue to operate as they have done for the full duration of the stay and a long time after that" (para 89).

66.3. In these circumstances, while the Minister may have provided an undertaking not to exercise his powers under section 33 of the NHI Act, he plainly intends to take substantive steps towards defunding and shrinking the role of medical schemes in the immediate future. The prejudice to taxpayers and medical scheme members is obvious and clear.

66.4. The Minister's assertion in his replying affidavit that HASA will suffer no prejudice during the period of the stay (para 174) entirely overlooks the material risk to HASA from a stakeholder and investor perspective. Even partial implementation of the NHI Act is likely to be perceived by stakeholders and investors as the commencement of full implementation. This perception, in turn, is likely to have severe negative consequences for the ongoing viability of private hospitals.

67. I underscore that HASA learned of the Minister's decision to terminate tax credits for those earning over R1 000 000 for the first time after reading his replying affidavit. The Minister has not consulted publicly or with stakeholders regarding this decision. He attaches no evidence or analysis to this replying affidavit to justify this decision. He does not explain why the threshold is set at one million rand. He does not explain how much revenue he foresees his decision generating for the Fund.

68. This tax credit decision appears to be arbitrary.

69. The prejudice to HASA and the other respondents is obvious. They must not only contend with new factual allegations in reply, but they must also respond to

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a decision affecting their rights without prior consultation and with no reasons given. A further concern is that there is no telling whether the Minister may still intend to consult on this decision, in which case there is hardly a guarantee that he will take that decision in 2027/2028. He may do so earlier, and he may extend the tax credit termination to those with lower salaries to generate more revenue. There can be no prejudging that consultation process.

70. The vagueness surrounding the Minister's decision regarding tax credits makes it entirely unhelpful for the purposes of this stay application. Without knowing the basis for forfeiting tax credits for those earning more than R1 000 000, there can be no guarantee that the Minister will adhere to this threshold and the timeline he proposes for its implementation.

71. **Fourth**, even assuming the Minister and the President adhere to the Minister's new plan (and do not implement any further sections), the Minister plans to cause immense prejudice to provincial health departments in the next two years (by 2027/2028). The Minister intends to implement section 49(2)(a)(i) by 2027/2028 and allocate revenue from provincial health departments to the Fund (paras 71 and 76). Accordingly, during the stay, the Minister will commence centralising national healthcare, taking funds away from provincial healthcare departments. This is a significant step in the implementation of the NHI Act, to the detriment of provincial healthcare departments.

72. Additionally, HASA explains why sections 2 and 4 of the NHI Act unconstitutionally take powers away from the provinces (HASA FA para 196). HASA also explains why the amendments to the National Health Act

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contemplated under section 58 of the NHI Act, read with the schedule, fundamentally alter the role of provinces in healthcare (HASA FA para 205).

72.1. The Minister intends (by requiring the President to exercise his power to bring the section into force) to implement section 2 in the near future, and he intends to implement section 58 (other than those amendments affecting medical schemes or correctional services) in 2026/2027.

72.2. In other words, from the next financial year (running from 1 April 2026 to 31 March 2027), the Minister will usurp provinces' healthcare powers.

72.3. This would cause immense prejudice to the provinces. Provincial health departments may be forced to close, or significantly pare resources.

73. The prospects of re-establishing provincial departments should HASA succeed in its challenge are slim. At the very least, re-establishment will require resource expenditure that could have been avoided had HASA's application been determined before the implementation of section 58. In any event, the issue is not whether re-establishment is possible. The issue is whether there will be harm caused during the stay because of the implementation of sections of the NHI Act that HASA challenges as unconstitutional. There certainly will be. Provincial health departments will be stripped of powers and funding—issues which HASA challenges as unconstitutional in its application. Plainly, for the purposes of the stay, HASA's challenges must be accepted as good, and, in the circumstances, it would plainly not be in the interest of justice and would violate section 34 access to court rights to stay litigation aimed at thwarting that unconstitutional usurpation of provincial power, which the Minister intends to proceed with.

