THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No 2024-057449

In the matter between:

SOLIDARITY TRADE UNION	Applicant
and	
THE MINISTER OF HEALTH	First Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
DIRECTOR-GENERAL, NATIONAL DEPARTMENT OF HEALTH	Third Respondent
MINISTER OF FINANCE	Fourth Respondent
NATIONAL TREASURY	Fifth Respondent

SUPPORTING / CONFIRMATORY AFFIDAVIT

I, the undesigned,

NICHOLAS CRISP

state under oath as follows:

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1 I am an adult male Deputy Director General: National Health Insurance at the National Department of Health ("**NDoH**"). The NDoH's primary place of business is at Dr AB Xuma Building, 1112 Voortrekker Road, Pretoria.

2 The facts in this affidavit are true and correct and fall within my personal knowledge unless otherwise indicated. To the extent that I make submissions of a legal nature, I do so on the advice of the first and third respondents' legal representatives, which advice I accept as correct.

PURPOSE OF THIS AFFIDAVIT

3 I address the following issues in this affidavit:

3.1 I briefly set out my qualifications and experience.

3.2 I confirm:

3.2.1 certain allegations made in the answering affidavit filed on behalf of the first and third respondents deposed to by the Minister of Health, Dr Pakishe Aaron Motsoaledi ("**the Minister's answering affidavit**"); and

3.2.2 certain allegations made in the affidavits deposed to by three expert witnesses and filed on the first and third respondents' behalf.

4 I provide the Court with information relating to costing processes that have been conducted and which are ongoing in the NDoH.

5 I respond to Solidarity's Annexure "*AB9*".

6 Finally, I explain the date of filing of the Minister's answering affidavit.

MY QUALIFICATIONS

7 I am a medical doctor and public health medicine specialist.

8 I have an MBChB degree from the University of Cape Town, a MMed (Community Health) from the University of the Witwatersrand ("**Wits**") and a Diploma in Occupational Health, also from Wits. I am also an Honorary Professor in Health Systems and Public Health at the University of Pretoria.

9 After qualifying as a medical doctor, I did my internship at 2 Military Hospital and Letaba Hospital in the former homeland of Gazankulu. I remained at Letaba as a Medical Officer for a further three years, then moved to Shiluvana Hospital as the only full-time doctor for a further year.

10 I worked as Regional Director of the Department of National Health and Population Development for Northern and Eastern Transvaal (Limpopo and Mpumalanga) from 1989 to 1993. I was appointed as Superintendent General (Head of Department) of the Department of Health and Welfare, Northern Province (Limpopo) where I served from 1995 until April 1999.

11 Thereafter, I worked as a health management consultant in several African countries including South Africa, Nigeria, Ghana, Lesotho, Botswana, Namibia and Tanzania. In Nigeria I played a major role in the establishment of the National AIDS Control Agency.

12 In South Africa I led the establishment of the National Health Laboratory Service, the transfer of the mortuaries from the South African Police Services to health

departments, and the reform of the Medicines Control Council and Medicines Regulatory Authority into the South African Health Products Regulatory Authority. I have also worked on human resources, infrastructure (including the planning of the new Limpopo Central Hospital) and tertiary services plans for the NDoH. In 2009, I served as Special Adviser to Minister Barbara Hogan.

13 I also led the COVID-19 vaccination programme in South Africa.

14 I am now working as Deputy Director-General of the National Health Insurance Branch at the NDoH. In this capacity, I lead the NDoH's work in planning for and implementing the National Health Insurance Act 20 of 2023 ("**the NHI Act**").

15 By virtue of my role, I am at the helm of the NDoH's preparatory work in relation the NHI Act. I have held that position since 6 June 2021. I was first engaged as an independent consultant from August 2019 to February 2020 during which time I assisted with NDoH's work in preparing the Business Case for establishment of the National Health Insurance Fund administration. After my appointment I participated in activities of the NDoH in guiding the Bill through Parliament, first the National Assembly's Portfolio Committee on Health, then the National Council of Provinces Select Committee on Health. This involved attending sittings of the committees and answering technical questions posed by members of the committees.

16 It was also my responsibility to establish a Branch in the NDoH dedicated to preparing for the NHI. This included taking over some functions and personnel from elsewhere in the NDoH and recruiting new personnel once the Department of Public Service and Administration and National Treasury had approved posts and funding, from June 2022.

17 The technical work that this Branch is engaged in includes developing frameworks, technical documentation and draft standard operating procedures for management of users of the NHI, health care providers who will be accredited to provide benefits paid for by the Fund, the benefits design (largely focussed on a capitation model for payment of primary health care, establishing proof-of-concept contracting units for primary health care ("**CUPs**"), and preparing guidelines for benefits pricing. Another unit in the Branch actively manages health product procurement, including over 1200 critical medicines which are procured on national government tenders.

18 The Branch further manages the development of the digital systems that are being designed and tested to support the integration of a universal health care system funded by the NHI.

19 Risk identification and fraud prevention are being explored with the members of the Health Sector Anticorruption Forum under the lead of the Special Investigating Unit.

20 The Branch has been working with legal drafters to prepare the governance regulations which will describe and provide a mandate for transparent appointment of the Board, Committees and chief executive officer of the Fund. This includes preparation of draft administrative policies.

