IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number:

In the application of:

SAKELIGA NPC	Applicant
and	
MINISTER OF HEALTH	First Respondent
DIRECTOR GENERAL: DEPARTMENT OF HEALTH	Second Respondent
MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Third Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent

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FOUNDING AFFIDAVIT

I, the undersigned,

PIETER JACOBUS LE ROUX

do hereby state under oath as follows:

1. I am an adult male and Chief Executive Officer of Sakeliga NPC, the Applicant, which has its offices at Building A, 5th Floor, Loftus Park, 402 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

2. The facts set out herein fall within my personal knowledge, save where the contrary is expressly stated or appears from the context, and such facts are true and correct. To the extent that any facts set out herein do not fall within my personal knowledge, I shall attempt to obtain confirmatory affidavits from persons with such personal knowledge. To the extent that I am unable to confirm such facts by means of confirmatory affidavits, I request the Court to admit such facts as evidence in terms of Section 3 of the Law of Evidence Amendment Act, Act 45 of 1988.

3. Where I make legal submissions herein, I do so based on the advice that I have received from the legal representatives of the Applicant.

4. I am duly authorised to depose to this affidavit and the Applicant has resolved to prosecute this application.

THE APPLICANT

5. The Applicant is **SAKELIGA NPC**, a non-profit company registered and incorporated in terms of the Laws of the Republic of South Africa with registration number 2012/043725/08, and with its principal place of business at Building A, 5th Floor, Loftus Park, 402 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

6. The Applicant is a business-interest organisation with a support and donor base of more than 12 000 businesspeople, companies and business organisations and a network of more than 40 000 subscribers in South Africa supporting its causes and objectives.

7. The Applicant was established in the year 2011 and was incorporated and registered as a non-profit company in terms of the Companies Act, Act 71 of 2008 in the year 2012. The Applicant's main objective is the protection of constitutional rights, constitutional order, the rule of law, free-market principles, and a just and sustainable business environment within the Republic of South Africa.

8. Pursuant to its objectives, the Applicant lobbies to promote a free market and economic prosperity and to create a favourable business environment in the interest of its supporters and in the interest of the common good. Further, to achieve the Applicant's objectives and perform its functions and mandate, the

Applicant is *inter alia* mandated to act in the interest of its supporters and members of the public to protect their business and other constitutional rights.

9. The aforesaid is also evident from and confirmed by an extract of the Applicant's memorandum of incorporation, which I attach hereto marked **ANNEXURE PJLR 1**. I draw the Court's attention specifically to clause 4 of the memorandum of incorporation, which I confirm, and which sets out in more detail the objects, ancillary objects as well as the powers of the Applicant.

10. I do not attach a full copy of the memorandum of incorporation to these papers, because it will make these papers unnecessarily lengthy. The Applicant will make its full memorandum of incorporation available to the Court and to the respondents should same be requested.

THE RESPONDENTS

11. The First Respondent is **THE MINISTER OF HEALTH OF THE REPUBLIC OF SOUTH AFRICA**, a public office currently held by Dr J Phaahla, cited herein in his official capacity as the Cabinet member responsible for public health. The First Respondent has his office situated at Dr AB Xuma Building, 1112 Voortrekker Road, Pretoria, Gauteng Province and is referred to hereinafter as "**the Minister**".

12. The Second Respondent is **THE DIRECTOR GENERAL: NATIONAL DEPARTMENT OF HEALTH** and is referred to hereinafter as **"the Director**

General". In terms of the National Health Act, 61 of 2003 (also referred to hereinafter as "the Act" and / or "the National Health Act") the Director-General is the Head of the Department of Health and is responsible for the implementation of national health policies across the country. The duties of the Director-General in relation to the administration and implementation of the Surveillance Regulations referred to hereinbelow are set out in Regulation 3 of the National Health Act. The Director-General conducts business at 112 Voortrekker Road, Pretoria, Gauteng Province.

13. The Third Respondent is the **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS,** a public office currently held by Dr Nkosazana Dlamini-Zuma, cited herein in her official capacity as the Cabinet member responsible for cooperative governance and traditional affairs. The Third Respondent has her office at 87 Hamilton Street, Arcadia, Pretoria, Gauteng Province and is referred to hereinafter as "**the COGTA Minister**".

14. The Fourth Respondent is the **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**, cited herein in his official capacity. Mr Matamela Cyril Ramaphosa currently holds the office of President. The Fourth Respondent is the head of the national executive and Cabinet. He is cited in these proceedings by virtue of the fact that section 85(1) of the Constitution vests the executive authority of the Republic in the President. The Fourth Respondent is joined in the event that he or any member of his Cabinet might have an interest in the litigation currently unknown to the Applicant or not foreseen by it. The Fourth Respondent has his office situated at the Union Buildings, Government

Avenue, Pretoria, Gauteng. I shall hereinafter refer to the Fourth Respondent as "**the President**".

15. A copy of this application will also be served on the office of the **State Attorney**, Pretoria at 316 Thabo Sehume Street, Pretoria Central, Pretoria, Gauteng.

16. The Director-General, COGTA Minister and the President are cited herein for the potential interest that they may have in this application. A cost order will only be sought in the event of opposition, subject to the discretion of the court.

17. Due to the urgent nature of this application, service will be effected via the office of the Sheriff, but also electronically to the known email addresses of the Respondents as well as the State Attorney. A service affidavit will be filled to confirm the method of service employed.

LOCUS STANDI

18. The Applicant has *locus standi* to launch this application and seek the relief that it does in this matter:

18.1 in its own interest as a party (as contemplated in Section 38(a) of the Constitution of the Republic of South Africa, Act 108 of 1996 (hereinafter referred to as "the Constitution")) directly affected by the Minister's regulations, as set out hereinbelow;

18.2 in the general public interest (as contemplated in Section 38(d) of the Constitution); and

18.3 in the interest of its members and supporters (as contemplated in Section 38(e) of the Constitution), who are also directly affected by the Minister's regulations.

19. Further argument insofar as may be necessary shall be advanced at the hearing of this application concerning the facts set out in the body of this application in support of the *Applicant's locus standi*.

JURISDICTION

20. This Court has jurisdiction to adjudicate this application by virtue of the Respondents' principal place of business and administration being situated within the Court's area of territorial jurisdiction.

21. This Court is further vested with the required jurisdiction to entertain this application on the basis that the Applicant's principal place of business is within the area of jurisdiction of this Honourable Court. The effect of the decision which is the subject of this application will be experienced by the Applicant at its principal place of business within the area of jurisdiction of this Court. In terms of the provisions of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") this Court accordingly enjoys jurisdiction to hear this matter.

INTRODUCTION AND OVERVIEW OF APPLICATION

22. On 4 May 2022 the Minister of Health amended the existing *Regulations Relating to the Surveillance and Control of Notifiable Medical Conditions, 2017* ("the 2017 surveillance regulations") published in terms of the National Health Act by way of the publication of a notice in Government Gazette No. 46319 of 4 May 2022. The amendment inserted substantive provisions into the 2017 surveillance regulations and, in particular, introduced:

22.1 Regulation 16A which concerns the *"Wearing of face masks to contain the spread of Covid-19"*;

22.2 Regulation 16B which concerns the *"Regulation of gatherings to contain the spread of Covid-19"*;

22.3 Regulation 16C which concerns the *"Regulation of persons entering the country to contain the spread of Covid-19"*; and

22.4 Covid-19 as a *"notifiable medical condition"* as Item 5A of Table 2 of Annexure A to the Regulations.

23. The newly inserted regulations above came into operation on 5 May 2022 and are hereinafter referred to as "the 2022 surveillance regulations".

24. This is an application to review and set aside the 2022 surveillance regulations and further to set aside the Minister's decision to publish the 2022 surveillance regulations.

25. There are several separate and independent grounds of review in this matter, which include:

25.1 The public participation process embarked upon by the Minister in respect of the 2022 surveillance regulations was unsatisfactory, inadequate, unlawful, irregular and stands to be set aside;

25.2 The Minister failed to comply with the peremptory provisions of Section 90(1) of the National Health Act in not consulting the National Health Counsel before publishing the 2022 surveillance regulations;

25.3 The 2022 surveillance regulations are both substantively and procedurally irrational;

25.4 The 2022 surveillance regulations are *ultra vires* the provisions of Section 90(1)(j), (k) and (w) of the National Health Act (which are the empowering provisions relied on by the Minister of Health to publish the Regulations) and are therefore unlawful and invalid;

25.5 The 2022 surveillance regulations were made for ulterior purposes, including:

25.5.1 To effectively extend the rules and restrictions which had been in place under the Disaster Management Act;

25.5.2 Continuing a public health containment strategy in respect of Covid-19 in a manner that is inappropriate and constitutionally impermissible.

25.5.3 Enforcing a covert vaccine mandate that effectively coerces the public into being vaccinated against Covid-19 by way of derogation of the Constitutional and public rights of unvaccinated persons;

25.5.4 To compel civil society to enforce the aforesaid vaccine mandate by creating mechanisms that will force civil society to discriminate between different classes of persons (namely vaccinated and unvaccinated persons);

25.6 The 2022 surveillance regulations impermissibly infringe various rights as set out in the Bill of Rights and are inconsistent with the Constitution and are invalid.

25.7 The Minister unlawfully delegates the obligation, risk and cost of enforcing a covert vaccine mandate to business, churches and other organisers of gatherings – to the detriment of a stable constitutional order.

26. Each of the above reasons alone constitutes a sufficient basis to review and set aside the 2022 surveillance regulations and declare them to be inconsistent with the Constitution and to be invalid.

27. These grounds of review may be supplemented in terms of Rule 53(4) of the Uniform Rules of Court after the Minister of Health dispatches to the Registrar of this Court the Rule 53 record of decisions sought by the Applicant in the notice of motion.

APPLICATIONS FOR SIMILAR RELIEF BY OTHER PARTIES

28. The Applicant has had the benefit of considering the similar applications filed in this Honourable Court under case numbers 25363/2022 (Solidariteit) and 25226/2022 (Afriforum NPC and Dear SA NPC) against the Minister and the Director-General (amongst others).

29. The Applicant supports the grounds and contentions generally in the similar applications and has considered seeking leave to be admitted as an *amicus curiae* in such matters.