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74. **Fifth**, in addition to the actual prejudice the Minister will cause to medical schemes, their beneficiaries, and provincial health departments, should the Minister allocate *any* revenue to the Fund under section 49, the Minister would be doing so unlawfully and unconstitutionally. The Minister intends to implement section 49(1), (2)(a)(i) and (2)(a)(ii) in the near future (and by 2027/2028 at the latest). He plans to implement section 49(2)(a)(iii) and (2)(a)(iv) in 2030/2031 and 2040/2041, respectively. But section 49 is unconstitutional:

74.1. Section 49 mandates the distribution of funding that falls within the remit of the Minister of Finance and National Treasury; this funding must be regulated by a Money Bill in accordance with the Constitution (HASA FA para 233).

74.2. Parliament cannot, in an ordinary act like the NHI Act, fetter the discretion of the Minister of Finance to pass a Money Bill (HASA FA para 235).

74.3. In turn, once section 49 is implemented, the Minister will cause funds to be unconstitutionally appropriated to the NHI Fund. The Minister will cause taxpayer money to be spent on the NHI Fund without a constitutional basis for doing so.

75. **Sixth**, HASA's founding affidavit explains why various provisions which the Minister intends to implement in the "near future" (para 70) are impermissibly vague:

75.1. Section 13(3) fails to provide for who is responsible for preparing a shortlist of candidates and the criteria for membership of the *ad hoc* advisory body (HASA FA para 172.14).

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75.2. Sections 26 and 27 empower the Minister to establish the Health Care Benefits Pricing Committee and the Stakeholder Advisory Committee, but the Act fails to provide reasonable clarity as to who decides to appoint the members of these committees (HASA FA para 172.12). Additionally, the Act provides no reasonable certainty regarding how the Benefits Advisory Committee determines the scope of health care services available to people under section 4(1).

75.3. Section 31 provides the Minister with wide sweeping powers and functions; but it provides no reasonable certainty regarding the role of the NHI Fund (HASA FA para 172.15).

76. The same is true of those provisions meant for commencement in 2026/2027, 2027/2028, 2029/30:

76.1. Section 5 regulates the registration of users. But there is no reasonable certainty on how registered users may access health care services (HASA FA para 172.2).

76.2. Section 11, which provides the Fund with numerous powers, fails to provide reasonable certainty regarding how the cost of delivery, and quality and value of services will factor into prices paid for those services procured by the Fund, and how those values compare to the "lowest possible prices" referred to in section 11(2)(e) (HASA FA para 172.5).

76.3. Section 11 further fails to provide reasonable certainty regarding the annual increase of rates, certainly when read with sections 26(3) and 10(1)(g) (HASA FA para 172.7).

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77. **Seventh**, assuming the Minister will implement the NHI Act through regulations, the Minister intends to implement provisions that afford him a power unlawfully delegated by Parliament. Section 55, which empowers the Minister to pass broad regulations, provides insufficient guidance to pass constitutional muster (HASA FA para 189).

78. The prejudice caused by implementing these impermissibly vague provisions and unlawfully delegated powers is obvious. It is an offence to the rule of law and causes constitutional harm. It could result in unlawful decisions taken under vague laws by a functionary (the Minister) who should not have had the power to take them.

79. **Eighth**, HASA explains in its founding affidavit why the procurement provisions in the NHI Act—which the Minister envisages commencing in 2029/2030—are unconstitutional (HASA FA paras 209 to 228). The Act permits the procurement of services contrary to section 217 of the Constitution. The prejudice caused by the implementation of those provisions is plain: the Fund will procure goods and services illegally. This is immense prejudice without more.

80. The Minister, in reply (para 187), attempts to engage in the merits of HASA's allegation regarding the constitutionality of the procurement provisions—but he cannot do so. In the context of this stay, HASA's allegations must be taken as correct. In any event, his contention that the NHI Act is "subject" to procurement laws is incorrect. This will be addressed in argument.

81. **Ninth**, HASA explains in detail, with reference to expert evidence, why the NHI is unaffordable (HASA FA para 81 onwards). The scheme envisaged by the Act

is irrational, unreasonable, and unworkable. So, to allocate any resources to the implementation of the scheme, during a stay, creates a material risk of unnecessary or fruitless expenditure.

82. HASA explains in its answering affidavit why the Minister's legal costs in defending HASA's direct challenge are not a legitimate or cognisable prejudice (HASA AA paras 80-4). At best for the Minister, in adjudicating the application for the stay, this Court must weigh the risk of spending money on a scheme, the material aspects of which may ultimately be declared unconstitutional, against the risk of unnecessary legal costs incurred by the Minister.