21 Finally, the work that I lead involves collaborative work with National Treasury, Department of Public Service and Administration, Department of Planning, Monitoring and Evaluation in the Presidency, South African Police Services, and the South African National Defence Force, specifically the South African Military

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Health Services to work through the implication, steps, sequencing and other requirements for the transitional arrangements.

22 There are many external stakeholders involved including bilateral and multilateral international donor partners, private sector organisations, professional associations and societies as well as academic institutions, and the media with whom I work.

CONFIRMATION

Minister's answering affidavit

23 I have read the Minister's answering affidavit. I confirm the correctness of its contents in all respects.

Prof Diane McIntyre

24 I have read the expert affidavit deposed to by Prof Diane McIntyre. I confirm that its contents are true and correct insofar as it refers to information provided to her by the NDoH.

25 Without detracting from the generality of this confirmation, I draw particular attention to Prof McIntyre's statements at paragraphs 88 to 90 of her affidavit as they relate to the development of an integrated information system, the piloting of CUPs, and the Central Chronic Medicines Dispensing and Distribution program. I confirm these statements to be true.

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Dr Deborah Budlender

26 I have read the expert affidavit deposed to by Dr Deborah Budlender. I confirm that its contents are true and correct insofar as it refers to the NDoH.

27 Without detracting from the generality of this confirmation, I draw particular attention to the budget, the medium-term expenditure framework, and various grant allocations as they relate to the NDoH as described in paragraphs 17 to 38 of her affidavit. I confirm these statements to be true.

Dr Joseph Kutzin

28 I have read the expert affidavit deposed to by Dr Joseph Kutzin. I confirm that its contents are true and correct insofar as it refers to me and the NDoH.

29 Without detracting from the generality of this confirmation, I draw particular attention to paragraph 61 of his affidavit dealing with costing work by the NDoH, which statements I confirm to be true. I expand further on these issues to follow.

COSTING AND NHI

30 In this section I explain certain costing work that the NDoH has done, and that which is ongoing, to plan for and inform decisions in implementing the NHI Act.

31 I must emphasise that the first and third respondents' witnesses have considerable difficulty in anticipating the level of detail that is required of us to answer to Solidarity's broad, sweeping and unfocused allegations in relation to the NHI Act and its feasibility. We are prejudiced in this regard.

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32 The planning and preparatory work that preceded the passage of the NHI Act and the work that has followed it since, is extensive and detailed. I am therefore wary not to overburden the Court unnecessarily with reams of documentation that will not necessarily assist the Court in adjudicating the matter.

33 I have attempted in the remainder of this affidavit to answer Solidarity's allegations by providing a broad overview in narrative form of the costing and budget planning work that has been done and which is ongoing.

The NDoH's approach to cost planning for NHI

34 The NHI Act envisages significant, systemic reform of health care financing in South Africa, through an incremental and phased approach. Section 57(1)(b) of the NHI Act prescribes that it will be "*gradually phased in using a progressive and programmatic approach based on financial resource availability*". Sections 57(1)(a) and 57(2) – (5) detail that implementation will occur over two phases: Phase 1 from 2023 to 2026, and Phase 2 from 2026 to 2028.

35 The NDoH's approach to cost planning for NHI accords with advice that it sought and received from the World Health Organisation ("**WHO**") on the issue. The substance of that advice is as follows.

35.1 Attempts to conduct a once-off accounting exercise to attach a globular price to NHI as a whole, as Solidarity attempts to do, is ultimately not useful. The outcome of such an exercise is inevitably inaccurate, misleading and does not support informed decision-making for reform.

35.2 A once-off price tag for NHI could therefore never be useful in either proving or disproving the financial feasibility of the financing system

envisaged in the NHI Act. The inaccuracy and futility of such an exercise is evident in the extremely wide range of figures that various parties have claimed to reflect "*the cost of NHI*" in the public domain.

35.3 What is useful, however, are the types of ongoing costing processes for specific steps of the NHI implementation process, which I describe below.

36 Anticipating the costs associated with NHI implementation is important to the NDoH in order to plan, raise funds, and make decisions that will realise the NHI Act's objectives. Costing is therefore an important and valuable component of the NDoH's work in relation to NHI. To the extent that Solidarity implies that no costing has been performed, or that the NDoH is seeking to implement NHI without anticipating the costs of that process, it is wrong.

37 It is also important to point out two issues:

37.1 First, many cost items, particularly for service benefits, are not net additional budgetary requirements arising from introducing NHI as a different financing mechanism. That is to say, many cost items concern existing health spending by government that will in future simply be shifted to the Fund. NHI is therefore not something which in all respects anticipates a budget "*on top of*" what the NDoH and provincial departments of health are already spending.

37.2 Second, the NDoH is engaged in ongoing costing work that is related to NHI but which concern items that are not costs attributable to NHI exclusively. These include, for example, costings for incremental upgrading of service delivery infrastructure in the public sector.

38 For these reasons, I do not attempt to discuss every costing activity that the NDoH has undertaken that relates, or could be related, to NHI. I focus below on those aspects of the NDoH's work which demonstrate how the Department is undertaking work to cost steps in the implementation process which are peculiar to the functions that the Fund will perform under the NHI Act.