30. Due to the substantive nature of the evidence and submission, which the Applicant feels is necessary to bring before the Court, the Applicant has been advised that it would not be possible or proper to do so as an *amicus curiae.*

31. The Applicant's grounds for relief, as set out below, traverses material and evidence that is not relied on by the applicants in the other matters mentioned above. Same cannot be dealt with through mere submissions. In addition to the grounds and material relied on by the applicants in the above-mentioned applications, the Applicant introduces new and substantially different grounds for the relief sought. It would be inappropriate for the Applicant to participate in the above applications as an *amicus curiae,* and a separate application is accordingly launched.

BACKGROUND

COVID-19 IN SOUTH AFRICA AND GOVERNMENT RESPONSE

32. The context in which this application arises is the well-known Covid-19 outbreak. Covid-19 has been traversed in various cases dealing with the legality of the government's response to the Covid-19.

33. On 15 March 2020, the Minister of Cooperative Governance and Traditional Affairs ("the COGTA Minister") declared a 'National State of Disaster' in response to Covid-19 in South Africa.

34. On 22 March 2020, the President declared a "national lockdown", initially with the aim of slowing the spread of Covid-19. This strategy was later replaced by a containment strategy focussing on managing infections and transmission. The lockdown was effected as of midnight on 26 March 2020. On 25 March 2020, the COGTA Minister made regulations to govern the lockdown in terms of Section 27(2) of the DMA ("the **DMA Regulations**").

35. The DMA Regulations were extensive and invasive of the public's basic constitutional rights and freedoms. The public, as well as the Applicant's, response to the limitation of constitutional rights and freedoms during the "National State of Disaster" should be measured within the context of the particular powers granted to the COGTA Minister under the DMA, which differs materially from the Minister's powers under the National Health Act.

36. The DMA Regulations were amended from time-to-time and extended one month at a time until the eventual termination of the "National State of Disaster".

ALERT LEVEL 1 DMA REGULATIONS: FROM 18 SEPTEMBER 2020 TO 30 DECEMBER 2021

37. During the "National State of Disaster" the scope of the DMA Regulations were continuously adjusted to reflect the perceived risk that Covid-19 posed.

38. Alert level 1 (the lowest or least restrictive level created) was provided for initially by way of an amendment of the DMA Regulations during or about September 2020. The regulations relating to Alert level 1 became increasingly less restrictive with each amendment thereof over time.

39. South Africa was effectively on a so-called Alert Level 1 from 1 October 2021.

40. On 30 September 2021, the COGTA Minister published amended DMA Regulations in Government Gazette 45253, providing for restrictions inter alia on mask wearing (Regulation 67), gatherings (regulation 69) and travel (Regulation 75) (which will henceforth be referred to as "the **September 2021 Regulations**"). A copy of the amendment notice is attached hereto as **ANNEXURE PJLR 2.**

41. The Applicant pauses to note that the September 2021 Regulations:

    41.1 did not introduce any provisions which discriminated between persons on the basis of their vaccination status for purposes of travel and/or gatherings, or attempted to limit any of a person's constitutional rights and freedoms for failing to comply with a public health policy in relation to vaccination;

    41.2 were applicable from October 2021 at a time when vaccinations had been freely available and administered to adults who sought to be vaccinated in South Africa;

41.3 were introduced at a time when citizens of almost every country in the world had access to vaccines and could chose to be vaccinated or not;

41.4 were introduced during or shortly after the peak of the Delta variant of Covid-19, which resulted in higher infection fatality rates than the later Omicron variant.

42. The September 2021 Regulations were amended by the COGTA Minister by way of amendments in Government Gazette 45297, 11 October 2021, Gazette 45697 of 21 December 2021, Gazette 45715 of 30 December 2021 and Gazette 43855 of 1 February 2022. None of the last-mentioned amendments to the regulations introduced vaccination status as a factor or means to contain Covid-19 in any way. The various amendments gradually reduced restrictions on gatherings and travel.

43. As of 30 December 2021 amendments, the position relating to gatherings was (in summary) that gatherings were restricted to no more than 1 000 people indoors and no more than 2 000 people outdoors. Where the venue was too small to accommodate these numbers with appropriate distancing, then no more than 50 per cent of the capacity of the venue could be used. No vaccination status condition was attached to the regulations.

44. The 1 February 2022 amendment to the September 2021 Regulations, in an apparent response to the reduced magnitude and severity of Covid-19, even

provided that persons who tested positive for Covid-19 but were asymptomatic were no longer required to isolate (Regulation 7(1)).

45. On 22 March 2022, the COGTA Minister introduced new regulations to amend Regulations 69 and 75, wherein she introduced (for the first time as far as the Applicant can establish) vaccination status conditions regarding gatherings and travel. A copy of the amendment notice is attached hereto as **ANNEXURE PJLR 3.**

46. In summary, the position relating to gatherings changed on 22 March 2022 to the following:

46.1 Fully Vaccinated persons and persons who tested negative for Covid-19 had no restrictions on their gatherings (indoor or outdoor) save that they were limited to 50% of the capacity of the venue if prescribed distancing could not be achieved; and

46.2 Persons not fully vaccinated and those who did not have a negative Covid Test could gather but were subject to a limit of 1000 persons indoors and 2000 outdoors, up to 50% of the capacity of the venue (with distancing of 1 meter);

46.3 The restrictions shifted from regulating the conduct of individuals in respect of gatherings, to holding business and organisers of gatherings if they do not discriminate between vaccinated and unvaccinated person.

END OF STATE OF DISASTER: 04 APRIL 2022 AND TRANSITIONAL PROVISIONS

47. On 4 April 2022, the "National State of Disaster" was terminated by way of a notice published in the Government Gazette (GG 46197) (the "**termination notice**"). A copy of the aforesaid notice is attached hereto as **ANNEXURE PJLR 4**.

48. In terms of the termination notice, all regulations and directions made in terms of Section 27(2) of the DMA were repealed, save for the regulations which dealt with mask-wearing (Reg 67), gatherings (Reg 69), travel (Reg 75), social relief and distress grants (Reg 4(5) and (10)) and various provisions relating to driver's licenses and motor vehicle licensing (Reg 4(7)(b)). Most of these provisions would, according to the notice, continue for a further month until midnight on 4 May 2022. A Covid-19 Vaccine Injury No-Fault Compensation Scheme created as part of the termination regulations would continue indefinitely.

49. Regulations 67, 69 and 75 continued in materially the same form as amended on 22 March 2022. I attach hereto the aforesaid regulations as published on 4 April 2022 as **ANNEXURE PJLR 5.**

50. On 5 April 2022, the Head of the National Disaster Management Centre, withdrew the classification of Covid – 19 as a "national disaster".

51. The applicant is of the view that the containment strategies deployed during the "National State of Disaster", were extremely harmful to both the economy and the social fabric of our society. The Applicant and its supporters hoped that the termination of the "National State of Disaster" would beckon a return to pre-Covid normality, as there is no current or likely public health emergency, public health risk or disaster in respect of Covid-19. The withdrawal of the classification of Covid-19 as a "national disaster" supports this.

MINISTERIAL ADVISORY COMMITTEE ON COVID -19

52. During the "National State of Disaster", a Ministerial Advisory Committee (MAC) was established to provide expert medical and other expert advice to the Minister and Cabinet on relevant issues relating to Covid-19. The committee was apparently comprised of over 50 members who the Minister considered to be leading experts in relevant fields, including virologists, epidemiologists, clinicians, and other relevant experts.

53. On 15 February 2022 the MAC on Covid-19 (having been requested to review the screening requirements for travel) advised the Minister by way of a written report (which is attached hereto as **ANNEXURE PJLR 6**) that:

> *"As the region moves to recognising COVID-19 as endemic, with a view to a mitigation strategy to address the health risk of infection, the MAC on COVID-19 therefore recommends that entry requirements for all international travellers to South Africa be reduced and even removed,*

opening the country to increased incoming travel, for economic and tourism purposes.

For entry into South Africa by air or sea (except from a neighbouring country) the following requirements should apply:

- *A completed Traveler Health Questionnaire at all border entry points according to Port Health data requirements; symptom screening is not recommended for travellers to prevent the transmission of COVID-19, but may remain in place to recognise other emerging infectious diseases;*

  Unvaccinated travellers in South African border and ports should be offered vaccinations in South Africa and where possible at the border. This vaccination program should be offered at no cost to the traveller…"

54. The MAC advised furthermore that the effect of vaccines was to *"reduce the risk of severe disease, hospitalisation and death."*[1] It referred to a study of September 2021 in which it was claimed that vaccines *"reduce transmission of the virus to some extent"*.[2] The "extent" to which transmission is claimed to be reduced is unclear. The MAC accepts that vaccination against Covid-19

[1] At page 3 of MAC advice of 15 February 2022
[2] At page 3 of MAC advice of 15 February 2022

does not prevent transmission of Covid-19 and has advised measures in accordance with the limited effect of the vaccine.

55. On 16 February 2022, the MAC on Covid -19 (having been requested to review the requirements for gatherings) advised the Minister by way of a written report (which is attached hereto as **ANNEXURE PJLR 7**) at pages 1 and 2 thereof) that:

- *"The current restrictions applicable to outdoor gatherings be lifted;*

- *The current restrictions on the number of persons at indoor gatherings, the minimum physical distancing, and hence the 50% capacity rule, be lifted."*

56. It is patently clear from the contents of the MAC advisory of 16 February 2022 that the Minister was advised that no restrictions are required in South Africa for gatherings or mask-wearing in outdoor settings. The MAC recommended that wearing masks indoors *"be retained initially, but be re-assessed at regular intervals…. The ultimate aim should be lifting indoor mask mandates."*

57. Furthermore, the MAC advisory of 16 February 2022 provided reasoning for the recommendations, including that costly, large-scale containment efforts are inappropriate and that policies should be aimed at mitigation. The MAC advisories also state that while it is inevitable that easing restrictions on outdoor and indoor gatherings will allow for greater transmission of the virus,

the focus should now be on preventing severe disease ("mitigation"), rather than trying to prevent infections ("containment".)"

58. The MAC advisory of 16 February 2022 added:

- *"South Africa now has a high degree of population immunity to SARS-CoV-2, which can be expected to offer strong protection against severe disease and death, as was seen in the recent Omicron wave. SARS-CoV-2 seroprevalence exceeded 70% prior to the Omicron wave and is expected to be even higher now.*

- *Reducing unnecessary restrictions will allow society to return to normal functioning to the greatest possible degree and is expected to have significant economic and social benefits."*

59. The aforesaid MAC advisories indicated that the factual situation in South Africa no longer required mandatory mask-wearing outdoors, that indoor mask-wearing should be phased out and that no travel or gathering restrictions were required, i.e a return to normality.

