

REPUBLIC OF SOUTH AFRICA

**NATIONAL PUBLIC HEALTH
INSTITUTE OF SOUTH AFRICA
BILL**

*As amended by the Portfolio Committee on Health (National Assembly)
(The English text is the official text of the Bill)*

(MINISTER OF HEALTH)

[B 16B—2017]

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BILL

To provide for the establishment of the National Public Health Institute of South Africa in order to coordinate, and where appropriate to conduct, disease and injury surveillance; to provide for specialised public health services, public health interventions, training and research directed towards the major health challenges affecting the population of the Republic; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that the right of all South Africans to have access to health care services requires the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

RECOGNISING that communicable and non-communicable diseases, occupational health, cancer, injuries and prevention of violence and environmental health are important health challenges in South Africa;

MINDFUL that the realisation of that right can be achieved by, amongst others, the—

- establishment of a single national public entity to provide public health services to the country that performs critical public health functions and that requires a high level of coordination across functions, such as surveillance and research;
- restructuring and transformation of the public health sector to provide evidence-based leadership and public health services, and to serve as focal point for the efforts to protect and improve health; and
- development of policies that will enable the single national public health entity to provide public health functions and services nationally;

AND IN ORDER TO—

- provide support, expertise and advice to government to achieve improvements in the health of the population;
- provide coordinated disease and injury surveillance, research, training and workforce development, monitoring and evaluation of services and interventions directed towards the major health problems affecting the population; and
- provide training, conduct research and support interventions aimed at reducing the burden of communicable and non-communicable diseases and injuries and aimed at improving occupational health, and environmental health.

B E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
“**Minister**” means the Cabinet member responsible for health;

- “**NAPHISA**” means the National Public Health Institute of South Africa established by section 2;
- “**prescribed**” means prescribed by regulation made in terms of this Act;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 5
- “**public health**” includes the science of protecting the safety and improving the health of communities through education, policy-making and research for disease and injury prevention;
- “**public health sector**” means that part of the health sector that is owned or controlled by an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996; 10
- “**surveillance**” means an information-based activity involving the collection, analysis and interpretation of large volumes of data originating from a variety of sources to predict, observe and minimise the harm caused by outbreak, epidemic and pandemic situations, and to increase knowledge about which factors contribute 15 to the harm caused by outbreak, epidemic and pandemic situations; and
- “**this Act**” includes any regulation made in terms of this Act.

Establishment of National Public Health Institute of South Africa

2. (1) There is hereby established a juristic person to be known as the National Public Health Institute of South Africa, comprising of divisions dealing with the following: 20
- (a) Communicable Diseases;
 - (b) Non-Communicable Diseases;
 - (c) Occupational Health;
 - (d) Cancer Surveillance;
 - (e) Injury and Violence Prevention; and 25
 - (f) Environmental Health.
- (2) The NAPHISA is a national public entity as defined in section 1 of the Public Finance Management Act.

Functions of NAPHISA

3. (1) The NAPHISA must— 30
- (a) promote cooperation between the Republic and other countries with regard to epidemiological surveillance and management of diseases, exposures and injuries;
 - (b) coordinate, develop and maintain surveillance systems to collect, analyse and interpret public and occupational health data in order to guide health 35 interventions;
 - (c) use surveillance data and other sources of information, where appropriate, to advise on the setting of health policies, priorities and planning;
 - (d) use public and occupational health information for monitoring and evaluation of policies and interventions; 40
 - (e) coordinate reference laboratory and referral services;
 - (f) provide leadership and direction to provinces and local authorities in respect of disease and injury surveillance and outbreak response;
 - (g) strengthen capacity in public and occupational health surveillance in order to reduce the burden of disease and injury; 45
 - (h) strengthen the capacity of the workforce in occupational health by developing the curriculum for occupational health;
 - (i) strengthen cross-border, regional and international collaboration on communicable diseases, non-communicable diseases, occupational health and safety, cancer, injury and violence prevention and environmental health; 50
 - (j) strengthen epidemiology and surveillance of communicable diseases, non-communicable diseases, occupational health and safety, cancer, injury and violence prevention and environmental health;
 - (k) advise the Minister on strategies to improve the health of the population;
 - (l) support the health sector response and make recommendations to the 55 Department of Health on—
 - (i) control measures for disease outbreaks; and
 - (ii) mitigating risks and hazards of injury and violence, cancer and workplace exposures;