39 The extent of costing work that has been undertaken and which is ongoing is appropriate to the stage at which the NHI process is. That is to say, the NHI Act has now been passed but it has not yet been brought into force. For this reason, while it is necessary and appropriate that certain preparatory costing work is being done, the NDoH cannot yet engage the machinery of the NHI Act to progress the costing activities and exercises beyond what it has done.

Phase 1 costing

40 In 2019, the then-Minister of Health commissioned a project to develop the business case for the implementation of NHI in anticipation of the tabling of the NHI Act in Parliament.

41 I led the NDoH's work in preparing the Business Case for an amendment to the organisational structure of the NDoH to establish a comprehensive National Health Insurance Fund administration. This was done in consultation with National Treasury, the Department of Public Service and Administration, provincial departments of health, and the Presidency.

42 The purpose was to budget for certain changes to the NDoH's organisational structure to enable NHI preparatory work, and to cost the running of the

administration and governance of the Fund in anticipation of the NHI Bill becoming law.

43 Detailed costings and budgeting were conducted as part of this process. This included costings for human resources ("**cost of employment**" or "**COE**") and a range of other goods and services required for governance and administration for the implementation of Phase 1 under section 57 of the NHI Act.

44 For example, the costings indicated the resources required to constitute and operate the Board of the NHI Fund and various committees established under the NHI Act such as the Risk and Audit Committee, the Benefits Advisory Committee, the Health Care Benefits Pricing Committee and the Stakeholders Advisory Committee.

45 The values attributed to each of the assumptions used in the costing model are driven by the cost of employment per post and are dependent on filled posts as there is "*take-on*" in the three-year period of Phase 1 of the NHI implementation process. The model therefore allows for budgeting according to the systemic upscaling of the Fund's administrative capacity over time.

46 The NDoH prepared medium term estimates for the 2020/21 to 2022/23 financial years as part of this process. I attach a high-level overview of those estimates, which I mark as Annexure "**NC1**".

47 These costings were signed off by the NDoH Chief Financial Officer ("**CFO**") and National Treasury. In confirmation thereof, I attach a letter dated 4 December 2019 from the NDoH CFO, which I mark as Annexure "**NC2**", and a letter dated 2 December 2019 from Dr Mark Blecher, Chief Director: Health and Social

Development, of the National Treasury to Dr Anban Pillay, Acting Director-General of the NDoH (and also a senior official responsible for implementation of the NHI Act), which I mark as Annexure "**NC3**".

48 I quote the letter, annexure "*NC3*" here in full because it demonstrates that the approach to costing explained in this affidavit aligns with National Treasury's perspective on the matter and has aligned for several years prior to the passing of the NHI Act:

> *"BUSINESS CASE FOR AMENDMENTS TO THE ORGANISATIONAL STRUCTURE OF THE NATIONAL DEPARTMENT OF HEALTH PERTAINING TO THE NATIONAL HEALTH INSURANCE*
>
> *This letter is to confirm that National Treasury has received and reviewed the business case for the amendment to the organisational structure of the National Department of Health (NDOH) to establish a comprehensive National Health Insurance (NHI) Fund administration, and is broadly supportive of the direction proposed.*
>
> *National Treasury has been involved in the development and costing of the organogram of the NHI Fund. In particular, the previous head of a European NHI Fund who is on contract to the Treasury did a lot of work in this area, which has been significantly drawn upon and articulates well with the work done by Dr. Crisp for the Health Minister on a potential future structure for the NHI Fund, which is articulated here.*
>
> *We acknowledge that what is presented here is both a full organogram for the Fund over the longer term and to some extent a transitional strategy. We support the approach of gradually building the capacity outlined to establish the administrative and operational capacity within NDOH which can later move to the NHI Fund, once created as a public entity. There are various possible transitional routes including potentially through a larger interim NHI structure within the Department or through some alternate form such as a Government Component as an interim step to the full S3A public entity. These kinds of transition are always complex, given that the NHI Bill is not yet law, but the more that capacity is established, the sooner the NHI Fund will be able to get properly established and functioning after the Bill is passed. Also the existing NHI indirect grant comprises around R2 billion per annum, so the interim structure would have real functions to perform even from the earliest stages. The Treasury will work in an ongoing way with the Department to progressively roll out the proposed structure. Reprioritisation within the NDOH budget has been made over the 2020 MTEF period for this purpose, with preliminary amounts earmarked for the NHI interim fund being R20 million in 2020/21, R40 million in 2021/22 and R42.8 million in 2022/23."* (emphasis added)

49 This work was revised five years' later, after the NHI Act was assented to by the President. The revision was largely focussed on updating the new cost of employment and the inflation-adjusted costing of goods and services, and adjusting timelines.

50 These costings remain dynamic to allow the NDoH to respond to uncertainty in relation to several factors which are not in its control, including uncertainty as to the funds that Parliament will ultimately allocate to the NDoH for this work.

Costing the capitation model for primary health care services

51 As the Minister explains in his answering affidavit, one of the features of the NHI Act is its focus on primary health care. This includes the NHI Act's specification of a capitation provider payment mechanism that will incentivise preventative health care and population health improvement through primary health care services.

52 As is evident from Phase 1 implementation as set out in section 57 of the NHI Act, services for vulnerable groups and primary health care will also be prioritised in the progressive rollout of NHI. Primary health care costing is therefore a priority.