NEW DRAFT REGULATIONS ANNOUNCED: 15 MARCH 2022

60. On 15 March 2022, the Minister gave notice in Government Gazette No 46048 of his intention to make four sets of regulations in terms of the National Health

Act and International Health Regulations Act 28 of 1974 (the **"draft health regulations"**).

61. The draft health regulations dealt with:

61.1 Regulations relating to Proposed Amendments of the Surveillance and Control of Notifiable Medical Conditions under Section 90(1)(j), (k) and (w) of the National Health Act ("the draft surveillance regulations");

61.2 Regulations relating to Public Health Measures in Points of Entry under Section 3(2) of the International Health Regulations Act 28 of 1974 ("the draft points of entry regulations");

61.3 The regulations relating to the Management of Human Remains under Section 68(1)(b) read with Section 90(4)(a) of the National Health Act ("the draft human remains regulations"); and

61.4 Regulations relating to Environmental Health in Section 90(1)(a), (n) and (w) of the National Health Act ("the draft environmental health regulations").

62. The draft health regulations included an invitation by the Minister to comment on the contents thereof within thirty days.

63. One needs only to glean the draft health regulations to see that they were clearly oblivious to the advice of the MAC reports of 15 and 16 February 2022. In contrast with the MAC's advice regarding devolution away from the draconian DMA Regulations and back to normality, the draft health regulations seek to introduce a permanent invasive public health regime of a nature never seen before in South Africa.

64. On 14 April 2022 (one day before the submissions were due), the Minister extended the period for public comments on the draft health regulations for a further week until 24 April 2022.

65. The Applicant responded to the Minister's invitation and made written representations on the draft health regulations. In its submissions, the Applicant raised several objections to the draft health regulations, including that it would be unlawful for the Minister to make the draft health regulations in terms of the National Health Act. The Applicant's submission is attached hereto as **ANNEXURE PJLR 8**. Due to the limited time available to consider the implication of such an extensive public health regime, the Applicant's submissions were limited in nature.

THE 2022 SURVEILLANCE REGULATIONS

66. On 4 May 2022 the Minister published the 2022 surveillance regulations, a copy of which is attached hereto as **ANNEXURE PJLR 9**. Notably, he did not adopt the draft health regulations (i.e. those regulations that he proposed

making in which he sought public comment). In summary the 2022 surveillance regulations dealt effectively with three topics namely a mask mandate (16A), limits on gatherings (16B) and regulation of entry at borders (16C).

67. Regulation 16A regulates the wearing of a face mask to contain the spread of Covid-19 and states as follows:

> *"(3) A person must, when entering and being inside an indoor public place, wear a face mask.*
>
> *(4) No person may use any form of public transport if they do not wear a face mask.*
>
> *...*
>
> *(6) The Minister of Health may:*
>
> *(a) determine that the measures in this Regulation, in part or in their entirety, are no longer necessary to contain the spread of Covid-19 and give notice of this determination in the Government Gazette, whereupon the measures concerned will no longer be in operation; and*
>
> *(b) at any time after having made such a determination, determine that the measures concerned are once again necessary to contain the spread of Covid-19 and give notice of this determination in the Government*

Gazette, whereupon the measures concerned will resume operation."

68. Regulation 16B deals with gatherings and provides that:

"(2) For purposes of this regulation:

(a) A 'gathering' means a planned assembly or meeting at a particular venue involving more than one hundred persons, whether for faith-based, religious, social, political, cultural, sporting, economic or recreational purposes; and

(b) 'vaccinated against Covid-19' means having received at least one dose or a vaccine approved for use in respect of Covid-19 by the South African Health Products Regulatory Authority or listed for this purpose by the World health Organisation.

(3) For any indoor gathering, a maximum of 50% of the venue capacity may be occupied, provided that every attendee must:

(a) be vaccinated against Covid-19 and produce a valid vaccination certificate; or

(b) produce a valid certificate of a negative Covid-19 test, recognised by the World Health Organisation, which was obtained not more than 72 hours before the date of the gathering.

(4) Where sub-regulation (3) is not complied with, then attendance at the indoor gathering shall be limited to 1 000 people or 50% of the capacity, whichever is smaller.

(5) For any outdoor gathering, a maximum of 50% of the venue capacity may be occupied, provided that every attendee must:

(a) be vaccinated against Covid-19 and produce a valid vaccination certificate; or

(b) produce a valid certificate of a negative Covid-19 test, recognised by the World Health Organisation, which was obtained not more than 72 hours before the date of the gathering.

(6) Where sub-regulation (5) is not complied with, then attendance at the outdoor gathering shall be limited to 2 000 people or 50% of the capacity, whichever is smaller.

(7) An owner or operator of any indoor or outdoor facility where gatherings are held must display the certificate of occupancy which sets out the maximum number of persons the facility may hold.

(8) Hotels, lodges, bed and breakfast, timeshare facilities, resorts and guest houses are allowed full capacity of the available rooms for accommodation, with patrons wearing face masks when in common spaces.

(9) All registered basic education institutions are excluded from the operation of this regulation.

...

(11) The Minister of Health may:

(a) determine that the measures in this Regulation, in part or in their entirety, are no longer necessary to contain the spread of Covid-19 and give notice of this determination in the Government Gazette, whereupon the measures concerned will no longer be in operation; and

(b) at any time after having made such a determination, determine that the measures concerned are once again necessary to contain the spread of Covid-19 and give notice of this determination in the Government Gazette, whereupon the measures concerned will resume operation."

69. Regulation 16C, which deals with persons entering the country, requires of them, when entering at South African Ports of Entry to:

69.1 Be vaccinated against Covid-19 and produce a valid vaccination certificate; or

69.2 Produce a valid certificate of a negative PCR Covid-19 test, which was obtained not more than 72 hours before the date of departure; or

69.3 Produced a valid certificate of a negative antigen Covid-19 test performed by a medical practitioner, registered public health

authority or accredited/approved laboratory which was obtained no more than 48 hours before the date of departure; or

69.4 Produce a valid certificate of a positive PCR Covid-19 test, for a test date less than 90 days prior to the date of arrival and more than 10 days prior to the date of arrival, together with a signed letter from a health care provider stating that the person has fully recovered from Covid-19, is not experiencing any new symptoms, and is fit to travel.

70. Despite the new and invasive manner in which constitutional rights and freedoms would now be limited under the National Health Act, the regulations grant the Minister unchecked arbitrary power to invoke or terminate invasive public health interventions. Vaccination against Covid-19 can be a significant public health concern today (to such an extent as to strip a person of his ability to meet with others at large gatherings), only to be terminated by the Minister tomorrow.

71. While some of the topics set out in Regulations 16A, 16B and 16C were covered in the draft health regulations, the form in which they were ultimately adopted in the 2022 surveillance regulations did not accord with the draft health regulations. The 2022 surveillance regulations accord more with the transitional regulations contained in the termination notice under the DMA.

72. Simultaneously with the publication of the 2022 surveillance regulations, the Minister extended the period of public comment on the draft health regulations for three months.

73. The public had been given no notice or formal details of the contents of what the 2022 surveillance regulations would be before they were published, and which became law overnight. The approach adopted by the Minister has been incoherent, irrational and disingenuous for many reasons including:

73.1 The 2022 surveillance regulations came into effect merely hours before the DMA Regulations' transitional provisions were to expire at midnight on 4 May 2022;

73.2 Prior to the publication of the 2022 surveillance regulations, the public was not provided with any feedback on their comments or advised on changes thereto;

73.3 No notification was given that a wholly new version of particular differing provisions of the draft health regulations would be finally published and made law with immediate effect, and the public comment process extended in respect of the remaining draft health regulations;

73.4 No explanation was provided as to why the Minister only deemed it necessary to publish three discrete amendments to the surveillance regulations and not the other regulations proposed for adoption or why those provisions were not

adopted in the form in which they have been published in the draft health regulations;

73.5 No explanation was provided as to why the Minister completely disregarded the expert advice of his own MAC as set out in the advisories of 15 and 16 February 2022;

73.6 The process the Minister proposed to follow in applying the regulation and in particular in applying his sole and unfettered discretion to determine as to when and/or on what basis the Regulations are to be of force and effect or not is likewise unclear, vague and illegal.

MAC ADVISORY OF 25 APRIL 2022

74. The publication of the 2022 surveillance regulations is not only irrational in the light of the MAC advisories of 15 and 16 February 2022 referred to above but is impossible to reconcile with the further advice set out in a MAC on Covid-19 advisory of 25 of April 2022 (which is attached hereto as **ANNEXURE PJLR 10**). The advisory addresses the monitoring of Covid-19 between acute outbreaks and deciding on appropriate and timely responses. It states *inter alia* that:

> *"COVID-19 is most likely to become endemic, with periodic acute outbreaks. A mitigation approach is therefore needed, with the ability to pivot to a more interventional stance if needed."* [3]

[3] MAC 25 April 2022 Page 1 par 1 - background

75. In response to the question "What mitigation strategies are recommended if a high burden of severe disease is thought likely?"[4] the MAC states that:

> *"A rising caseload alone (as evidenced by total cases, percentage positivity, rising wastewater viral burden, or falling cycle threshold values) does NOT warrant further action in and of itself. However more intensive restrictions and enhanced mitigation efforts can be justified if a high burden of severe disease is shown to be likely. Should it be deemed that the integrity of the healthcare system is under threat, the following measures can be considered:"*

76. The MAC advisory of 25 April 2022 then lists nine recommended measures which are summarised as follows:

76.1 A Vaccination booster drive;

76.2 Strengthened linkage between vaccination coverage data, testing data and hospital admission data;

76.3 Securing of adequate quantities of essential medicines;

76.4 Strengthening of oxygen supplies;

[4] MAC 25 April 2022 page 6

76.5 Ordering sufficient consumables required for a severe COVID-19 outbreak;

76.6 Putting surge capacity strategies on standby;

76.7 Efficient public communication about mask-wearing, avoidance of large gatherings and ventilation and spacing in indoor venues with the focus on risk individuals with recommendations being favoured over mandates;

76.8 Restrictions on the sale of alcoholic beverages – to rapidly decongest ICU /High Care beds;

76.9 New restrictions on school attendance – a last resort.

77. The MAC does **not** advocate for a return to mandatory mask-wearing and does **not** call for restrictions on gatherings or travel in the event of an acute and serious outbreak of Covid -19. The Minister is advised to put other measures in place. Restricting unvaccinated persons access to gatherings is never advised as far as the Applicant can determine,

78. In any event, in the light of the fact that there is currently no acute or serious outbreak of Covid-19, it is completely irrational and unjustifiable that restrictions be placed on individuals such as those imposed by the 2022 surveillance regulations.