- (m) collaborate with relevant government departments and government agencies to implement communication strategies on public and occupational health issues and outbreak response;
- (n) provide technical support to all spheres of government and other regulatory bodies on surveillance of communicable diseases, non-communicable diseases, occupational health and mitigation strategies for occupational exposures, cancer, injury and violence prevention and environmental health; 5
- (o) coordinate research and, where appropriate, conduct research to inform policy and guidelines on communicable diseases, non-communicable diseases, occupational health, cancer surveillance, injury and violence prevention and environmental health, and must develop processes for dissemination of research findings to key stakeholders; 10
- (p) participate in research independently or collaborate with government, academic institutions, scientific institutions and any other similar institutions;
- (q) strengthen advocacy, social mobilisation and partnerships in order to address communicable diseases, non-communicable diseases, occupational health, cancer surveillance, injury and violence prevention and environmental health; 15
- (r) provide training and technical information on health issues to health professionals, governmental and regulatory bodies;
- (s) contribute to human resource development in the public health sector; 20
- (t) maintain accredited reference and specialised laboratories for pathogen detection, disease and injury surveillance and monitoring, outbreak response and the provision of scientific evidence to prevent and control infectious diseases;
- (u) monitor trends in occupational health and conduct workplace health risk assessments; 25
- (v) support the monitoring of workplaces in order to assess worker exposure to workplace hazards;
- (w) produce and distribute reports on health and disease profiles, injuries and violence and occupational health; and 30
- (x) provide specialised and referral services related to occupational safety and health, including—
 - (i) specialised analytical laboratory services to support the practice of occupational medicine and occupational hygiene;
 - (ii) consultations on the appropriate collection of samples; 35
 - (iii) measurement of selected contaminants from environmental and biological samples collected from the workplace and from workers, and participation in quality assurance schemes for selected hazardous agents;
 - (iv) analyses of workplace contaminants in biological and environmental samples for toxic metals, organic substances, pesticides and persistent organic pollutants; 40
 - (v) specialised testing for bio-aerosols and nano-particles;
 - (vi) assessment of occupational allergies;
 - (vii) advising on the prevention of occupational diseases and occupational injuries; 45
 - (viii) conducting workplace visits and risk assessments of hazardous factors; and
 - (ix) providing pathology services for occupational health.
- (2) For the purposes of subsection (1)(e), “referral services” means any specialist services that require specialist knowledge, skills and interventions. 50
- (3) The NAPHISA may—
 - (a) liaise with any other regulatory authority or institution and may, without limiting the generality of this power, require the necessary information from, exchange information with and receive information from any such authority or institution in respect of matters of common interest; 55
 - (b) negotiate cooperative agreements with any regulatory authority or institution in order to ensure the consistent application of the principles of this Act;
 - (c) undertake operational research;
 - (d) cooperate with persons and institutions undertaking basic research in the Republic and in other countries by the exchange of scientific knowledge and the provision of access to the resources and specimens available to the NAPHISA; 60