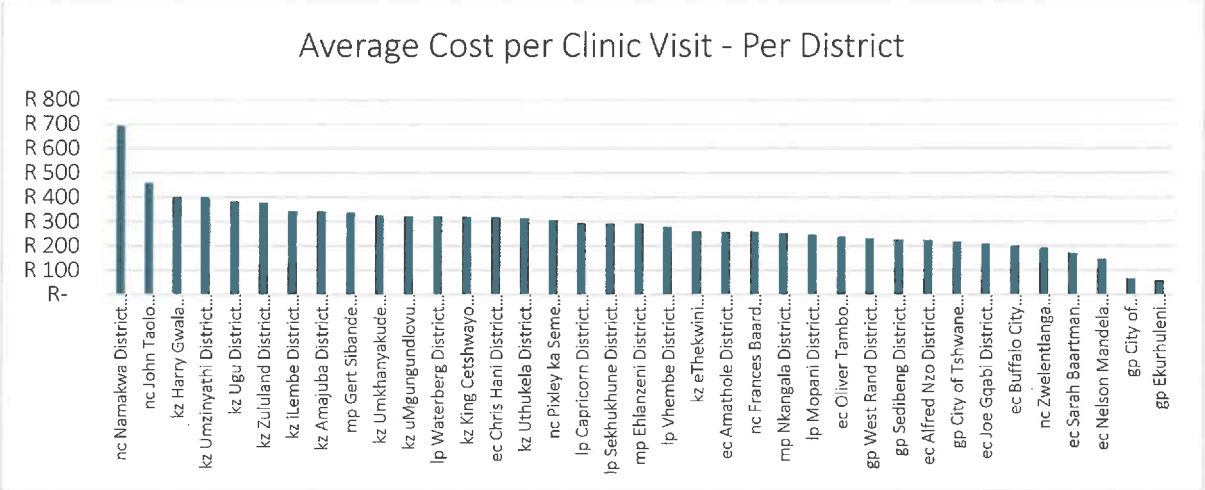
53 A lot of costing work has been done and is ongoing in this regard. The purpose of this work will ultimately be to inform the processes prescribed in the NHI Act which will determine the provider payment rates.

54 Some highlights of this ongoing work include the following.

54.1 A capitation framework has been developed, which lays out the processes and components that need to be both costed and priced. Extensive consultation with general practitioners ("**GPs**") informed the development of this framework.

54.2 Ongoing technical work is being conducted to measure the cost of delivery of primary health care in the proof-of-concept sites of the CUPs. There are nine of these sites, one in each province.

54.3 With support from the Clinton Health Access Initiative, the NDoH is developing an average expenditure per visit analysis at primary care level in the public sector to inform capitation pricing and contract development. Initial results have been produced. The process is ongoing to verify data sources and obtain accurate and comparable data from all districts. I include a graph below that shows some of the preliminary results. I note that these are not reliable or accurate estimates of what a cost per visit will ultimately be to the NHI Fund as this costing process is ongoing, the data remains incomplete, and the process is currently focussed only on public sector costing as a first step. I nonetheless provide the graph to the Court simply to demonstrate some of the cost data collection processes that are ongoing.



GRAPH 1: Initial costing of average cost per clinic visit per district.

Technical Working Committee on Health Technology Assessment

55 As a precursor to more detailed benefits costing, a Technical Working Committee on NHI ("**TWC**") has been established to work on the Health Technology Assessment model.

56 The TWC is designing methods to evaluate technologies that the NHI Fund may adopt in its benefits package. Some of the TWC's work has included, for example, engaging with the United Kingdom's National Institute for Clinical Excellence to gather information on how other entities are performing these kind of cost assessments.

57 Once the relevant portions of the NHI Act are brought into force, the TWC will be upgraded to a Ministerial Advisory Committee as provided for in section 57(3) of the NHI Act.

The Inter-Departmental Technical Working Committee on NHI

58 The Interdepartmental Committee, comprising senior officials from NDoH, National Treasury, Department of Public Service and Administration, South African Police Service, and Department of Planning, Monitoring and Evaluation has established five workstreams which focus on: a) Financial Sector Group and Tax Policy, b) Public Sector Matters, c) Procurement matters, d) Intergovernmental Relations (IGR) & Public Finance, and e) Public Entity Listing. The activities include discussions and technical work on shifting current health funding resources.

Work with the Africa Centres for Disease Control and Prevention

59 The NDoH is working with the Presidency and the African Centres for Disease Control and Prevention to explore economic modelling work in relation to NHI implementation between 2024 to 2033. This work is very much in its early stages and I am therefore unable to provide more useful information on the process.

Conclusion on costing work

60 I submit that the detailed and extensive costing work that has been done, and which is ongoing, is reasonable and prudent, and in line with the WHO's advice.

SOLIDARITY'S ANNEXURE "AB9"

61 Solidarity attaches as Annexure "*AB9*" a document authored by Mr Theuns du Buisson entitled, "*National Health Insurance Isn't Cheap*" ("**the Solidarity report**").

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Impermissible opinion evidence

62 I am advised that the Solidarity report amounts to impermissible hearsay and opinion evidence.

63 No effort is made by Solidarity to demonstrate that Mr du Buisson is qualified to provide expert opinion of value to the Court. His identity, experience, qualifications and independence are entirely unknown.