79. What is clear is that the approach taken by the Minister has not been transparent and open. He has not been open and transparent about his intention to effect the 2022 surveillance regulations instead of the published

draft health regulations. He has failed to explain why he did so or why he has elected to ignore the advice of his own MAC panel.

80. The intention of the rushed publication of the 2022 surveillance regulations was ostensibly to fill the gap that was perceived to be left by the lapsing of the DMA Regulations before midnight on 4 May 2022.

81. The Applicant and the public never participated in a consultation process for the enactment of the 2022 surveillance regulations. Had the public known that a separate set of regulations would be made instead of the draft health regulations, they would most likely have participated differently in the draft health regulations' consultation process. Instead of trying to comment on all-encompassing draft health regulations under pressure, the Applicant could have diverted its energy to the issues specifically relating to the intended 2022 surveillance regulations.

82. The Minister's conduct is unfortunate and regrettable and has tainted the whole public participation process with irrationality.

VACCINATION IN SOUTH AFRICA

83. South Africa's vaccination rollout commenced on 18 February 2021 under the auspices of the Department of Health. According to Government's SA Coronavirus Portal (sacoronavirus.co.za), as on 18 May 2022, approximately 35 617 595 vaccine doses have been administered. The Applicant refers to Figure X1 below taken from the SA Coronavirus Portal in support.

COVID-19 Total Vaccination Summary as at 17:00 18 May 2022
Total Number of Vaccines Administered
35,617,595

Figure **X1**

84. Disputes regarding safety, efficacy, and allocation have become divisive, polarising and far-reaching issues across the globe. South Africa's own track record concerning vaccination clearly shows a country divided (or at the least hesitant) on the issue. According to the SA Coronavirus Portal data, as on 18 May 2022, more than half of the adult population alone has decided to not have a Covid-19 vaccine administered. The Applicant refers to Figure X2 below, taken from the SA Coronavirus Portal that shows that only 45.25% of the population has been administered a full regiment of either one of the currently available vaccines.

COVID-19 Total Adults Fully Vaccinated Summary as at 17:00 18 May 2022 (Excluding 12 - 17 Years)	
Total Adult Population by Province [18 Years and Older] (1)	
39,798,201	
Total Number of Adults Fully Vaccinated (2)	Adults Fully Vaccinated as a % of the Adult Population (3)
18,010,428	45.25%

Figure **X2**

85. The data published by government on the SA Coronavirus Portal also clearly shows a steep and continued decline in vaccination rates since the vaccination drive peak at the end of August 2021. The Applicant refers to Figure X3 below, taken from the SA Coronavirus Portal in support.

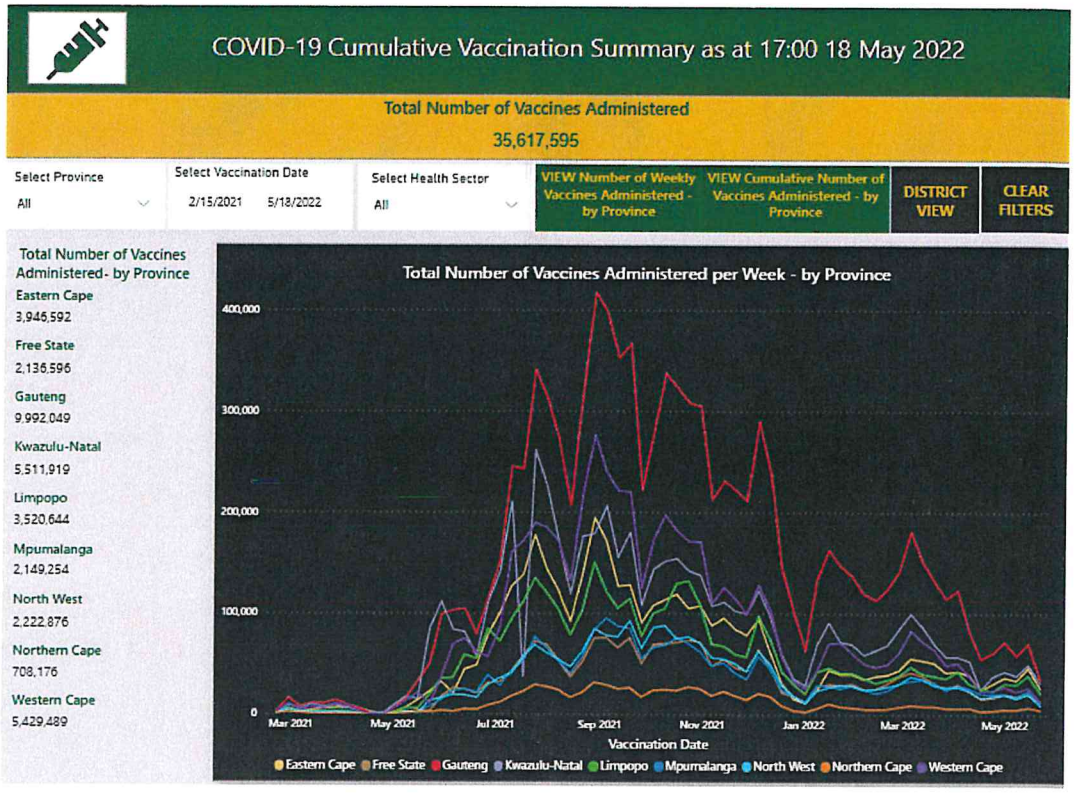


Figure **X3**

86. People are also not returning for what is called booster shots at even remotely the same rate as at the vaccination peak of the 2021 vaccination drive. According to the SA Coronavirus Portal, only 3 026 816 people have, as at 18 May 2022 returned for a booster shot. According to the SA Coronavirus Portal, at least 6 354 669 adults received a full vaccine regimen by 31 July 2021 (I refer to Figure **X4** below).

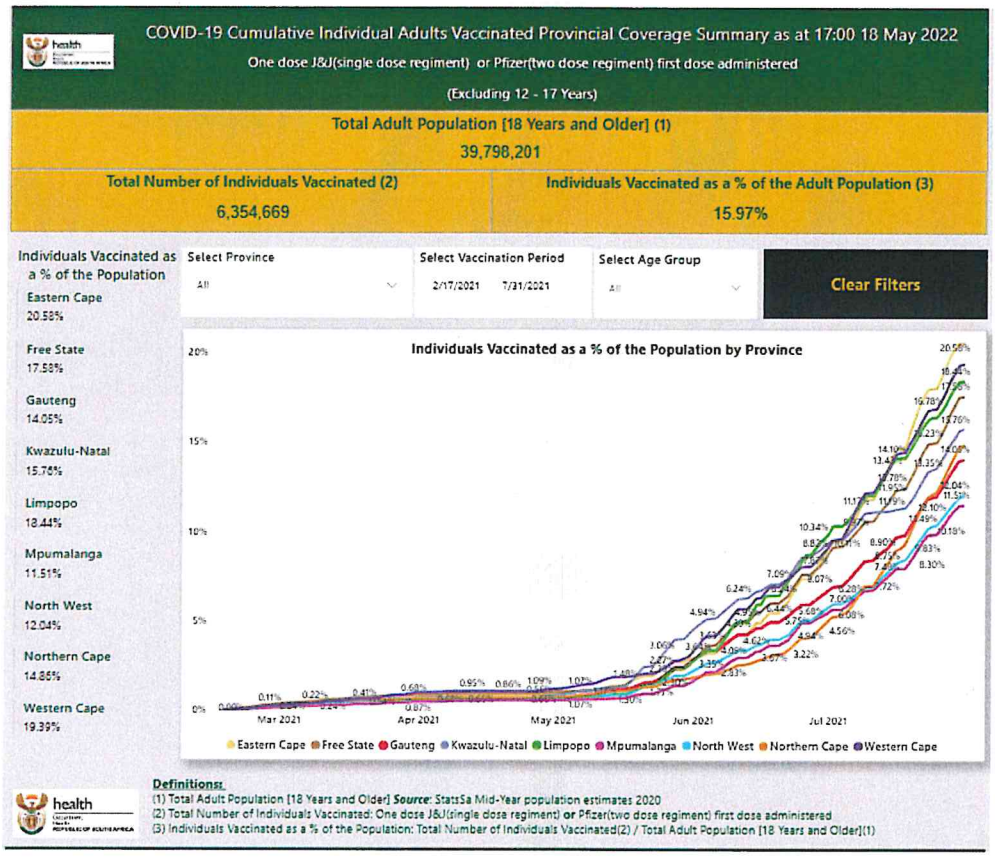


Figure **X4**

87. Logic would dictate that at least that number of people would have started to return for a booster shot, as is recommended by the Minister (in most cases after 180 days), somewhere between January 2022 until May 2022. This is simply not happening at this stage, indicating a potentially larger number of people who will not be "fully vaccinated" (i.e. vaccinated and with all booster shots subsequently received at recommended intervals) in the future. That only 3 026 816 people have received a booster shot by 18 May means that the "fully vaccinated and boosted" rate for the adult population in South Africa was at most 7,6% at this date.

88. People's response to vaccination has been clearly motivated by a myriad of different considerations. The ability of adults to apply their own minds to the

issue of vaccination, has been a key theme in the public position taken by the National Executive. During an address on 1 February 2021, the President stated the following:

> *"Nobody will be forced to take this vaccine. Nobody will be forbidden from travelling, from enrolling at school,* ***or from taking part in any public activity if they have not been vaccinated.*** *Nobody will be given this vaccine against their will, nor will the vaccine be administered in secret." [Own emphasis]*

89. As recently as 31 March 2022, the Deputy President, Mr David Mabuza, confirmed the following in a question-and-answer session before Parliament:

> *"One thing we are not going to do is force people to go and vaccinate," […]*
>
> *"We think (that) would be crossing the 'red line'. All we can do is encourage our people to go and vaccinate."*

90. The Applicant can also note that, as far as it is aware, no legislation has been tabled before Parliament which seeks to introduce any form of mandatory vaccination or which will seek to penalise persons who refuse to be vaccinated.