- (e) participate in joint research operations with any person, including government departments, tertiary institutions, museums and scientific institutions;
- (f) cooperate with educational authorities, scientific or technical societies, higher education health institutions or industrial institutions representing employers and employees for the promotion of the instruction and training of health professionals, scientists, researchers, technical experts and other supporting personnel in tertiary institutions; 5
- (g) enter into contracts, within or outside the Republic, with any person, government or institution, and may execute any contract, deed or other document in the Republic or any foreign country; 10
- (h) purchase or acquire any movable or immovable property;
- (i) manage, insure, lease, sell, mortgage, dispose of, develop, maintain, improve or in any other way deal with any of its property or assets;
- (j) apply for, purchase or by any other means acquire, protect, extend, renew, deal with or alienate any patents, patent rights, licences, trademarks, concessions or other rights; 15
- (k) borrow money, within or outside the Republic, in line with the Public Finance Management Act;
- (l) invest money in accordance with the framework prescribed in section 7 of the Public Finance Management Act; 20
- (m) open and operate banking accounts in terms of section 7 of the Public Finance Management Act;
- (n) make, draw, issue, execute, accept, endorse or discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments;
- (o) enter into indemnities, guarantees and suretyships and secure payment thereunder in line with the Public Finance Management Act; 25
- (p) enter into agreements to facilitate or secure the payment of commitments and to this end indemnify any person or cede, exchange or cancel agreements;
- (q) undertake and execute any trust;
- (r) form and have an interest in any company for— 30
 - (i) the purpose of acquiring the business or all or any assets or liabilities, or both, of any company; or
 - (ii) any other purpose which directly or indirectly benefits the NAPHISA;
- (s) take part in the management, supervision and control of the business or operations of any company or business; 35
- (t) enter into partnerships;
- (u) make donations to further the interests of the NAPHISA;
- (v) act as principal, agent, contractor or trustee;
- (w) charge for the rendering of laboratory services and other services;
- (x) remunerate any person for services rendered in the operation and development of the NAPHISA's business; 40
- (y) appoint officers and employees at such remuneration and on such conditions as it may deem fit subject to the relevant labour legislation;
- (z) pay gratuities and pensions to its officers and employees;
- (zA) establish and manage pension schemes, in consultation with the Minister of Finance, medical aid schemes and other incentive schemes for its officers and employees, and appoint trustees and other officials for such schemes; and 45
- (zB) produce and sell by-products.

Governance and control of NAPHISA

4. (1) The NAPHISA is governed and controlled, in accordance with this Act, by its Board. 50

(2) The Board is the accounting authority of the NAPHISA and must ensure that it fulfills its responsibilities in terms of Chapter 6 of the Public Finance Management Act.

Composition of Board

5. The Board consists of the following members, appointed by the Minister, taking into account, amongst other things, the appropriate representation of race, gender and disability: 55

- (a) An official from the national Department of Health;
- (b) two members, each with special knowledge in one of the following areas:

- (i) economics, financial matters or accounting; and
- (ii) legal matters;
- (c) seven members, each with special knowledge in one of the following areas:
 - (i) communicable diseases;
 - (ii) non-communicable diseases; 5
 - (iii) occupational health;
 - (iv) cancer surveillance;
 - (v) injury and violence prevention;
 - (vi) environmental health; and
 - (vii) field epidemiology; 10
- (d) the Chief Financial Officer of the NAPHISA by virtue of his or her office;
- (e) the Chief Executive Officer of the NAPHISA by virtue of his or her office; and
- (f) one member nominated by the schools of public health within publicly funded higher education institutions.

Appointment of members of Board 15

6. (1) The Minister must, before appointing the members contemplated in section 5(b) and (c), by notice in the *Gazette* and in two or more nationally circulating newspapers in the Republic, invite all interested persons to nominate, within the period specified in the notice, persons who in the opinion of such interested persons are fit to be so appointed, stating the grounds upon which such opinion is based. 20

(2) If a suitable person or the required number of persons is not nominated in accordance with subsection (1), the Minister must appoint an appropriate person who qualifies to be appointed in terms of this Act.

(3) A member of the Board holds office for a period of at least five years as the Minister may determine at the time of appointment, and is eligible for reappointment. 25

(4) A member of the Board, excluding a member who is in the full-time employment of the State, must be appointed on such conditions as the Minister may, with the concurrence of the Minister of Finance, determine.

(5) If the number of members of the Board is reduced to such an extent that a quorum cannot be obtained, the Minister may appoint suitably qualified persons on a temporary basis to serve on the Board for a period no longer than 12 months until new members are appointed in terms of section 5. 30

Chairperson and vice-chairperson of Board

7. (1) The Minister must appoint a chairperson and vice-chairperson of the Board from the members contemplated in section 5(b) and (c). 35

(2) Whenever the chairperson of the Board is absent or unable to perform his or her functions as chairperson, the vice-chairperson must act as chairperson, and if the vice-chairperson is absent or unable to act as chairperson, the members must designate another member of the Board to act as chairperson until the chairperson or vice-chairperson is available. 40

(3) Any person acting as chairperson of the Board in terms of subsection (2) must perform all the functions of the chairperson.