64 His opinions are, moreover, hearsay evidence as they are not made under oath.

65 I am advised that the Court cannot place any reliance on the Solidarity report as "*evidence*" accordingly.

66 There is a further reason why this is so. I am advised that if the deponent to an affidavit wishes to rely on information in an annexure, it must be properly referred to, explained and its intended application in support of the cause of action fully explained in the body of the founding affidavit. Yet the founding affidavit contains a single vague sentence referring to annexure "*AB9*" making the bald and incorrect allegation that South Arica cannot afford the NHI in any form.

67 The Minister's answering affidavit indicates that the first and third respondents will apply to strike out this and other similar matter in the founding affidavit.

68 To the extent that I address the content of the Solidarity report to follow, I do so only as a matter of caution and without prejudice to my submission that it is inadmissible.

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Solidarity does not understand the operation of the NHI Act

69 Solidarity's flawed report is the product of its failure to understand how NHI will operate under the NHI Act. This is dealt with in the Minister's answering affidavit.

70 Because Solidarity fails to appreciate how health care services are to be financed under the clear provisions of the NHI Act, it follows that its assessment of what NHI will cost is inevitably incorrect.

71 I do not address each and every incorrect statement or allegation in the Solidarity report, but I mention a few examples to follow which demonstrate the flawed foundations on which the Solidarity report is built.

72 First, the Solidarity report says that "*The private health sector in its entirety also will have to be funded by the NHI*". This is incorrect.

72.1 While it is true that the Fund will pay for health care services that will be accessed by users in both the public and private sectors, the NHI Act anticipates in section 7(4) that there will be a range of health care services which are not reimbursable by the Fund.

72.2 Such services may be paid for by users either out of pocket or in terms of complementary voluntary health insurance in terms of sections 6(o) and 33 of the NHI Act.

72.3 It is therefore clear that the Fund will not fund the private health sector in its entirety.

72.4 As the Minister's answering affidavit explains, the NHI Act is also designed to address the inefficiencies and wastefulness of health care

expenditure in the private sector. The Fund will therefore not be paying for services at prices which are inflated by current inefficiencies.

73 Second, the Solidarity report states that the NHI Act "*is a money bill*". On the basis of this incorrect assumption, the Solidarity report says that the Minister of Finance did not budget for the implementation of NHI and speculates that this "*implies that the Treasury does not foresee the actual implementation of the NHI in the near future*".

74 These assumptions are incorrect as detailed in the Minister's answering affidavit and explained in Dr Budlender's expert affidavit.

75 Solidarity also misunderstands how NHI will be funded. It fails to consider section 49(1) of the NHI Act which says in clear terms that the *"Fund is entitled to money appropriated annually from Parliament in order to achieve the purpose of the Act*".

76 Finally, I note with some concern the statement in Solidarity's report that "*While social services are enormously important, they leave behind no physical infrastructure with tangible value*".

76.1 It would seem from this statement that Solidarity has a principled objection to our Constitution's recognition of the State's role in the realisation of socio-economic rights, based on its flawed assumption that social services, such as health care services, do not add "*tangible value*" to society. I deny these allegations.

76.2 To the contrary, equitable access to health care is a constitutionally-mandated social good. An investment in equitable access to health care,

particularly as envisaged in the NHI Act, will also have positive economic impacts. A healthier population is a more economically productive population. A health care system that invests in preventative and primary health care as the NHI Act does, will also ensure medium to long-term cost saving by keeping people healthy.

76.3 The Human Papilloma Virus vaccine is a good example. This preventative health care intervention ensures that young people who are vaccinated today will not become sick with cervical cancer in future years when they become sexually active. Not only will society benefit from sparing women from cervical cancer as a social good, women who are spared cervical cancer will also be able to remain productive members of society in the most productive years of their lives, and the health care system will be spared the much higher expense of treating those women for cancer.

76.4 These kinds of social services offered through State-funded vaccination programmes have definite "*tangible value*" for society and the economy.

Projecting the cost of NHI is an unproductive and misleading exercise

77 As I have stated above, there is little value in attempting to attach a price tag to NHI as a whole as a once-off accounting exercise. The exercise is simply of no utility in decision making as it cannot predict an accurate figure.

78 The Solidarity report is therefore of inherently little value, even if it were based on verifiable figures and a comprehensible methodology, which it is not as I explain below.

The cost projections are flawed

79 The Solidarity report does not cite the sources of the data which it inputs in its purported cost model for NHI. I am therefore unable to deal in any helpful way with the accuracy of the inputs it uses. However, the figures produced are wildly exaggerated in order to promote Solidarity's fear-mongering. The descriptions of those inputs are also too vague for me to source the data independently. It is therefore impossible to attribute any weight to the actual figures cited in Solidarity's report, particularly having regard to the non-sensical methodology that the report applies.

80 As for the methodology, it would appear from the Table on page 8 of Solidarity's report that Mr du Buisson does the following:

80.1 He projects the "*minimum costs of NHI*" by adding the "*health budget*" using a figure which I assume is expenditure on health in the private sector.

80.2 He provides a figure of an "*acceptable total budget*", of 5% of GDP. While it is not clear from the report, I assume for purposes of this exercise that the "*acceptable total budget*" is meant to refer to Mr du Buisson's assumption of what the State will spend on health in total.

80.3 He subtracts his figure for "*minimum costs of NHI*" from his figure for the "*acceptable total budget*" to arrive at what he says is the budget deficit.