91. Viewed in the light of the above, the Minister's regulations are not only out of touch with the advice of the Minister's own experts but also:

89.1 in direct contradiction to the official position of the National Executive as represented by the President and Deputy-President on the issue (as declared in public and before Parliament);

89.2 exclusionary of a majority of the country's residents;

89.3 in direct opposition to the majority public sentiment in respect of vaccination.

LEGAL FRAMEWORK

THE NATIONAL HEALTH ACT

92. The Preamble of the National Health Act recognises that the State "must", in compliance with Section 7(2) of the Constitution, respect, protect, promote, and fulfil the rights in the Bill of Rights, which is the cornerstone of democracy in South Africa.

93. According to the Preamble of the National Health Act, the statute was enacted *inter alia* in order to:

93.1 Provide for a system of cooperative governance and management of health services within national guidelines, norms and standards, in which each province, municipality and health district must address questions of health policy and delivery of quality health care services; and

93.2 Establish a health system based on decentralised management, principles of equity, efficiency, sound governance, internationally recognised standards of research and a spirit of enquiry and advocacy which encourages participation.

94. Section 4 of the National Health Act imposes the obligation upon the Minister to *inter alia*:

94.1 Endeavour to protect, promote, improve, and maintain the health of the population;

94.2 Determine the policies and measures necessary to protect, promote, improve, and maintain the health and well-being of the population.

95. Section 21 of the National Health Act sets out the general functions of the Director-General. These include:

95.1 Ensuring that the National Health Policy is implemented;

95.2 Issuing guidelines for the implementation of the National Health Policy;

95.3 Coordinating health and medical services during national disasters; and

95.4 Facilitating and promoting the provision of health services for the management, prevention, and control of communicable and non-communicable diseases.

96. Section 22 of the National Health Act deals with the establishment and composition of the National Health Council. Section 23 sets out the functions of the National Health Council and states that the Council must advise the Minister amongst other things of the following:

> *"(a) Policy concerning any matter that will protect, promote, improve and maintain the health of the population, including …*
>
> *(ix) epidemiological surveillance and monitoring of national and provincial trends with regard to major diseases and risk factors for disease."*

97. In terms of Section 23(3) of the National Health Act, the Council must try to reach its decisions by consensus but where a decision cannot be reached by consensus, the decision of the majority of the members of the National Health Council is the decision of such Council.

98. Section 90(1) of the National Health Act confirms that the Minister, after consultation with the National Health Council or the Officer, Health Standard Compliance as the case may be, may make regulations regarding amongst other things:

"(j) Communicable diseases;

(k) Notifiable medical conditions;

(w) Generally any other matter which it is necessary or expedient to prescribe in order to implement or administer this Act."

99. Section 90(3) states that the Minister may, in regulation made under the National Health Act:

"(a) Designate as authoritative any methodology, procedure, practice or standard that is recognised as authoritative by internationally recognised health bodies within the relevant profession; and

(b) Require any person or body to comply with the designated methodology, procedure, practice or standard."

100. Section 90(4) prescribes the conditions relating to the publishing of regulations and states that:

"(4)(a) The Minister must publish all regulations proposed to be made under the Act in the Gazette for comment at least three months before the date contemplated for their commencement.

(b) *If the Minister alters the draft regulations, as a result of any comment, he or she need not publish those alternations before making the regulations.*

(a) *The Minister may, if circumstances necessitate the immediate publication of a regulation, publish that regulation without the consultation contemplated in paragraph (a).*"

THE 2017 REGULATIONS

101. As indicated above, the 2017 Regulations were published on 15 December 2017.

102. The 2017 Regulations defines four categories of notifiable medical conditions and sets out specific and distinct timeframes within which the Health Department must be notified of such conditions.

103. The May 2017 Regulations define a "notifiable medical condition" as a medical condition, disease or infection of public health importance that is classified as notifiable in terms of Regulation 12 thereof. The National Health Act does not provide a definition of such term.

104. The 2017 Regulations further define a "*public health risk*" as a likelihood of an event that may adversely affect the health of human populations, with the emphasis on one which may spread internationally or may present a *"serious and direct danger*".

105. Regulation 12 provides for "the declaration of notifiable medical conditions":

105.1 Sub-regulation 12(1) confirms that medical conditions listed in Annexure A, Tables 1, 2 and 3 are declared to be notifiable medical conditions;

105.2 Sub-regulation 12(2) states that:

"The Health Minister may declare by Notice in the Government Gazette, a medical condition not listed in Annexure A, as notifiable if in his or her opinion the medical condition:

(a) *poses a public health risk to a population of a particular community, district, municipality, province or the country;*

(b) *may be regarded as a public health risk or has a potential for regional or international spread; and*

(c) *may require immediate, appropriate and specific action to be taken by the national department, one or more provincial departments or one or more municipalities."*

106. Sub-regulation 12(3) further provides that:

"The Health Minister may determine, by notice in the Government Gazette, that:

(a) certain diseases or medical conditions be notifiable in certain provinces, districts or municipalities, for a period specified in the notice or until the notice is withdrawn;

(b) certain diseases or medical conditions be notifiable by certain categories of health care providers, pathologists or laboratory personnel; and

(c) specific diagnostic or laboratory criteria apply to specific diseases or medical conditions."

Regulation 13 of the 2017 Regulations requires that the diagnosis of a patient with a notifiable medical condition listed in Annexure A, Table 2 be notified to the focal person at the health sub-district within 7 (seven) days of diagnosis.

107. Regulation 15 deals with "mandatory medical examination, prophylaxis, treatment, isolation and quarantine":

107.1 Sub-regulation 15(1) states that:

"The required mandatory medical examination, prophylaxis, treatment, isolation or quarantine procedures must be determined on a case-by-case basis and tailored depending on

the public health risk and individual circumstances of the person in question."

107.2 Sub-regulation 15 (2) is exceptionally sensitive about the fundamental rights of citizens and provides for extremely limited circumstances in which an invasion of an individual's rights to *inter alia* freedom and security of the person, privacy, movement, and dignity may be allowed so as to subject a person to a mandatory medical examination, prophylaxis, treatment, isolation, and quarantine. The entire process is regulated on a case-by-case basis and a Court order is required.

108. Regulation 16 of the 2017 Regulations deals with the "Control of spread of notifiable medical conditions": Sub-regulation 16(1) requires that:

"The district health manager must ensure that health care providers, the case, contact or carrier comply with the specified disease prevention, management and control measures stipulated in the national department guidelines."

PUBLIC COMMENTS ON DRAFT REGULATIONS

109. Despite the Minister providing an exceptionally limited period for comment on the draft health regulations, the public sent in excess of 300 000[5] comments to his office.

110. The Minister assured the public that all comments would be considered and reviewed before the 5th of May 2022. I attach a copy of the speaking notes of the Minister on 29 April 2022 hereto as **ANNEXURE PJLR 11.**

111. I point out that the Minister specifically informed the public that he had sufficient resources and officials available to properly consider the comments by the public.

112. Having called for comments, a legitimate expectation was created that the Minister would only publish regulations once he had completed his consultation process with the public. The Minister's silence on the public comments received before publishing the 2022 surveillance regulations and extending the consultation process for his draft regulations is alarming.

THE MINISTER'S CONCERN ABOUT A FIFTH WAVE AND A DISTINCT NEW VARIANT

113. In a speech on 29 April 2022, the Minister expressed hesitancy to terminate the DMA Regulation style restrictions due to the apparent risk of a fifth Covid-

[5] As per speaking notes of Minister of Health on 29 April 2022

19 wave and the possibility of a distinct new Covid-19 variant. He indicated that South Africa would know if this risk would materialise by 6 May 2022. As of date of signature of this affidavit, the Minister has yet to publicly show that a new distinct variant that exceeds the magnitude and severity of the previous Covid-19 variants has materialised.

114. The Applicant submits that it would not be rational for the Minister to base his regulations on the mere possibility of future variations of Covid-19. Viruses are constantly mutating. The risk of mutation or variation does not imply that a real public health risk exists or that there is a serious or direct danger to public health.

115. Furthermore, the probability and high likelihood of a fifth wave was predicted by the MAC on Covid-19, with no concern being raised about it becoming an increased public health risk. The mere development of a fifth Covid-19 wave does not in itself pose a rational threat of risk to public health.

116. No justifiable basis exists for the continuation of restrictions on gatherings, travel and mask-wearing. The 2022 surveillance regulations are clearly out of step with the advice of the Minister's own MAC on Covid-19, who have called for an end to the restrictions and measures that aim to "contain" Covid-19. No alternative scientific evidence has been presented to the public to explain the Minister's divergence from the advice of his own MAC.

DEMANDS OF THE APPLICANT

117. On 12 May 2022 the Applicant, caused a letter of demand to be sent to the Minister, which is attached hereto as **ANNEXURE PJLR 12**. In the above letter of demand, the Applicant sought an audience of the President and the Minister to make proposals and suggestions so as to avoid litigation. To date there has been no response to the above letter and there has been no engagement by the President and/or the Minister.

GROUNDS FOR RELIEF SOUGHT

118. The decision to promulgate the 2022 surveillance regulations constitutes administrative action under PAJA. The amended regulations may be reviewed and set aside under that statute or on the basis of constitutional invalidity and illegality.

119. The promulgation of the 2022 surveillance regulations must be declared unlawful and unconstitutional and should be reviewed and set aside on at least the following grounds:

119.1 Section 6(2)(b) of PAJA since the mandatory condition of consultation with the National Health Council as provided for in Section 90(1) of the Act was not complied with;

119.2 Section 6(2)(e)(i) and (ii) of PAJA, since the decision arose out of a misconception of the proper scope and powers of the

Minister under the Act and was made for an improper and /or ulterior purpose and motive;

119.3 Section 6(2) (d) of PAJA since the decision was materially influenced by an error of law and an excess of jurisdiction;

119.4 Section 6(2)(e)(i) of PAJA, since the limitations imposed by the 2022 surveillance regulations are not authorised by the National Health Act;

119.5 Section 6(2)(e)(iii) of PAJA, since the Minister of Health brought irrelevant considerations into account in deciding to publish the 2022 surveillance regulations and further failed to take into account relevant material considerations including scientific evidence and the advice of the MAC;

119.6 Section 6(2)(e)(vi) of PAJA, in that the mandatory requirements to wear face masks and the limitations imposed on gatherings and travel based on vaccination status, are unlawful and arbitrary;

119.7 Section 6(2)(h) of PAJA, in that the regulations, if objectively viewed, are unreasonable ;

119.8 Section 6(2)(i) of PAJA, in that the amended regulations are impermissibly vague and cause uncertainty.

120. For the same reasons as set out above the decision to publish the 2022 surveillance regulations falls to be set aside on the basis of illegality.