Disqualification from membership of Board, vacation of office by member, removal of member from Board and dissolution of Board

8. (1) A person may not be appointed or remain as a member of the Board if that person— 45

- (a) is not a South African citizen and ordinarily resident in the Republic;
- (b) is not fit and proper;
- (c) is an unrehabilitated insolvent;
- (d) has at any time been convicted in a court— 50
 - (i) of an offence and sentenced to more than 12 months' imprisonment without the option of a fine; or
 - (ii) of an offence involving dishonesty, whether in the Republic or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, and sentenced to imprisonment without the option of a fine; 55
- (e) has been removed from an office of trust;

- (f) is an employee of the NAPHISA other than a member contemplated in section 5;
- (g) is disqualified in terms of section 69 of the Companies Act, 2008 (Act No. 71 of 2008); or
- (h) is a member of the National Assembly, permanent delegate to the National Council of Provinces, member of a provincial legislature or member of a Municipal Council. 5
- (2) A member of the Board must vacate his or her office if he or she—
- (a) becomes disqualified in terms of subsection (1);
- (b) submits his or her resignation to the Minister in writing; 10
- (c) is declared to be of unsound mind by a court of the Republic; or
- (d) has, without the leave of the Board, been absent from more than two consecutive meetings of the Board.
- (3) If a member of the Board dies or vacates his or her office in terms of subsection (2), the Minister may, subject to section 6, appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed. 15
- (4) The Minister may remove a Board member from the office on account of misconduct or inability to perform his or her duties efficiently after due inquiry.
- (5) The Minister may dissolve the Board for failure to perform its duties in terms of the Act after due inquiry. 20

Meetings of Board

9. (1) The meetings of the Board and the conduct of business at meetings must be done in accordance with the rules determined by the Board.
- (2) A quorum for a meeting of the Board is the majority of its members.
- (3) A decision of the majority of the members of the Board at any meeting constitutes a decision of the Board, and in the event of an equality of votes the member presiding at the meeting has a casting vote in addition to his or her deliberative vote. 25
- (4) A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason only of a vacancy on the Board, or where a person who is not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Board who were present at the time and entitled to sit as members. 30
- (5) Minutes of the proceedings of every meeting of the Board must be prepared and entered in a book kept for that purpose. 35
- (6) Minutes of the proceedings of each meeting must be submitted at the next meeting of the Board and, if passed as correct, must be confirmed by the signature of the chairperson or other member presiding thereat and may, when so confirmed, be evidence in a court of law of the proceedings of the first-mentioned meeting.

Committees of Board 40

10. The Board may, in order to assist it in the performance of its functions, appoint—
- (a) one or more committees consisting of Board members; and
- (b) expert advisory committees consisting of members other than members of the Board.

Appointment, performance agreement and removal of Chief Executive Officer 45

11. (1) The Board must, in consultation with the Minister, appoint a fit and proper and suitably qualified South African citizen as the Chief Executive Officer of the NAPHISA.
- (2) The Chief Executive Officer holds office for a term of five years and may be reappointed for one additional term of five years.
- (3) The appointment of a person as the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the Board. 50
- (4) The Board must, after consultation with the Minister, annually enter into a written performance agreement between the Chief Executive Officer and the Board.
- (5) The Board and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement. 55

(6) The Board may, in consultation with the Minister, remove the Chief Executive Officer from office on account of serious misconduct, incapacity or incompetence, after affording him or her reasonable opportunity to be heard and subject to applicable legislation.

(7) If the Chief Executive Officer is unable to perform his or her functions, or during a vacancy in the office of Chief Executive Officer, the Board may, after consultation with the Minister, designate another employee of the NAPHISA to act as Chief Executive Officer. 5

(8) No person may be designated as an acting Chief Executive Officer for a period longer than 180 days. 10

Functions of Chief Executive Officer

12. (1) The Chief Executive Officer—

- (a) is the administrative head of the NAPHISA;
- (b) is responsible for the proper and diligent implementation of the Public Finance Management Act; 15
- (c) must appoint suitably qualified persons as employees of the NAPHISA in accordance with an organisational structure and on terms and conditions approved by the Board; and
- (d) subject to the Public Finance Management Act, must cause the necessary accounting and other records to be kept. 20