83. Put differently, what is potentially worse:

    83.1. legal expenses being incurred by the Minister, which may only become unnecessarily spent if the Constitutional Court declares the NHI Act unconstitutional based on procedural challenges before this Court declares the NHI Act unconstitutional for substantive unconstitutionality (if the Constitutional Court dismisses the procedural challenges, as both Minister and President argue they should, then, the Minister and President would still need to answer and deal with the direct challenges before this Court); or

    83.2. years of significant NHI expenditure being unnecessarily incurred, because HASA succeeds in its application?

84. HASA submits that the choice between the two is obvious. The Minister's legal costs to defend the various challenges pale in comparison to the costs of implementing the scheme over a period of years.

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85. "Every cent" the Minister spends on an NHI system that is ultimately declared unconstitutional could "have been made available for the provision of healthcare" (para 12). The Minister stands to spend considerably more money on implementing the NHI Act compared to the legal costs in preparing an answering affidavit.

86. On the Minister's own version, he does not have this "luxury" to spend millions of rands and serious human resources on NHI implementation that could ultimately be set aside by a court (para 14).

87. The Minister may say that money spent on the NHI Act, and the exercises of public power taken to implement the Act, may be preserved by a just and equitable order from the court hearing HASA's application. But that raises another fundamental issue, raised squarely by HASA in its correspondence and answering affidavit. The longer the stay lasts, and the more the Minister implements the NHI, the more likely a court hearing HASA's application will be unable to grant HASA effective relief. The NHI system will become *irreversibly* implemented, or at the very least, practically and financially, very difficult to reverse.

88. **Finally**, the Minister—on his own version—expects the NHI Fund to commence procuring healthcare services by 2029/2030, and for taxpayers to start paying for NHI by 2027/2028.

88.1. If the Minister's stay is granted, and even if that stay lasts only for around two years, HASA will not obtain a judgment from this Court before the

Fund commences procurement, and taxpayers commence funding the NHI.

88.2. As HASA emphasised in its answering affidavit, the Minister has brought a stay at the earliest possible opportunity. Even after the stay is lifted, HASA's application and the other direct challenges are likely years away from a hearing and judgment, not only because the Minister will require time to prepare his answering affidavit, but also because he has intimated that there are various interlocutory applications requiring resolution prior to the hearing of the merits (and the Minister seeks the consolidation of all the applications) (HASA AA para 74).

88.3. The Minister even alleges that HASA's application and the other direct challenges will ("inevitably") go to trial—meaning that HASA is *years* away from a judgment even after the stay is lifted (para 57.4.1). He *concedes* that the length and permutations of the High Court litigation "hinges on speculative and distant events" (para 57.7).

88.4. All the while, people will pay more tax, and the state will spend money on the Fund, when such expenditure could have been avoided had HASA's application been determined expeditiously and without the stay.

89. The bottom line on prejudice is clear. The NHI Act, even on the implementation plan presented by the Minister in reply, presents a clear threat to constitutional rights. This Court should not grant the stay and allow those clear threats to materialise—for the sole purpose of saving the Minister from filing a possibly unnecessary answering affidavit. Instead, HASA's application should be

adjudicated as soon as possible, to prevent a wholesale violation of rights guaranteed by the Constitution.

Conclusion on the Minister's new position

90. The Minister appears to admit the central premise of HASA's objection to the stay: a stay cannot be granted if the executive implements the NHI Act in the interim. His response is that, in effect, the executive will not be implementing substantive parts of the NHI Act during a stay.

91. However, this response is flawed.

91.1. First, it is a response raised in detail for the first time in reply.

91.2. Second, the response suffers from two principled difficulties arising from a misunderstanding of the President's powers under the NHI Act.

91.3. Third, the response is so vague that it fails to demonstrate that the executive will refrain from implementing the NHI Act or causing prejudice to constitutional rights, pending a stay.

91.4. Fourth, the response, even if interpreted generously, nonetheless results in severe prejudice to the public pending the stay.