IMPROPER AND MATERIALLY DEFECTIVE PROCEDURE

FAILURE TO CONSULT WITH THE NATIONAL HEALTH COUNCIL – SECTION 90(1) OF ACT

121. As set out above, Section 90(1) of the National Health Act empowers the Minister to make regulations regarding matters listed in Section 90(1) after consultation with the National Health Council. The power to make regulations is given in respect of medical diseases, notifiable medical conditions and other matters which are necessary or expedient to prescribe in order to implement and administer the National Health Act.

122. The notice in terms of which the 2022 surveillance regulations were published does not state that the National Health Council had been consulted by the Minister or indicate in any other manner that the Minister of Health in fact consulted with the National Health Council.

123. The Minister must show that he has properly consulted the National Health Council before promulgating his regulations under the National Health Act.

124. In the event that the Minister asserts that he did in fact consult with the National Health Council, the Minister is required to provide a full record of the consultation process and the feedback and advice received.

125. Failing proper consultation with the National Health Council, the amended regulations fall to be set aside on this basis alone.

FAILURE TO PUBLISH REGULATIONS FOR COMMENT ON THREE MONTHS' NOTICE

126. Section 90(1)(a) of the National Health Act, expressly requires that the Minister must publish all regulations proposed to be made under the National Health Act in the Gazette for comment at least three months before the date contemplated for the commencement.

127. The above provisions of Section 90(4)(a) are obligatory.

128. Section 90(4)(c) of the National Health Act provides a single exception to the rule, and that is that "if circumstances necessitate the immediate publication of a regulation, it may be published without the consultation contemplated in Section 90(4)(a)".

129. In terms of the promulgation notice of 4 May 2022, the Minister declares to have issued his regulations under Sections 90(1)(j), (k) and (w) of the National Health Act. The Minister does not state any special or exceptional

circumstances that would comply with Section 90(4)(c). In fact, the Minister does not even rely on Section 90(4)(c) in his promulgation notice.

130. The Applicant submits that failing reliance on Section 90(4)(c), any regulation published by the Minister that fails to strictly comply with Section 90(4)(a), is procedurally irrational and should be reviewed and set aside.

131. The notice and comment procedure regarding the proposed regulations cannot constitute a dual consultation process for regulations devised of separately. The 2022 surveillance regulations were clearly devised and published in circumstances where no notice or public participation process was followed. At best, it can be argued that the 2022 surveillance regulations are an improper and irregular offshoot of the Minister's draft regulations in respect of which the actual consultation and public participation process remains open.

132. Insofar as the Court may be prepared to accept that the limited notice and comment procedure in respect of the proposed regulations up to 24 April 2022 may be regarded as notice and comment in respect of the 2022 surveillance regulations (which contention is not correct), the Applicant contends that such process was unfair on the same grounds as contended for by Solidariteit in their application namely because:

132.1 The public was not provided with sufficient time to comment on the extensive regulations of more than 150 pages;

132.2 The 2022 surveillance regulations were substantively different from the proposed regulations in respect of which comments had been invited;

132.3 It is improper for the Minister to select limited provisions of the proposed regulations to give effect to whilst the notice and comment procedure are still ongoing, particularly in the light of the fact that the notice and comment procedure in respect of the proposed regulations was inadequate;

132.4 It is noteworthy that the Minister has recognised that the period initially provided for the submissions of comments was insufficient and non-compliant with the requirements of the National Health Act. It cannot be that the Health Minister at once accepts that the notice and comment procedure was insufficient, but then relies on that notice and comment procedure to assert that the required process and processes have been followed in respect of the 2022 surveillance regulation;

132.5 The failure to provide for a notice and comment procedure coupled with the failure to invoke Section 90(4)(c), raises a substantive consideration in addition to a procedural one. If the Minister has not invoked the power under Section 90(4)(c) in making the regulations without first allowing for a notice and comment procedure, then he has acted outside his powers to make regulations. The Minister's powers to make regulations through immediate publication are confined to the circumstances in Section 90(4)(c). He could only

have made regulations with immediate effect if he invoked that power. Since he did not invoke such power, he made regulations with immediate effect in a manner outside the powers conferred upon him by Section 90(1) read with Section 90(4).

133. The 2022 surveillance regulations accordingly fall to be set aside on this basis, as set out above.

ULTERIOR PURPOSE OF REGULATIONS

134. The Applicant submits that the actual intention of the Minister in promulgating the 2022 surveillance regulations was twofold, namely: 1) to revive and extend the DMA Regulations (despite the termination of the "National State of Disaster") and 2) to coerce the public into being vaccinated by introducing measures which amount to a covert vaccine mandate.

135. The powers granted to the Minister under the Health Act cannot be used for purposes of extending the DMA Regulations. The regulatory function of the Minster can only be validly performed within the strict authority delegated to him by the National Health Act itself. Parliament did not provide for an extension of regulations issued in terms of the DMA, under the National Health Act. The use of discretionary power to make regulations by the Minister in this context is invalid if done for a purpose not expressly authorised by the empowering statutory enactment.

136. The Minister's attempts to essentially extend and create powers for himself to address Covid-19, which are similar to the powers ostensibly enjoyed under

the DMA, are invalid and unconstitutional. The National Health Act does not operate within the same confines as the DMA. The Applicant will if necessary, raise argument in this respect at the hearing of the matter.

137. The way that the 2022 surveillance regulations were considered and published simply does not comply with the framing of or requirements of the National Health Act. The Minister's conduct is more reminiscent of the continued and unpredictable publication of 'emergency' regulations under the "National State of Disaster", than the considered and structured process prescribed by the National Health Act.

138. Instead of deferring to the appropriate legislative forum, being Parliament, to debate an unforeseen problem facing society, the Minister elected to fashion himself a new permanent regulatory medical regime that 1) limits the constitutional rights and freedoms ordinarily available to the public, 2) penalises individuals who fail to act in a manner preferred by the Minister and 3) goes far beyond the framing, wording, intents and purposes of the National Health Act.

139. Parliament has the general authority to augment current legislation in order to adapt to new social challenges. Failing appropriate augmentation of current legislation, Parliament can introduce new legislation. Unlike Parliament, the Minister can only introduce regulations within the strict confines of the empowering legislation, being the National Health Act in this case.

140. The Director-General is reported to have explained in a press report of 4 May 2022 that the 2022 surveillance regulations were created to *"keep in place South Africa's mask mandates and other remaining Covid-19 rules"*. It is manifest that the Minister expressly exercised his authority to make regulations under Section 90(1), not for the particular purpose identified under the National Health Act, but to keep the so-called DMA Regulations in place. A copy of the press report is attached hereto as **ANNEXUR PJLT 13**.

ULTERIOR PURPOSE: COVERT VACCINE MANDATE

141. The introduction of vaccination status as a criterion to determine the attendance of gatherings and travel regulations in the 22 March 2022 DMA regulations came as a surprise. This criterion was introduced at a time when the fourth wave of Covid-19 had died down and there was no increased public health risk posed by Covid-19. Furthermore, the MAC advice at that time was clear that restrictions should be lifted. Despite the irrationality of the then restrictions, the Applicant and the public, especially considering the MAC advisories being circulated, assumed that these regulations will wither as the preference to manage Covid-19 shifted away from the DMA under the COGTA Minister, to the Minister under the National Health Act.

142. The importation of the DMA regulations, regarding vaccination status and masking, into the National Health Act's regulations without any consideration and augmentation of the empowering legislation by Parliament to cater for the specific aims of the Minister, is *ultra vires,* unreasonable and irrational.

143. One rationale for distinguishing between vaccinated and unvaccinated persons is that the Minister appears to believe that vaccinated persons are less likely to be infected with Covid-19 and/or do not transmit Covid-19. At the least, the motivator seems to be that vaccination will materially contribute to the safety of public spaces. This is incorrect and irrational.

144. A person should consider the real-world data from countries with some of the highest vaccination rates in the world that have continued to experience waves of infections and transmission. Israel is a prime example of a country that, according to data from the World Health Organization (WHO) website as on 18 May 2022, has a vaccination rate among its population of more than 70%. Despite being one of the earliest countries to roll out vaccines, the country continues to experience spikes in infections, having exited its so-called fifth wave of infections at the start of 2022. I refer in support to the data found on the World Health Organization website, Figure **X5** below.

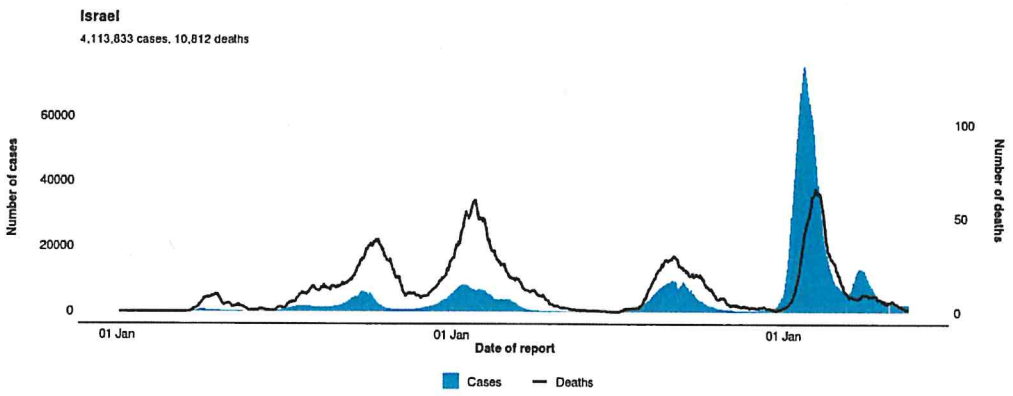


Figure **X5** below.

145. The data shows high levels of infection (cases), despite very high vaccination rates. Comparable data is available on the WHO website on other countries that all have vaccination rates in excess of 70% of their populations.

146. It is impossible to have high infection levels unless both transmission and infection have taken place amongst the vaccinated. The Applicant refers to a UK study where researchers concluded that:

> *"Nonetheless, fully vaccinated individuals with breakthrough infections have peak viral load similar to unvaccinated cases and can efficiently transmit infection in household settings, including to fully vaccinated contacts."*

A copy of the study is attached hereto as **ANNEXURE PJLR 14**.

147. It is apparent that vaccination status does not *per se* have an effect on the transmission of the virus or infection rates, and that its possible benefits are limited to preventing severe disease in the case of infection.