(2) As administrative head of the NAPHISA, the Chief Executive Officer is responsible for—

- (a) delivering on the agreed mandate of the NAPHISA as determined by the Board in terms of this Act;
- (b) the formation and development of internal rules and directives for an efficient 25 administration;
- (c) the organisation and control of staff;
- (d) the maintenance of discipline;
- (e) the effective deployment and utilisation of staff to achieve maximum operational results; 30
- (f) signing of memoranda of understanding with key stakeholders;
- (g) the issuing of guidelines regarding the manner in which claims should be handled;
- (h) making the annual report, financial statements and audit report on those statements in respect of the NAPHISA accessible to the public once the annual 35 report, financial statements and audit report have been tabled in Parliament by the Minister; and
- (i) the exercise of any such powers and performance of any such duties as may be delegated or assigned to him or her by the Board.

(3) The Chief Executive Officer must, upon request by the Minister— 40

- (a) furnish the Minister with information or a report in respect of any case, matter or subject dealt with by the NAPHISA; and
- (b) provide the Minister with reasons for any decision taken by the NAPHISA, the Board, the Chief Executive Officer or any other employee of the 45 NAPHISA.

Annual Report

13. Subject to the Public Finance Management Act—

- (a) the Chief Executive Officer must, in consultation with the Board, prepare and submit an annual report, financial statements and the report of the auditors on those statements to the Minister; and 50
- (b) the Minister must table the annual report and statements referred to in paragraph (a) in Parliament within one month of receipt thereof.

Transfer or secondment of certain persons to or from employ of NAPHISA

14. (1) A person who is in full time employ of the State or of an institution receiving financial aid from the State may, with his or her consent and subject to the laws 55 governing the public service and the approval of the Chief Executive Officer, be transferred or seconded to the employ of the NAPHISA.

(2) A person who is in the employ of the NAPHISA may, with his or her consent and subject to the laws governing the public service and the approval of the Chief Executive Officer, be transferred or seconded to the employ of the State or an institution receiving financial aid from the State.

(3) A person who is in the employ of another institution may, with his or her consent and subject to the applicable laws and the approval of the Chief Executive Officer of that institution, be transferred or seconded to the employ of the NAPHISA. 5

(4) A person who is in the employ of the NAPHISA may, with his or her consent and subject to the laws governing the public service and the approval of the Chief Executive Officer, be transferred or seconded to the employ of another institution. 10

(5) The rights, privileges and benefits of an employee contemplated in this section by virtue of his or her conditions of service as an employee of the NAPHISA, the State or an institution receiving financial aid from the State may not be adversely affected by a transfer or secondment.

Intellectual property rights 15

15. (1) The rights in respect of any invention or design or any work eligible for copyright protection by an employee of the NAPHISA in the course and scope of the employee's employment vests in the NAPHISA.

(2) The NAPHISA may in its discretion, but subject to such conditions as the Minister may determine, assign or dispose of any rights contemplated in subsection (1). 20

(3) The NAPHISA must, in respect of research conducted by the employees of the NAPHISA—

(a) subject to properly informed consent, ensure that in work conducted in respect of indigenous knowledge, written information transfer and material transfer agreements are established before the undertaking of the research; and 25

(b) protect, with the consent of the parties, any work, invention, discovery or improvement derived from indigenous knowledge, originally held by any person or community, in such a manner that the person or community participates in the benefits arising from such protection.

(4) If the rights in respect of an invention or design properly registered in the Republic in terms of subsection (1) are vested in the NAPHISA or assigned to the NAPHISA in terms of subsection (2), the NAPHISA must award the person responsible for the invention, financial participation by him or her in respect of the proceeds derived from such invention or design at such a percentage as may be prescribed. 30

(5) The NAPHISA must ensure that the person contemplated in subsection (4) receives the payment contemplated in subsection (4) timeously. 35

(6) The NAPHISA must, with regard to research conducted by employees of the NAPHISA in the area under the jurisdiction of a traditional leader, notify the National House of Traditional Leaders, in writing, of its intention to conduct such research.

