

7 April 2022

The Director General
Department of Health
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0001

Attention: Ms Tsakani Furumele

Comments: Regulations Relating to the Surveillance and Control of Notifiable Medical Conditions

Preamble:

While it could be argued that a national health crisis justifies some form of restrictions on persons, it has to be extremely limited in nature, rational, proportionate to risks posed to health, subservient to the Bill of Rights, to the Constitution and based on established science to pass the constitutional muster.

Furthermore, the amended Regulations are taken largely from Regulations under the Disaster Management Act (DMA) which were appropriate for early 2020 but have, in many instances, lost relevance as scientific evidence has emerged. Many of the provisions lack any risk-based support from both local or international scientists or policy makers thus, we submit that there is scant justification given for the need to transition the Regulations promulgated during the National State of Disaster, into a permanent non-disaster state Regulations.

There appears to be a clear intergovernmental conflict between the operational mandates of the Department of Health (DOH), who serve the Public Health Interests, and the Department of Employment and Labour (DEL), who regulate workplaces under the auspices of the Occupational Health and Safety Act. These Regulations regularly overlap the scope of the DEL mandate.

Rationale:

Legally, SaioSh is concerned that the draft Regulations relating to the Surveillance and the Control of Notifiable Medical Conditions: Amendment 2022 are essentially a regurgitation of the Regulations promulgated in terms of the DMA. It retains many of the restrictions placed on persons during a State of Disaster and cannot be legally or scientifically justified outside a State of Disaster. In terms of section 36(1) of the Constitution, the general requirements for the limitation of any right are that it may be limited only in terms of law of general application "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom". The draft Regulations fall short in this regard and are open to constitutional scrutiny.

(Reg.No,2012/033075/08)

Directors: Neels Nortjé (Executive Director/CEO/Registrar/Treasurer)
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On the regular mention of businesses, employers and employees throughout the amendment, we note a *potential* gross intergovernmental conflict of departmental mandates between the DEL and the DOH. Enforcement of workplaces is clearly the responsibility of the DEL, under the OHSA, not the DOH under the Health Act. The draft regulations also duplicate many of the elements of the Department of Employment and Labour's Code of Practice and in some instances are more prescriptive. All provisions pertaining to employers, employees and business premises should be omitted and incorporated onto the DEL's COP. Saioosh will simultaneously and formally request the DEL's Acting Chief Inspector to amend the DEL's COP and, where appropriate, align it with the draft Health Regulations. For example, the draft Health regulations provide for Compliance Officers / Employees while the DEL COP is silent on the matter.

Scientifically, these regulations are not evidence based;

- It is not appropriate to legislate quarantining and contact tracing for all airborne diseases. The approach taken in these draft regulations is not evidence based and not good science. *"Whether or not quarantines are effective depends in large part on the particular characteristics of the organism, its transmission dynamics and the disease itself. For some diseases, quarantining really can help contain an epidemic, whereas for others, no matter how good your quarantining is, you barely hamper the pathogen's spread at all".* Reasons for this are provided in this article: <https://www.dailymaverick.co.za/article/2021-12-15-covid-19-in-south-africa-its-time-to-ditch-quarantining-and-contact-tracing/>
- 16(A) (4). Masks – Fabric masks offer practically no risk protection Covid-19: Are cloth masks still effective? And other questions answered | The BMJ , <https://brownstone.org/articles/more-than-150-comparative-studies-and-articles-on-mask-ineffectiveness-and-harms/> Only N95, FFP1, 2, 3, KN95 or surgical masks offer protection. In early 2020 fabric face masks were an appropriate intervention due to the very limited numbers of N95 type respirators available and this was to ensure that health care workers had sufficient masks (it was untested as to whether the fabric masks would work or not). As soon as sufficient number of masks became available for both health care workers and the general public, the use of "fabric masks" for the public should have fallen away. Certainly going forward the use of fabric masks should be dropped as they have been scientifically shown not to provide protection against airborne diseases (we now know they don't work).
- 16(A)(4). Face shields only offer any protection from short range transmission (<1m). Face shields provide zero mitigation for long range transmission (>1m). Face shields are not interchangeable with face masks. *"Face shields can substantially reduce the short-term exposure of health care workers to large infectious aerosol particles, but smaller particles can remain airborne longer and flow around the face shield more easily to be inhaled. Thus, face shields*

provide a useful adjunct to respiratory protection for workers caring for patients with respiratory infections. However, they cannot be used as a substitute for respiratory protection when it is needed". <https://pubmed.ncbi.nlm.nih.gov/24467190/>

- 16(A)(6)(a) & (b), Does not follow the correct scientific approach to reducing transmission in indoor environments, which is included in the Department of Health's own Guideline for ventilation to prevent the spread of the SARS CoV 2 virus <https://www.nioh.ac.za/wp-content/uploads/2021/08/V1.1-Guidelines-for-ventilation-to-prevent-the-spread-of-the-SARS-CoV-2-virus-FINAL.pdf>.
- 16(A)(6)(a) (b) & (c). There is no risk basis for permanently requiring all employers to promote physical distancing of employees. The WHO needs to declare a pandemic for this requirement to be legislated and when the WHO removes this declaration, the requirement should fall away. <https://pubmed.ncbi.nlm.nih.gov/32191675/> The DOH own guideline provides ventilation guidance which can be followed ensuring that people can be physically present in a workplace when needed. <https://www.nioh.ac.za/wp-content/uploads/2021/08/V1.1-Guidelines-for-ventilation-to-prevent-the-spread-of-the-SARS-CoV-2-virus-FINAL.pdf>

Kind Regards,



Neels Nortjé
Chief Executive Officer

*Cc: Director General: Department of Employment and Labour
Acting Chief Inspector: Department of Employment and Labour*