81 On the basis of this methodology the Solidarity report says variously that "*If NHI were implemented today, there would be a budget deficit of R181,95 billion*"; "*a*

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budget deficit of approximately R32 billion may be expected", and "*a deficit or R295,93 is a more realistic expectation*".

82 This methodology is grossly flawed for several reasons. Amongst others:

82.1 One cannot predict the cost of NHI by merely adding what is spent in the public and private sectors together for a number of reasons. Amongst others:

82.1.1 The current public sector budget includes allocations for "*non-personal health services*" (such as environmental health and health promotion) and other services which will not be part of the NHI Fund.

82.1.2 The Fund will also not subsume all private sector health financing.

82.1.3 What services are funded under NHI and, as a result, the cost for those services, will also expand progressively and be determined in accordance with the Fund's budget.

82.1.4 The costs of private sector care are in any event unduly inflated due to the inefficiencies described in the Minister's answering affidavit, many of which are intended to be addressed through NHI. The current cost of care is therefore not an appropriate measure for the cost of services under NHI.

82.1.5 Any effort to cost NHI would need to consider a vast array of information, very little of which can be accurately forecast in present day terms. This information includes the effect of the

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varied efficiencies that the NHI Act will enable on a progressive basis and over time to reduce the cost of health care, the financial impact of reallocations (funding shifts), the population exclusions under the NHI Act (e.g. military health), demographic changes, capital investments, the impact of new science and technologies, and the phasing and sequencing of implementation.

82.1.6 Nowhere are such variables accommodated in the Solidarity report.

83 The cost projections in the Solidarity report are therefore methodologically flawed, based on unverifiable input data, and founded on a fundamental misunderstanding of the NHI Act. The figures cited are, in the result, meaningless and at the very least inaccurate.

FILING DATE OF THE MINISTER'S ANSWERING AFFIDAVIT

84 I am advised that Solidarity's application is being case managed by the Honourable Deputy Judge President. In terms of this process, the Minister's answering affidavit was initially due on 2 October 2024. The minutes of the case management meeting dated 17 September 2024 reflected that an extension of this date to 27 November 2024 was agreed subject to certain conditions.

85 I attach a subsequent letter from Solidarity's attorneys reflecting their agreement to the filing date of 27 November 2024 unconditionally. I mark the letter as Annexure "**NC4**".

NICHOLAS CRISP

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Pretoria on this the 27th day of November 2024, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

POSTNET GROENKLOOF
27 -11- 2024
Nicole Dyssell
Commissioner of Oaths
REF NO: RO-10711/2021
P/BAG X06
Waterkloof 0145

COMMISSIONER OF OATHS

National Health Insurance Fund (NHIF)