Finances of NAPHISA 40

16. The NAPHISA is funded by—

(a) money appropriated by Parliament;

(b) fees received for services rendered;

(c) income earned on surplus moneys deposited or invested;

(d) grants, donations and bequests made to it; 45

(e) royalties; and

(f) money received from any other source.

Delegation of functions

17. (1) The Board may, subject to such conditions as it may determine, delegate to the chairperson, any member or committee of the Board or the Chief Executive Officer any function entrusted to the Board under this Act. 50

(2) The Chief Executive Officer may delegate to an employee of the NAPHISA any function entrusted to the Chief Executive Officer under this Act or delegated to the Chief Executive Officer in terms of subsection (1).

(3) A delegation in terms of subsection (1) or (2) does not preclude the performance of that function by the Board or the Chief Executive Officer, as the case may be. 55

- (4) The delegation of a function in terms of subsection (1) or (2)—
- (a) must be in writing and may be subject to such terms and conditions as the Board or Chief Executive Officer may determine or impose;
 - (b) may at any time be amended or revoked by the Board or Chief Executive Officer; and
 - (c) does not divest the Board or Chief Executive Officer of the responsibility concerning the performance of that function.

Limitation of liability

18. No member of the Board, employee of the NAPHISA or other person performing work for the NAPHISA is liable in respect of anything done or omitted in good faith in the performance of any function in terms of this Act.

Regulations

- 19.** (1) The Minister may make regulations regarding—
- (a) any matter which in terms of this Act may or must be prescribed;
 - (b) disease and injury surveillance; and
 - (c) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) Before the Minister makes any regulation under this section, he or she must publish a draft of the proposed regulation in the *Gazette* together with a notice calling on interested persons to comment, in writing, within a period stated in the notice of not less than 30 days from the date of publication of the notice.
- (3) If the Minister alters the draft regulations, as a result of any comment, he or she need not publish those alterations before making the regulations.
- (4) A regulation made under this section may, for any contravention thereof or failure to comply therewith, prescribe a fine or imprisonment for a period not exceeding three months.

Transfer of certain property belonging to State to NAPHISA

20. Any immovable property belonging to the State may be transferred to the NAPHISA on such conditions as the Minister with the concurrence of the Minister of Finance may determine in order to enable the NAPHISA to perform its functions.

Transfer of employees, assets and liabilities from National Health Laboratory Service to NAPHISA

- 21.** (1) A person who is employed by the National Health Laboratory Service established by section 3 of the National Health Laboratory Service Act, 2000 (Act No. 37 of 2000), immediately before the commencement of this Act and who was transferred to the National Health Laboratory Service in terms of item 2(b) and (c) of the Schedule to the said Act must, in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995), and any applicable collective bargaining agreement with organised labour, be transferred to the NAPHISA on the date when this section takes effect.
- (2) The remuneration and other terms and conditions of service of a person transferred in terms of subsection (1) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before his or her transfer, and he or she remains entitled to all rights, benefits, including pension benefits, and privileges to which he or she was entitled immediately before such transfer.
- (3) A person transferred to the NAPHISA in terms of subsection (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before his or her transfer to the extent that they remain applicable.
- (4) Any proceedings against such person which were pending immediately before his or her transfer must be disposed of as if that person had not been transferred.
- (5) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when a person contemplated in subsection (1) takes up employment at the NAPHISA.
- (6) When the employees referred to in subsection (1) are transferred to the NAPHISA, all assets and liabilities of the National Health Laboratory Service referred to in that

subsection that were transferred to the National Health Laboratory Service in terms of item 2 of the Schedule to the National Health Laboratory Service Act, 2000 (Act No. 37 of 2000), must be transferred to and vest in the NAPHISA at the same date.

Short title and commencement

22. This Act is called the National Public Health Institute of South Africa Act, 2018, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 5

MEMORANDUM ON THE OBJECTS OF THE NATIONAL PUBLIC HEALTH INSTITUTE OF SOUTH AFRICA BILL

BACKGROUND

1. The Bill seeks to establish the National Public Health Institute of South Africa (“the NAPHISA”) as a juristic person. The aim of the NAPHISA is to coordinate and, where appropriate, to conduct disease and injury surveillance and provide specialised public health services, public health interventions, training and research directed towards the major health challenges affecting the population of the Republic.
2. There are pockets of excellence of communicable and non-communicable disease surveillance systems in South Africa. These systems are managed by different institutions and there is a lack of unified institutional capacity for providing coordinated and integrated disease and injury surveillance data. The NAPHISA will be used as a vehicle to provide coordinated and integrated disease and injury surveillance data in the Republic and to enhance the effectiveness of health systems.

