

Action 4 Freedom (NPC)

REG. 2021/160883/08



10 May 2022

OPEN LETTER TO MINISTER OF HEALTH

Dear Minister Joe Phaahla,

3 MONTHS EXTENSION FOR PUBLIC COMMENTS | G 46319 GoN 2061

We note the Minister's response to seek to adjust the periods for public consultation for effect of compliance with the provisions in the National Health Act.

The media statement dated 4 May 2022 states:

“The Minister of Health Dr Joe Phaahla has extended the period for public comments on health regulations ...by **three months with effect from Thursday, 5 May 2022.**”[emphasis added]

Paragraph 2 states:

“The new **closing date** for submissions of comments is **5th July 2022.**”
[Emphasis added]

Source: <https://sacoronavirus.co.za/2022/05/04/media-statement-health-minister-extends-public-consultation-period-for-health-regulations/>

Given the date of the Notice (namely Notice Number 2061, under Government Gazette Number 46319), if indeed this is the operative notice, **the extension period amounts to only two (2) months and not three (3) months** as published.

We also note another publication on the National Department of Health's website inviting public comments on Notices published in Gazette No. 46243, published 5th May 2022 and ending 5th August 2022.

Source: <https://www.health.gov.za/public-comments-on-regulations/>

Gazette No. 46243 was actually published 14th April 2022 and bears Notice No. 2025 which quotes Notices (1877-1880) that are no longer of legal effect as they were replaced by Government Notices 1882-1885 in Gazette No. 46048.

Based on the publication in the link above relating to Gazette No. 46243, the Minister is offering extension for comment on Notices already revoked.

The Minister's media statement released on the 4th May 2022 has not been retracted and it thus remains unclear as to which message the Minister wants the public to rely on.

If the Minister intends for the publication indicating consultation to end on 5th August 2022, we suggest the Minister retracts his media statement about comment period ending 5th July 2022 which is widely publicised by the media, and make it known to the public for the avoidance of doubt about when the comment period actually ends.

The Minister may wish to correct the Gazette and Notice Numbers referenced in <https://www.health.gov.za/public-comments-on-regulations/> to reflect what is contained in https://sacoronavirus.b-cdn.net/wp-content/uploads/2022/05/46319_4-5_Health.pdf, unless the Minister is minded to nullify the above publications and republish afresh without ambiguity.

The public being drawn to the Government's website for information raises concerns about which of these publications can be relied on without doubt, unless the government contends that the public should not rely on publications on its website.

If the public shouldn't rely on all publications as per the links above, would the minister be so kind as to specify which of the above linked publications the public should not rely on.

If the Minister's Notice 2061, published and publicly communicated by way of a media statement, on 4 May 2022, implies to effect a **three (3) months "extension" from the date of the publication of Notice 2061** the public consultation period should, therefore, end on 4th or 5th August 2022. Not 5 July 2022.

If the Minister's Notice 2061 implies to effect a three (3) month consultation period for Government Gazette Number 46048 (hereinafter referred to as G 46048) Notices (1882-1885) from the original date of 15 March 2022, that public consultation period would end on 16th June 2022. Not 5th July 2022.

If the Minister's Notice 2061 implies to effect an "extension" based on the original end date (namely 16 April 2022) of Notices in G 46048 – that public consultation period would end on 16 July 2022. Not 5th July 2022.

On 14 April 2022, the Minister published Government Gazette Notice No 2025 (hereafter referred to as the 14 April Notice) indicating that he was giving extension to Notices under Government Gazette Number 46045 (hereinafter referred to as G 46045). It stated that public consultation ends 24 April 2022.

What the 14 April Notice failed to take into consideration was the fact that all notices under G 46045 were replaced by Notices under G 46048 on 15 March 2022 and were therefore deemed non-existent, hence of no legal value or effect.

On 19 April 2022, the Minister published in Government Gazette Notice 46251 (hereafter referred to as the 19 April Notice), Notice No. 2051, an "extension" to all Notices under G 46048. This extension notice stated that public consultation would end on 24 April 2022.

Worth noting, is that the Minister labelled the Notice of 19 April 2022 as an "extension" notice, and in Court on 26 April 2022 claimed that the public was given two extensions.

The assertion of two extensions is factually incorrect, because the extension published on 14 April 2022 was based on Notice Numbers that were no longer relevant as they were no longer applicable in law.

The Notice published on 19 April 2022 did not amount to an "extension" exclusively, because the end date for Consultation was exactly the same as for the Notice issued on 14 April 2022.

The 19 April Notice amounted to a “correction notice” as opposed to an extension exclusively, in that it replaced the gazette and notice numbers contained in the 14 April Notice from G 46045 to G 46048 and GoN 1877-1880 to that of GoN 1882-1885. This would mean that all comments made between 14 April 2022 and 19 April 2022 were addressing non-existent legislation.

If, however the Minister considers the Notice published on 19 April 2022 to be exclusively an extension notice, that extension would then have been a 5 day extension, given the end date of 24 April 2022.

If the Minister’s Government Gazette Notice Number 2061, published 4 May 2022, implies to effect a three (3) months “extension” from the end date of 24th April 2022, granted by the 19 April Notice, the three (3) months consultation period should end on 24 July 2022. Not 5 July 2022

Given that any three (3) month “extension”, for public comment, effective from any of the commencement dates of the relevant notices issued in this regard, evidently not ending on 5th July 2022 as asserted in the Minister’s Media Statement on 4th May 2022, we ask for the Minister to clarify whether in fact the Minister intends for the extension period to be three (3) months, and if so, which date the Minister considers the three (3) month period is being effected from and why the Minister considers that particular date as the operative date.

We look forward to the Minister’s reply.

Yours sincerely,

Action 4 Freedom (NPC)

PS: Due to the fact that despite our last correspondence being electronically delivered and also couriered, via Postnet, the Minister apparently did not have sight of the letter. To ensure that we do not find ourselves in a similar position, where we believe that the letter has been sent and received, but claimed by the Minister that it was not, we have decided to send a copy through the media as well.

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