

Action 4 Freedom (NPC)

REG. 2021/160883/08

29 March 2022

Minister of Health

Private Bag X9070

Cape Town, 8000

Dear Minister Dr Joe Phaahla,

Concern for Period for Public Consultation regarding Gazette No. 46048

We note that the Minister issued the above Government Notice for Public Consultation in terms of Section 90(4)(c) of the National Health Act, 2003 (Act 61 of 2003) and intends to, after consultation with the National Health Council, make the regulations in the schedule contained thereto.

The Minister, in the Notice dated 15 March 2022, offers invitation for submissions to be made within 30 days of the date of the publication of the Notice.

We note that section 90(4)(c) of the National Health Act, 2003 (Act 61 of 2003) expresses ministerial prerogative to publish regulations without the consultation contemplated in section 90(4)(a) of the Act, under necessity of certain circumstances.

Section 90(4)(a) of the Act, should the Minister seek Public Consultation, specifies a period of at least three months publication before the date contemplated for the commencement of such regulations.

We seek to know from the Minister as to whether the Minister intended for his publication, for the purpose of discharge with the requirement for public consultation, to be read with section 90(4)(a) as opposed to section 90(4)(c) in that section 90(4)(c) does not permit any period for public consultation and, if yes, whether the Minister would be inclined to correct the public consultation aspect by invoking the statutory minimum of three months period as is provisioned for at section 90(4)(a) of the Act, as against the current 30 day period which is not catered for by either Section 90(4)(a) or (c).

2.

If the Minister has relied on a legislative provision limiting the above referred consultation to the said period of 30 days, we invite the Minister to kindly reference and or furnish us with a copy of the relevant legislative instrument.

Whilst we commend the Minister's commitment to engage the public in matters affecting of public life, we're concerned that, if the Minister intended for Public Consultation, the Notice in its current construct may inadvertently deprive members of the public lawful adequacy of time to participate and may of itself be deemed to be ultra vires as Section 90(4)(c) does not cater for what the Minister sought to achieve.

Particular concern is for members of the public who, dependent on their unique set of circumstances such as a disability like visual or hearing impairment or otherwise, or socio-economic circumstances and people in rural/remote areas, are at risk of total exclusion and being deprived of their democratic and lawful right to participate in a matter of huge national importance. Some of the people of concern may be compromised by not having access to electronic means for participation in the consultation process. Furthermore, is the question as to whether the format, to ensure adequate public participation, is accessible and available in all official languages or not, inclusive of people who rely on braille and/or audio?

Additional concern is as to whether the Minister intends to include, in the consultation, input from indigenous groups such as the Khoi-San who's language(s) are not provisioned for as a means of communicating the contemplated regulations, unless the minister's contemplated regulations will have no binding effect on them.

Given the urgency of the matter at hand, we respectfully request the Minister to reply by no later than close of business on Friday 1st April 2022.

We look forward to the Minister's reply.

Yours sincerely,

Action 4 Freedom

www.action4freedom.com