ANALYSIS OF BILL

3. Clause 1 contains the definitions of words or expressions used in the text of the Bill.
4. Clause 2 provides for the establishment of the NAPHISA as a juristic person, comprising of divisions dealing with the following:
 - Communicable Diseases;
 - Non-Communicable Diseases;
 - Occupational Health;
 - Cancer Surveillance;
 - Injury and Violence Prevention; and
 - Environmental Health.
5. The NAPHISA is a public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“the PFMA”). In terms of the said definition, a “public entity” is a national or provincial public entity. A national public entity is defined in section 1 of the PFMA, as follows:

“ national public entity’ means—

 - (a) a national government business enterprise; or
 - (b) a board, commission, company, corporation, fund or other entity (other than a national government business enterprise) which is—
 - (i) established in terms of national legislation;
 - (ii) fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation; and
 - (iii) accountable to Parliament;” (emphasis added).
6. Clause 3 provides for the functions of the NAPHISA. The functions of the NAPHISA are set out in a functions list rather than providing for these functions in various substantive provisions in the Bill. This approach is similar to the approach in the National Health Laboratory Service Act, 2000 (Act No. 37 of 2000) (“the Act”) in respect of the functions of the National Health Laboratory Service (“the Service”).
7. Clause 4 provides for the governance and control of the NAPHISA. The NAPHISA is governed and controlled by its Board, which is the accounting authority of the NAPHISA.

8. Clause 5 provides for the composition of the Board of the NAPHISA. The Board will consist of the following members, appointed by the Minister of Health (“the Minister”):
 - An official from the national Department of Health;
 - two members, each with special knowledge in one of the following areas:
 - * economics, financial matters or accounting; and
 - * legal matters;
 - seven members, each with special knowledge in one of the following areas:
 - * communicable diseases;
 - * non-communicable diseases;
 - * occupational health;
 - * cancer surveillance;
 - * injury and violence prevention;
 - * environmental health; and
 - * field epidemiology;
 - the Chief Financial Officer of the NAPHISA by virtue of his or her office;
 - the Chief Executive Officer of the NAPHISA by virtue of his or her office; and
 - one member nominated by the schools of public health within publicly funded higher education institutions.
9. Clause 6 provides for the appointment of members of the Board. A member of the Board holds office for a period of at least five years as the Minister may determine at the time of appointment, and is eligible for reappointment.
10. Clause 7 provides for the appointment of the chairperson and vice-chairperson of the Board.
11. Clause 8 provides for the disqualification from membership of the Board, vacation of office by a member, removal of a member from the Board and dissolution of the Board.
12. Clause 9 regulates meetings of the Board.
13. Clause 10 provides for the appointment of committees of the Board.
14. Clause 11 provides for the appointment of the Chief Executive Officer. The Board, in consultation with the Minister, must appoint a fit and proper and suitably qualified South African citizen as the Chief Executive Officer of the NAPHISA.
15. Clause 12 sets out the functions of the Chief Executive Officer. The Chief Executive Officer is the administrative head of the NAPHISA and, amongst other things, is responsible for the proper and diligent implementation of the PFMA and must appoint suitably qualified persons as employees of the NAPHISA in accordance with an organisational structure and on terms and conditions approved by the Board.
16. Clause 13 provides for reporting to Parliament on an annual basis as required by the Public Finance Management Act.
17. Clause 14 provides for the transfer or secondment of certain persons to or from the employ of the NAPHISA.
18. Clause 15 provides that rights in respect of any invention or design or any work eligible for copyright protection by an employee of the NAPHISA in the course and

scope of the employee's employment vests in the NAPHISA. The clause also seeks to protect any work, invention, discovery or improvement derived from indigenous knowledge, originally held by any person or community, in such a manner that the person or community participates in the benefits arising from such work, invention, discovery or improvement.