92. It should also be noted that the suggestion in the Minister's replying affidavit that there will be no prejudice to HASA during the stay (para 174), in addition to everything stated above also completely ignores the fact that once the NHI starts to be implemented by means of taking away tax credits (even if only for high income earners), establishing the Fund, and appointing people to manage it, etc., the perception that will be created across the board will be that the NHI is starting

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to be implemented in earnest, and all of the negative consequences, including from an investment and stakeholder (including doctors) perspective, that have been referred to in HASA's founding affidavit will start to come into being.

THE ALLEGATION OF "LAWFARE"

93. In reply, the Minister accuses HASA of "lawfare" (para 51.4).

94. **First**, the only legal concept that may possibly approximate to "lawfare" is abuse of court. The requirements for abusive litigation are settled. The Minister has not pleaded these requirements. He has not alleged that HASA has engaged in abusive litigation. HASA denies any allegation that its direct challenge to the NHI Act is an abuse.

95. **Second**, the Minister suggests that HASA's intention behind its direct challenge to the NHI Act is not to obtain the relief sought in its notice of motion, but instead to prevent the implementation of the NHI Act by bogging the Minister down in litigation (para 51.5). HASA denies this allegation, for which the Minister provides no specific evidence. HASA's intention behind its challenge is to invalidate the NHI Act or many of its provisions for the reasons set out in its founding affidavit. HASA wants its application adjudicated forthwith—hence its opposition to this stay application.

96. **Third**, the Minister suggests that there is some kind of conspiracy between the applicants to "overwhelm" the Minister (para 51.7). Again, there is no evidence for any such allegation; and this baseless speculation is denied. I specifically deny the vague suggestion that I (or any other "leader" of HASA) remarked to the deponent of the replying affidavit that HASA wishes "to tie up the Minister

and the department in litigation to impede the implementation of the NHI Act" (para 51.5). The fact that the applicants have adopted different positions to this stay and consolidation application belies any allegation that they have conspired against the Minister (para 5).

97. The fact that many stakeholders have challenged the NHI Act does not imply conspiracy or "strategy" to overwhelm. The Minister must contend with various applications impugning the NHI Act, because it is not only one of the most controversial pieces of legislation ever passed by our post-apartheid parliament, but also the subject of numerous credible challenges to its constitutionality. It stands to violate the rights of healthcare workers, doctors, medical scheme beneficiaries, private hospitals, asylum seekers, foreigners, and the general public. It will introduce an irrational and unreasonable public healthcare system that will *worsen* access to healthcare for all.

98. There is an appropriate option open to the President, which allays all the Minister's concerns: do not proclaim the Act until the constitutional challenges to the Act have been dealt with.

99. In that case:

    99.1. The Minister will not be at risk of expending unnecessary resources on the implementation of the NHI Act.

    99.2. The Minister may still exercise his wide-ranging and numerous powers under existing legislation to advance access to healthcare, including a focus on vulnerable persons, during the stay.

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100. **Fourth**, HASA has never suggested that judicial resources should not be used optimally (para 51.7). HASA accepts—and proposes—that its matter be case managed along with the other direct challenge applications (HASA AA para 109). The issue is not as binary as the Minister assumes. His stay is not only an inappropriate way to manage direct challenge applications, but it is also not the only way. HASA's proposal regarding case management as the matters ripen and interlocutory issues arise will ensure the orderly and optimal use of judicial resources, while also mitigating the immense delay and prejudice caused by a stay.

CONCLUSION

101. The Minister raises new factual material in his replying affidavit. HASA seeks leave to file this affidavit to address that new material. HASA submits that its responses above are materially relevant to the determination of the Minister's application. These responses ought to be admitted and considered by this Court under rule 6(5)(g) of the Uniform Rules of Court.

DUMISANI SIZWE BOMELA

I certify that the deponent signed the affidavit in my presence and declared that the deponent knows and understands its contents, has no objection to taking the prescribed oath and considers the oath to be binding. Thus signed and sworn before me on 24 October 2023 at **JOHANNESBURG**.

Certified a true copy / Signed before me
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COMMISSIONER OF OATHS

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Nortons Inc

Portfolio Committee on Health
(Nicholas Crisp)

held on

10 October 2025

AMB Recordings and Transcriptions CC
P O Box 915-1519, Garsfontein East 0060
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CHAIRPERSON: May invite the professor. Prof Crisp, there is quite a lot for you to deal with. Thank you very much.