148. In a similar vein to the complexities relating to transmission and infection, the question of the personal health benefits of vaccination is similarly complex, as a case can be made out for and against vaccine created versus natural infection related immunity (not even accounting for wide variations in apparent natural resistance, pre-infection, to the pathogen, given how most people experience no severe symptoms at first infection).

149. A South African study published on 23 February 2022 found that:

> *"[P]eak incidences of hospitalization, recorded death, and excess death in the fourth wave were lower than the peak incidences in previous waves. The fourth wave contributed 11.2%, 3.9%, and 3.3% of overall hospitalizations, recorded deaths, and excess deaths due to Covid-19, respectively, whereas the third wave, in which the delta variant was dominant, contributed 43.6%, 49.3%, and 52.7%."*
>
> *"[W]e observed a dramatic decoupling of hospitalizations and deaths from infections during the fourth wave of Covid-19, as compared with the proportions seen during the three previous waves. The biologic basis for this decoupling could be the extensive cell-mediated immunity in the population that was induced by previous natural infection and vaccination."*
>
> *"The researchers found that seropositivity for Covid-19, was prevalent in at least 85% of cases."*

A copy of the study is attached hereto as **ANNEXURE PJLR 15.**

150. According to Professor Shabir Madhi, the Dean of Health Sciences and professor of vaccinology at the University of the Witwatersrand, writing on the Conversation on 1 March 2022:

"The omicron wave was associated with 10% of all hospitalisations since the start of the pandemic, whereas 44% of hospitalisations had transpired during the course of the Delta variant wave. More impressively, only 3% of COVID deaths since the start of the pandemic occurred during the omicron wave, compared with 50% during the delta dominant wave."

"Our findings also show that natural infection has been high and is playing a major role in how the pandemic has unfolded especially in countries with low to moderate COVID-19 rollout."

"Another resurgence is likely, and there might well be another variant. But it would be very surprising if further variants are able to evade the T-cell arm of the immune system ***which is stimulated by vaccines and natural infection****." [own emphasis]*

"So why do I believe that we are at the tail end of this pandemic? It depends what metric you use. If it's about infections, we're not at the tail end. If it's about the number of deaths that will transpire from COVID-19 during 2022, relative to the number of deaths that will transpire from other preventable causes of death in countries such as South Africa, then I believe the country has pretty much arrived towards the end of this pandemic."

"In South Africa about 10,000 to 11,000 people die of seasonal influenza every year. In 2019 tuberculosis killed 58 000 in 2019. But we are not declaring an emergency in South Africa to deal with flu or tuberculosis. Deaths from HIV, and complications from HIV, are about 70,000. But South Africa isn't shutting down the country to prevent deaths and infections from these diseases."

A copy of the article is attached hereto as **ANNEXURE PJLR 16.**

151. It is also relevant to note that during November 2021, the country successfully completed a nationwide municipal election without any surge in case numbers. Despite the fears of the Independent Electoral Commission, who had brought an unsuccessful application to postpone the election (fearing that this massive nationwide gathering presented an unacceptable public health risk), the largest public gathering since March 2020 was successful. According to the Chief Electoral Officer's report on the 2021 municipal elections published on 13 May 2022, more than 93% of surveyed voters were satisfied that Covid-19 was sufficiently managed at voting stations. A successful gathering with people standing in close proximity, sometimes for hours, could be completed without ever having to exclude the unvaccinated from the process. The report is attached as **ANNEXURE PJLR 17.**

152. There is no logical or rational basis for arguing that a vaccinated person presents such a materially higher public health risk as to exclude that person from access to public spaces, as is the case under the 2022 surveillance

regulations. The facts simply do not support any rational link between vaccination (or rather the lack thereof) and increased general public health risks.

153. The only conclusion that can be reached is that the purpose of referring to vaccine status in the DMA regulations of 22 March 2022 and in the 2022 surveillance regulations was to coerce citizens into being vaccinated by creating two distinct classes of citizens namely: 1) those who could participate in larger gatherings and travel without fear of having to render a positive Covid-19 test at a port of entry and 2) those who could not attend larger gatherings or who had to incur the cost of Covid-tests (with the risk of being prevented from gathering or travelling if the test was positive.) The vaccinated are effectively rewarded with fewer restrictions and the unvaccinated punished in turn. The irony of the above is that vaccinated persons who are asymptomatically - and even symptomatically - positive with Covid-19 (and are accordingly potentially infecting people around them) can travel with no restrictions or testing and attend large gatherings of people while an unvaccinated person who does not have Covid-19 cannot travel without restriction and cannot attend large gatherings. This makes no sense and is irrational.

154. The only reason why vaccine status has now been included in travel and gathering regulations is that the Minister seeks to coerce South Africans into being vaccinated by making the rewards of an unrestricted society available to the vaccinated and restraining the unvaccinated from enjoying such

freedoms. The Minister wants to make life so unbearable for unvaccinated (and potentially, unboosted) persons that they will vaccinate themselves, indirectly forcing them to comply. Put differently, he wants to infringe on people's freedoms to such a degree that even being vaccinated against their will is a lesser – and therefore "preferred" - penalty.

155. Regulations 16B and 16C were accordingly published by the Minister with the further ulterior motive of coercion and a covert vaccine mandate. This is irrational, unreasonable, irregular, and unconstitutional, and fall to be set aside on this ground alone.

THE REGULATIONS ARE ULTRA VIRES THE PROVISIONS OF THE NATIONAL HEALTH ACT

156. The National Health Act was not enacted to respond to National Disasters or public health emergencies.

157. The overall purpose of the National Health Act and the system of healthcare regulation established thereunder is that the Act is supposed to be employed to ensure proper regulation of the healthcare sector. The primary aim of the National Health Act is not to regulate public health emergencies. The National Health Act does not endow the Minister with the power to simply make broad regulations unrelated to providing health care services.

158. The Minster does not have the power under the Act to limit gatherings, regulate travel and impose mask and vaccine mandates on the public.

UNFETTERED POWER GRANTED BY MINISTER

159. The 2022 surveillance regulations do not specify what conditions will need to be met to implement the restrictions set out in Regulations 16A, 16B and 16C. Likewise, it is unclear under what conditions the public will be entitled to claim the return of their general rights and freedoms affected by a restriction imposed by the Minster.

160. The Minister has granted himself unfettered and unchecked discretion to impose the 2022 surveillance regulations. There are no guidelines or checks or balances to the powers that the Minister has granted himself.

161. The 2022 surveillance regulations must be found to be *ultra vires,* arbitrary and unlawful.

GENERAL IRRATIONALITY

162. There is no rational, scientific or other basis for:

162.1 distinguishing between assemblies of people in public places from "planned" gatherings. For example, a Shopping Mall with a capacity of 30 000 people (where people gather in confined indoor spaces) will be allowed to operate at full capacity since it is not a "planned" gathering. At the same time, an assembly

of spectators in a sports stadium with a capacity of 30 000 people will be viewed as a "planned gathering" and may not operate at more than 50% of its capacity for vaccinated persons and capped at 2000 persons if even one unvaccinated person is admitted. This is irrational;

162.2 still requiring that face masks be worn indoors (particularly when the MAC on Covid-19 indicated in February 2022 that this should be phased out);

162.3 requiring only one dose of a Covid-19 vaccine, even if the prescribed regiment is two, to be considered vaccinated against Covid-19.

162.4 to restrict an unvaccinated person's rights and freedoms, but to reward a person with his rights and freedoms immediately upon receiving a first dose even if he has not completed a prescribed regiment;

162.5 distinguishing between hotels, lodges, bed and breakfast, timeshare facilities, resorts and guest houses and other public places;

162.6 compelling unvaccinated persons entering South Africa to undergo Covid testing while not requiring vaccinated persons to undergo testing.

THE AMENDED REGULATIONS INFRINGE UPON RIGHTS CONFERRED BY THE CONSTITUTION

163. The 2022 surveillance regulations make drastic inroads into and unjustifiably infringe on the basic constitutional rights of South Africans.

DIGNITY

164. The right to human dignity affirms the intrinsic worth of every person, and is foundational to several other rights in the Bill of Rights. The right to dignity informs constitutional interpretation and adjudication.

165. The approach of the 2022 surveillance regulations, especially in as far as it speaks to the vaccination status of a person, stigmatises and excludes unvaccinated persons from a large part of public life. An unvaccinated person, relying on constitutional rights when refusing to vaccinate, is deemed to have made a selfish and foolish choice. Ostensibly, such a person becomes deserving of exclusion from public life.

166. In public discourse, a narrative has emerged branding the unvaccinated (or even unboosted) as irresponsible and careless. The vaccination mandate

enshrined in the 2022 surveillance regulations makes this narrative part of the law. It is dehumanising as its moves a large part of the public to the fringes of public life, based solely on an individual medical choice.

167. The 2022 surveillance regulations further shift the duty, to exclude more than half of the population from general public life, onto owners and operators of venues. Businesses that would prefer to uphold and respect the constitutional rights and freedoms of others are effectively penalised (including being held criminally liable) by a hard cap on the number of persons who can visit or gather at their place of business.

168. The 2022 surveillance regulations question the intelligence, integrity, and ability of adult human beings to make their own decisions in respect of their health, safety in public and bodily integrity.

169. Ngcobo J in the matter of Barkhuizen v Napier 2007 (5) SA 323 CC, stated at paragraph 57 that "self-autonomy, or the ability to regulate one's own affairs, even to one's own detriment, is the very essence of freedom and a vital part of dignity". The statement especially applies to the most intimate of matters, such as the right to make your own informed medical decisions.

170. The penalising of a person relying on a fundamental constitutional right is constitutionally unacceptable.

PRIVACY

171. The vaccination policy of the 2022 surveillance regulations compels an unvaccinated person to disclose personal medical information and her/his vaccination status if they want to attend a Regulation 16B(3) gathering or if they want to enter South Africa.

172. This infringes upon the privacy of the unvaccinated person in circumstances where the limitation is not reasonable or justified.

173. The right to privacy intends to restrain both governmental and private actions that threaten an individual's privacy. The requirement to disclose intimate medical information infringes directly upon that right.