Total Entity Budget

	Medium term estimates					
	2020/21	2021/22	2022/23			
SUMMARY OF ECONOMIC CLASSIFICATION OF PAYMENTS						
REVENUE	**419 840 572**	**449 731 328**	**404 957 937**			
Treasury allocation	20 000 000	39 800 000	43 000 000			
Transfer from NDOH	63 152 311	66 941 450	70 957 937			
Other	336 688 260	342 989 878	291 000 000			
CURRENT PAYMENTS						
Compensation of employees	**164 851 600**	**290 594 674**	**296 330 390**	72%	82%	82%
Basic salary	164 851 600	290 594 674	296 330 390			
Other benefits / contributions	0	0	0			
Goods and services	**64 365 488**	**65 634 182**	**65 338 170**	28%	18%	18%
Advert : tenders	87 500	91 963	96 561	0.04%	0.03%	0.03%
Advertising	337 500	354 713	372 448	0.15%	0.10%	0.10%
Advertising recruitment	818 750	361 281	13 794	0.36%	0.10%	0.00%
Assets < than the threshold (currently R5,000)	3 553 375	1 567 961	59 868	1.55%	0.44%	0.02%
Audit cost : external	2 400 000	2 522 400	2 648 520	1.05%	0.71%	0.73%
Bank charges	12 500	13 138	13 794	0.01%	0.00%	0.00%
Building maintenance	0	0	0	0.00%	0.00%	0.00%
Catering	81 875	122 179	129 667	0.04%	0.03%	0.04%
Communication : data lines	65 500	97 743	103 734	0.03%	0.03%	0.03%
Communication : Mobile data	163 750	244 358	259 334	0.07%	0.07%	0.07%
Communication : Mobile phones	327 500	488 715	518 669	0.14%	0.14%	0.14%
Communication : Telephone & faxes	91 250	135 973	144 151	0.04%	0.04%	0.04%
Computer services : software licences	491 250	733 073	778 003	0.21%	0.21%	0.22%
Computer services : system advisor	81 875	122 179	129 667	0.04%	0.03%	0.04%
Consultants and professional : mechanical and technical	81 875	122 179	129 667	0.04%	0.03%	0.04%
Consultants and professional service : business and advisory service (ICT)	20 331 688	21 412 089	22 533 910	8.87%	6.01%	6.23%
Consultants and professional service : call centre	0	0	0	0.00%	0.00%	0.00%
Consultants and professional service : Legal advise	900 000	1 418 850	1 986 390	0.39%	0.40%	0.55%
Consultants and professional service : research & advisor	10 812 000	4 086 288	1 589 112	4.72%	1.15%	0.44%
Courier and delivery services	362 300	382 004	402 549	0.16%	0.11%	0.11%
Entertainment	746 930	789 440	834 113	0.33%	0.22%	0.23%
Indemnity cover	1 500 000	1 576 500	1 655 325	0.65%	0.44%	0.46%
Insurance	0	0	0	0.00%	0.00%	0.00%
Inventory : books & journals	32 750	48 872	51 867	0.01%	0.01%	0.01%
Inventory : electrical supplies	32 750	48 872	51 867	0.01%	0.01%	0.01%
Inventory : Fuel, oil and gas	32 750	48 872	51 867	0.01%	0.01%	0.01%
Inventory : Materials and supplies	170 000	266 034	282 095	0.07%	0.07%	0.08%
Inventory : Other consumables	81 875	122 179	129 667	0.04%	0.03%	0.04%
Inventory : Stationery, printing and photocopying	798 400	1 189 642	1 261 414	0.35%	0.33%	0.35%
Operating leases	2 831 250	4 098 900	4 386 611	1.24%	1.15%	1.21%
Personnel and labour (shredding and waste disposal)	50 000	52 550	55 178	0.02%	0.01%	0.02%
Professional boards. Members, subscription fees	25 000	26 275	27 589	0.01%	0.01%	0.01%
Registration fees	25 000	26 275	27 589	0.01%	0.01%	0.01%
Rent of building	0	0	0	0.00%	0.00%	0.00%
Rent of switchboard	0	0	0	0.00%	0.00%	0.00%
Repairs and maintenance : machinery and equipment	65 500	97 743	103 734	0.03%	0.03%	0.03%
Repairs and maintenance : other assets	32 750	48 872	51 867	0.01%	0.01%	0.01%
Resettlement costs	0	0	0	0.00%	0.00%	0.00%
Security	65 500	97 743	103 734	0.03%	0.03%	0.03%
Storage of files	50 000	78 825	110 355	0.02%	0.02%	0.03%
Training and development	2 060 645	3 817 688	4 087 693	0.90%	1.07%	1.13%
Travel and subsistence : accommodation foreign	306 000	406 737	476 734	0.13%	0.11%	0.13%
Travel and subsistence : accommodation local	3 509 900	4 482 307	4 728 038	1.53%	1.26%	1.31%
Travel and subsistence : air transport foreign	480 000	599 070	695 237	0.21%	0.17%	0.19%
Travel and subsistence : air transport local	3 797 700	4 648 455	4 914 468	1.66%	1.30%	1.36%
Travel and subsistence : car rental foreign	255 000	338 948	397 278	0.11%	0.10%	0.11%
Travel and subsistence : car rental local / lease of cars	1 285 500	1 785 859	1 880 118	0.56%	0.50%	0.52%
Travel and subsistence : daily allowance foreign	85 000	112 983	132 426	0.04%	0.03%	0.04%
Travel and subsistence : daily allowance local	642 750	892 930	940 059	0.28%	0.25%	0.26%
Travel and subsistence : food and beverages local	1 285 500	1 785 859	1 880 118	0.56%	0.50%	0.52%
Travel and subsistence : incidental costs foreign (parking, toll fees etc)	59 500	79 088	92 698	0.03%	0.02%	0.03%
Travel and subsistence : incidental costs local (parking, toll fees etc)	684 650	852 698	899 992	0.30%	0.24%	0.25%
Travel and subsistence : kilometre's own	1 170 000	1 677 790	1 801 407	0.51%	0.47%	0.50%
Venues and facilities	1 202 400	1 259 098	1 317 197	0.52%	0.35%	0.36%
Water and electricity	0	0	0	0.00%	0.00%	0.00%

Total current payments	229 217 088	356 228 856	361 668 560	100%	100%	100%
PAYMENTS FOR CAPITAL ASSETS						
Buildings and other fixed structures	126 265 500	50 494 500	50 017 000			
Buildings	125 000 000	50 000 000	50 000 000			
Other fixed structures	1 265 500	494 500	17 000			
Machinery and equipment	924 835	268 628	347 900			
Transport equipment	0	0	0			
Other machinery and equipment	924 835	268 628	347 900			
Software and other intangible assets	0	0	0			
Total payments for capital assets	127 190 335	50 763 128	50 364 900			
TOTAL PAYMENTS	356 407 423	406 991 984	412 033 460			
Year on Year Growth		*14%*	*1%*			
Number of employees	262	372	376			
Number of employees in senior management	32	37	37	9.0%		
	294	409	413			
Surplus/Short-fall	R 63 433 149	R 42 739 344	-R 7 075 523			
Check	0	0	0			

"NC2"

DEPARTMENT OF HEALTH
DEPARTEMENT VAN GESONDHEID

Private Bag X828
PRETORIA, 0001

REPUBLIC OF SOUTH AFRICA

UMNYANGO WEZEMPILO
LEFAPHA LA MAPHELO

Privaatsak X828
PRETORIA, 0001

REPUBLIEK VAN SUID-AFRIKA

Faks/Fax : (012)
Telefoon/Telephone : (012) 395 9373

Navrae/Enquiry : Mr I van der Merwe
Verw/Reference :

Dear Dr Crisp

The Minister Adviser on NHI

This is to confirm that as CFO at NDOH I was:

1. Thoroughly briefed on the development and functions of the NHI Fund and the staff requirements;
2. Take note of these plans and find the estimates and approach appropriate and reasonable
3. Can confirm that the National Treasury has earmarked funds for Interim NHI Office of R20 million, R40 million and R42,8 million over the MTEF

Kind regards

MR I VAN DER MERWE
CHIEF FINANCIAL OFFICER
Date: 2014/12/4

Aids Helpline
0800 012 322

14-625

"NC3"

national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Private Bag X 115, Pretoria, 0001 · Tel: (+27 12) 315 5111 · Fax: (+27 12) 325 1620 · PO Box 29, Cape Town, 8000 · Tel: (+27 21) 464 6100 · Fax: (+27 21) 461 2934

Enquiries: Mark Blecher
Tel: (012) 464 6119
Fax: (012) 395 2568
E-mail: Mark.Blecher@treasury.gov.za
Ref: 9/4/5/4/9/2

Dr Anban Pillay
Acting Director-General
National Department of Health
Private Bag X828
PRETORIA
0001

Dear Dr Pillay

BUSINESS CASE FOR AMENDMENTS TO THE ORGANISATIONAL STRUCTURE OF THE NATIONAL DEPARTMENT OF HEALTH PERTAINING TO THE NATIONAL HEALTH INSURANCE

This letter is to confirm that National Treasury has received and reviewed the business case for the amendment to the organisational structure of the National Department of Health (NDOH) to establish a comprehensive National Health Insurance (NHI) Fund administration, and is broadly supportive of the direction proposed.

National Treasury has been involved in the development and costing of the organogram of the NHI Fund. In particular, the previous head of a European NHI Fund who is on contract to the Treasury did a lot of work in this area, which has been significantly drawn upon and articulates well with the work done by Dr. Crisp for the Health Minister on a potential future structure for the NHI Fund, which is articulated here.

We acknowledge that what is presented here is both a full organogram for the Fund over the longer term and to some extent a transitional strategy. We support the approach of gradually building the capacity outlined to establish the administrative and operational capacity within NDOH which can later move to the NHI Fund, once created as a public entity. There are various possible transitional routes including potentially through a larger interim NHI structure within the Department or through some alternate form such as a Government Component as an interim step to the full S3A public entity. These kinds of transition are always complex, given that the NHI Bill is not yet law, but the more that capacity is established, the sooner the NHI Fund will be able to get properly established and functioning after the Bill is passed. Also the existing NHI indirect grant comprises around R2 billion per annum, so the interim structure would have real functions to perform even from the earliest stages.

The Treasury will work in an ongoing way with the Department to progressively roll out the proposed structure. Reprioritisation within the NDOH budget has been made over the 2020 MTEF period for this purpose, with preliminary amounts earmarked for the NHI interim fund being R20 million in 2020/21, R40 million in 2021/22 and R42.8 million in 2022/23.

Kind regards

DR. MARK BLECHER
CHIEF DIRECTOR: HEALTH AND SOCIAL DEVELOPMENT
Date: 2 December 2019

14-625

"NC4"

Serfontein Viljoen & Swart

Attorneys, Conveyancers & Notaries

165 Alexander Street, Brooklyn, Pretoria
P.O. Box 35015, Menlop Park, 0028 Docex 9 Brooklyn
E-mail : niekie@svslaw.co.za / jd@svslaw.co.za
Tel: (012) 362 2556
Also, at: Bronkhorstspruit (013) 932 3034

Our ref : Mr. Swart/Claassen/Venter / MJ / CS0562
Your ref : 1970/2024/Z64 & 2183/2024/Z66
Date : 11 November 2024

BY EMAIL

TO: **THE STATE ATTORNEYS' PRETORIA**
EMAIL: JMulaudzi@justice.gov.za / rsebelemetsa@justice.gov.za

Dear Sir / Mesdames,

RE: PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND ANOTHER SOLIDARITY TRADE UNION // MINISTER OF HEALTH AND OTHERS (CASE NO: 057449-2024)

1. We refer to your previous letter, the case management minute, and, in particular, the dialogue between our respective senior counsels.

2. It bears emphasizing that our office, along with our client, has consistently maintained a courteous and mutually respectful rapport throughout prior litigation. Accordingly, the tone conveyed in your letter is viewed as both unwarranted and contrary to the spirit of our established professional relationship.

14-626

3. We acknowledge your client's position concerning the undertaking, noting that it may have been influenced by recent logistical and political developments. We hereby confirm that our client reserves the right to pursue urgent relief, should the circumstances so require.

4. Nevertheless, we are instructed to agree to the requested extension for the filing of your client's answering affidavit, provided it is submitted no later than 27 November 2024. We request that your client, in turn, agrees to offer a similar extension to Solidarity for the submission of replying affidavits, if necessary. Given this understanding, we see no need for an additional case management meeting or a condonation application.

5. It may, however, be advisable to approach the Deputy Judge President's office promptly after pleadings have been concluded.

6. We look forward to receiving your client's answering affidavit in due course.

Yours faithfully

SERFONTEIN, VILJOEN & SWART
MR. CN VENTER / MR JD CLAASSEN
Email: niekie@svslaw.co.za / jd@svslaw.co.za

[ELECTRONICALLY TRANSMITTED, THEREFORE UNSIGNED]