PROF CRISP: Thanks DG. Good day, honourable Chair and honourable members and colleagues in a room where there are two computers. Can we just switch off the one? Sorry, we are just trying to stop the sound. We've managed to quieten the Heritage Day, but we haven't managed to quieten our second computer. Just close it.

Okay, thanks very much. So, the questions I will deal with are related to the health market enquiry and to the National Health Insurance. So, in response to Honourable Clark's question about the health market enquiry, we have reported in a separate meeting solely dedicated to the health market enquiry to the portfolio committee late last year and we have also reported on the 24th of February where the Honourable Minister had a press conference on the implementation of the health market enquiry to the whole morning, so a detailed presentation on that.

We have also answered the parliamentary question in March, question 1391 in March on what is happening with the health market enquiry. So, I won't go into any details, but just for completeness sake to answer Honourable Clark's question, the department is not going to implement the health market enquiry in the format that it was recommended. Youi must remember that this was a market enquiry by the Competition Commission under the auspices of the Department of

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Trade, Industry and Competition and it is not an instruction to the Minister on implementation of anything.

So, it was also conducted and reported on a period long before the National Health Insurance Bill was in parliament and certainly before the Act and so there are things that were anticipated in the health market enquiry report and recommendations that they are not what happened entirely in the end. So, we have to avoid making duplications and creating parallel structures.

We did report on that. So, we are not recommending or not going to pursue the creation of another public entity in parallel to the current five entities and the NHI as a supply side regulator. However, all the activities of that supply side regulator are under development. They have all hit some snags, for instance, the issue about the regulation of infrastructure and issuing of licences, whether being governed under Section 36 to 40 of the Health Act.

That Act was adjudicated by the High Court to be not constitutional. It went to the Constitutional Court and the hearing in the Constitution Court on our appeal was on the 9th of September. So, we will await the outcome before we can proceed with anything to do with that portion of the recommendations in the health market enquiry.

There were also recommendations about a multilateral negotiating forum and setting of tariffs in the private sector. We embarked on a process together with the Competition Commission.

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The Minister of Trade and Industry published draft block exemptions to try and bridge the period that we are dealing with. They were not well received in the marketplace. There were legal opinions and we are not able to proceed with them in that format and we have embarked on a new process to define a new set of regulations that we hope, in accordance with the legal advice that was given to the two departments and the Competition Commission, we will be able to pursue.

So, I won't go into all the other recommendations on Umrah, etc. They are all in the previous reports that we have given, but I think everyone must be assured that the content of the recommendations and the intentions are being taken extremely seriously. We are just trying to find the most suitable ways to make sure that they link into the developments of the various reforms anticipated in the health system.

There was also a question by Honourable Clark about why the department failed to submit the accreditation framework to the National Health Council. We missed the agenda of the last council of that financial year with the documents. It went to the National Health Council Technical Committee, but it was not submitted in time for the financial year, but it has been submitted and it has been presented to the National Health Council now and it is the accreditation framework that we are proposing that we will present to the board, once the National Health Insurance Fund is established as the accreditation framework for the board to adopt.

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Of course, the Department of Health has no jurisdiction and no legal mandate to implement an accreditation framework. That will be the mandate of the NHI and that brings us to the questions asked by Honourable Chirwa and they were around specific milestones.

So, the first thing was, I think if I if I didn't miss here, the reference was to three phases. The Act does not have three phases. It has only two phases. So, maybe just to clarify what is there. The first phase ends at the end of 2026. So, 2023 to 2026 and so we are on track for the five targets that are set in Section 57, which is the transitional arrangements for the National Health Insurance. We are working on those five. Some of them have already been fully implemented and others are in progress.

So, in terms of phase 1, as outlined in the Act, I think we can be fairly confident that we are not behind schedule. The second phase is between 2026 and 2028 and the intention, if one reads what is outlined and it's quite high level in the descriptions in the section of the Act, is to get the machinery of the NHI, not the office of the NHI, that's in phase 1, but to get the machinery of the implementation of the NHI starting to work and it's in those years, between 2026 and 2028, that the first funds will go to the National Health Insurance.

There are no funds in the National Health Insurance at this stage and I will clarify what that means, because there is no National Health Insurance Fund and there is no National Health Insurance entity yet.

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