BODILY INTEGRITY

174. The right to bodily and psychological integrity is guaranteed by section 12(2)(b) of the Constitution. It is a component of the broader fundamental rights, which generally deals with 'freedom' and 'security of person'. The relevant text reads as follows:

> *"2. Everyone has the right to bodily and psychological integrity, which includes the right –*
>
> *a) to make decisions concerning reproduction;*
>
> *b) to security in and control over their body; and*
>
> *c) not to be subjected to medical or scientific experiments without their informed consent."*

175. This right is self-explanatory and entails the right of adults to make autonomous decisions regarding their body.

176. A covert mandatory vaccination policy and /or a vaccination status discrimination policy limits and violates unvaccinated persons' right to bodily integrity by denying them control over their bodies, with the threat that should they refuse vaccination, their ability to participate freely in normal activities in society will be curtailed.

177. The limitation of this right under the current circumstances is unreasonable and unjustified in an open and democratic society based on human dignity, equality, and freedom.

FREEDOM OF CONSCIENCE, FREEDOM OF RELIGION, BELIEF AND OPINION

178. The situation described above amounts to societal pressure, which has the effect of limiting the right of the unvaccinated person to freedom of conscience, belief, and opinion.

179. Many members of society hold a sincere, well-founded belief and informed opinion that the several known and unknown side effects of available vaccinations do not outweigh the risk of Covid-19 for them and have therefore taken one or more regiments of such vaccines. At the same time, many members of society, having had Covid-19 or even not having had Covid-19, hold a sincere, well-founded and informed opinion that the risk of future

contraction of the disease does not pose a serious adverse health risk that outweighs the effort of vaccination and boosting or the several known and unknown side-effects of the vaccination.

180. A system that effectively penalises people who hold sincere beliefs and opinions regarding the risks and benefits, of recently developed vaccines, whereof knowledge of the short, medium, and long-term side-effects remain unclear and whereof recommendations and even approvals by different health authorities in different countries keep changing and being revoked or reinstated, infringes upon section 15 rights of the Constitution. It imperils social cohesion and stability and drives a wedge between people, organisations and sections of society. This is particularly so where one encounters such an issue as divisive as mandatory medical intervention.

181. Mandatory vaccination policies, directly and indirectly, restrict how the beliefs of persons who oppose this type of coercion find expression. Freedom of conscience favours a non-coercive position.

182. In contrast with a non-coercive position, the threat of exclusion or penalties in the case of owners or operators of venues who refuse to adopt or apply a covert mandatory vaccination policy and/or a vaccination status discrimination policy may eventually become so pressing that persons who oppose mandatory vaccination on moral, religious, and factual grounds act against their conscience and held beliefs or opinions and subject themselves to committing or subjecting to such infringements.

FREEDOM OF ASSEMBLY

183. In terms of Section 17 of the Constitution, everyone has the right to assemble with other persons. This is not only a basic human right but a social need and forms part of normal society where people gather and assemble for numerous purposes. The 2022 surveillance regulations limit and restrict such right irrationally, unreasonably, and without justification.

LAW OF GENERAL APPLICATION

184. A fundamental right may only be limited by way of a law of 'general application'. Furthermore, the law so limiting must be sufficiently clear, accessible, and precise so that those who are affected by it can ascertain the extent of their rights and obligations.

185. As already shown above, this is not the case with 2022 surveillance regulations.

LIMITATIONS ANALYSIS

186. The limitation of a constitutional right in the Bill of Rights is permissible only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on dignity, equality, and freedom. The advantage

and benefit to be gained by limiting the right must be compelling, tangible, and substantive.

187. The limitation must consider all relevant factors, such as the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and its purpose and less restrictive means to achieve the purpose.

188. The 2022 surveillance regulations do not strike an appropriate balance between the relevant facts of the matter and the objectives of the regulations as to warrant the limitation of the constitutional rights of the public.

189. No evidence exists that any of the available vaccines prevent the spread of Covid-19. Differentiating between persons on the basis of vaccination choice or status does not make society safer.

190. Therefore, the limitation of constitutional rights and freedoms in the 2022 surveillance regulations is not justified.

CONTRA BONOS MORES

191. The Applicant contends that there is no justice or morality under these circumstances in coercing an autonomous individual into receiving medical treatment against his will, convictions, and beliefs. Equally, there is no justice or morality in excluding such a person from public life. This is even more important to remember where 1) no benefit for excluding such a person from

public life can be shown and 2) the exclusion is a direct result of an intimate and personal choice made in terms of a freedom guaranteed by the Constitution.

192. A vaccination mandate of any nature (covert, express, tacit or implied) is and generally should be found to be against the morals and convictions of a society based on mutual respect and dignity.

193. The currently available data demonstrate that the public is not in favour of mandatory vaccination and is generally not eager to be vaccinated, and even more so not willing to take booster shots.

194. The 2022 surveillance regulations do not seek to exclude a small section of society or one little group from general public life, it seeks to effectively exclude the majority of the population.

195. The Applicant submits that the vaccination status provisions of the 2022 surveillance regulations are *contra bonos mores*.

FURTHER GROUNDS OF REVIEW

196. It is noteworthy that notwithstanding that Regulation 16B makes no mention of past infections (and the consequent extension of natural immunity beyond the normally sufficient *ex ante* natural ability to combat the disease), the efficacy of natural disease-acquired immunity is clearly recognised in Regulation 16C (3)(d) for those entering the country. If natural disease-acquired immunity is good enough for travel and is not a threat to the country,

then surely it must be good enough for gatherings. At the very least, the failure to provide in the 2022 surveillance regulations for persons who have natural disease-acquired immunity due to past infections when attending gatherings is irrational and unjust.

197. Furthermore no provision is made for venues or premises which can "safely" accommodate more than 50% of their capacity – even if prescribed distancing is followed (and even if vaccination discrimination is allowed). A number of businesses are able to safely accommodate 100% of their capacity (outdoor and indoor). This should be provided for in the regulations and has been irrationally omitted.

198. The managing of "vaccinated" versus "unvaccinated" gatherings is practically impossible (or at the least extremely burdensome). Businesses and gatherings that do not want to exclude more than half of their patrons will need to either cut their service capacity in half or create duplicate gatherings. Businesses and civil society institutions, including inter alia schools, churches, sport stadia, expos, etc., are placed between a rock and a hard place. They need to either cut their ability to service the public in half or incur double costs in order to service everybody. The impact on businesses (including costs to "police" and administer the regulations) is unreasonably burdensome.

199. It cannot be expected of businesses and civil society to carry the costs and risks associated with the 2022 surveillance regulations.

200. Non-compliance with the 2022 surveillance regulations is a criminal offence with a penalty of up to 10 years imprisonment (Regulation 20). This is a particularly severe punishment which far exceeds any sanction imposed for failure to comply with regulations under the former "National State of Disaster".

201. In the premises the limitations imposed by the 2022 surveillance regulations cannot be justified. They fall to be set aside.

URGENCY AND NECESSITY OF EXPEDITED REVIEW

202. There is only one just and equitable order available to a Court in the current circumstances. The 2022 surveillance regulations must be set aside in *toto.*

203. The 2022 surveillance regulations constitute a continuing and daily risk to the rule of law, the public, the economy, and individual freedoms. The infringement of the rights of individuals is continuous and ongoing and the application must be heard as soon as possible.

204. The Applicant (and clearly other interested parties) did not anticipate that the Minister would simply adopt the 2022 surveillance regulations of 4 May 2022. Knowing that other parties were already bringing similar challenges, the Applicant elected to first consider their papers, as to avoid unnecessary burdening this Court. The applicant called for discussions with the Minister and the President with the hope that litigation could be avoided. The Applicant has acted with all reasonable haste in launching this application.

205. This matter is urgent and the Applicant seeks an order that the Rules relating to time frames, forms and service be dispensed with in terms of Rul 6(12) of the Rules of Court.

206. The 2022 surveillance regulations are fully operational. Failure to comply exposes the public to severe criminal sanction. Individuals furthermore face the continued infringement of their various rights as set out hereinabove for as long as the 2022 surveillance regulations are allowed to remain in force and effect.

207. Urgent intervention from the Court is required to prevent the ongoing illegal and unlawful limitation of constitutional rights and freedoms. The prejudice that will be suffered by the Applicant, its supporters as well as the general public, should the order prayed for not be granted, is immense. The Applicant has no other remedy available to it other than to approach this Court for relief.

208. In the above circumstances, the Applicant has set expedited timelines in the notice of motion in line with the expedited timelines set by Solidariteit (case number 25363/2022). Should alternative truncated timelines not be agreed between the parties, or the matter be subjected to specific directions from the Judge President, the matter will be set down as per the notice of motion.

CONCLUSION

209. The Applicant will file its supplementary affidavit in terms of Rule 53(4) of the Rules of Court after receipt of the record in line with the time frames set out in

notice of motion or as directed by the Judge President. I submit that the truncated time period for the filing of the record is reasonable in the circumstances of this matter since this matter is urgent and the Minister is bound to prepare and make such record available in other cases which are serving before Court already.

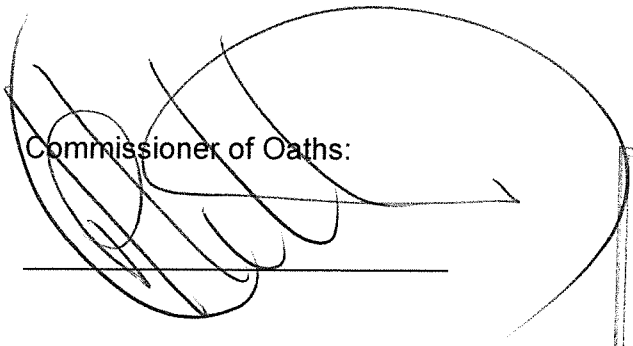
210. I have set out hereinabove the basis for the review of the amended regulations. These grounds of review may be supplemented in terms of Rule 53(4) of the Uniform Rules of Court after receipt of the Rule 53 record sought by the Applicant.

WHEREFORE the Applicant prays for relief on the terms as set out in the notice of motion attached hereto.

P J LE ROUX

Signed and sworn/affirmed to before me at PRETORIA on this 19th day of May 2022, the deponent having acknowledged that he knows and understands the contents of this affidavit; which is deposed to in accordance with the regulations governing the administration of an oath as more fully set out in Government Notice R1258 of 21 July 1972, as amended by Government Notice 1648 dated 19 August 1977 and Government Notice 903 dated 10 July 1998.

Commissioner of Oaths:



PHILIPPUS HELIENUS CILLIERS
Commissioner of Oaths
HD Forum
73 Stanvrug Street
Val De Grace
Ex Officio Practising Attorney
Republic of South Africa

Signature

Full names: _____

Status: _____

Street address: _____