19. Clause 16 provides for the finances of the NAPHISA. The NAPHISA is funded by money appropriated by Parliament, fees received for services rendered, income earned on surplus money deposited or invested, grants, donations and bequests, royalties and money received from any other source.
20. Clause 17 provides for the delegation of powers and assignment of duties by the Board and the Chief Executive Officer.
21. Clause 18 limits the liability of certain persons liable in respect of anything done or omitted in good faith in the performance of any function in terms of the Bill.
22. Clause 19 empowers the Minister to make regulations and, amongst others, provides that before the Minister makes any regulation the Minister must publish a draft of the proposed regulation in the *Gazette* together with a notice calling on interested persons to comment, in writing, within a specified period.
23. Clause 20 provides for the transfer of immovable property belonging to the State to the NAPHISA, on conditions determined by the Minister with the concurrence of the Minister of Finance, in order to enable the NAPHISA to perform its functions.
24. Clause 21 provides for the transfer of certain employees, assets and liabilities to the NAPHISA. These employees are persons employed by the Service immediately before the commencement of the National Public Health Institute of South Africa Act (if the Bill is promulgated) and who were transferred to the Service in terms of item 2(b) and (c) of the Schedule to the Act.
25. Clause 22 provides for the short title and commencement date.

DEPARTMENTS/BODIES/PERSONS CONSULTED

25. The draft Bill was published for public comment on 11 November 2015 and the comment period extended on 26 January 2016. Comments were received from the following departments, bodies and persons:
 - Section 27;
 - Institute for Health and Development Communication;
 - Human Science Research Council;
 - National Institute for Occupational Health;
 - The Pharmaceutical Society of South Africa;
 - Alexander Forbes Health (Pty) Ltd;
 - SASOHN National Office;
 - Southern African Institute for Occupational Hygiene; Prof Karen Hoffman: MRC [Wits Rural Public Health and Health Transitions Unit];
 - Chief Directorate: Communicable Diseases;
 - South African Medical Association;
 - WITS School of Public Health;
 - South African Medical Research Council;
 - Senior Lecturer: Department of Health Studies;
 - The Discipline of Public Health Medicine, School of Nursing, University of KwaZulu-Natal;

- Occupational and Environmental Health, University of KwaZulu-Natal;
- Western Cape Department of Health;
- South African Society of Occupational Medicine; and
- Doctors without Borders.

Consultation in respect of the draft Bill has also taken place within the Social Cluster Departments, namely the Department of Social Development, Department of Basic Education and Department of Women, Children and People with Disabilities.

FINANCIAL IMPLICATIONS FOR STATE

26. The full implementation of the Bill will have financial implications over the next three to five years. The implementation will be phased in over four financial years.
27. The Bill makes provision for six divisions, namely the National Institute of Communicable Diseases (NICD), National Institute of Non-Communicable Diseases (NINCD), National Cancer Registry (NCR), National Institute of Injury and Violence Prevention (NIVIP), National Institute of Occupational Health (NIOH) and the National Institute of Environmental Health (NIOEH). The Bill will initially focus on Communicable Diseases and Cancer Registry.
28. A summary of the budget is presented below:

Financial year 2016/17

a) NICD	320 209 102
b) NCR	8 597 906
c) NIVIP	—
d) NINCD	—
e) NIOH	108 182 633
f) NIOEH	—
TOTAL	436 989 641

Financial year 2017/18

a) NICD	336 219 557
b) NCR	9 027 802
c) NIVIP	20 000 000
d) NINCD	20 000 000
e) NIOH	113 591 765
f) NIOEH	—
TOTAL	498 839 123

Financial year 2018/19

a) NICD	353 030 535
b) NCR	9 479 192
c) NIVIP	26 000 000
d) NINCD	26 000 000
e) NIOH	119 271 353
f) NIOEH	—
TOTAL	533 781 079

Financial year 2019/20

a) NICD	370 682 062
b) NCR	9 953 151
c) NIVIP	33 400 000
d) NINCD	33 400 000
e) NIOH	125 234 921
f) NIOEH	—
TOTAL	572 670 133

29. Funding to create new information and financial management systems has been provided for through the National Treasury during the 2016/17 financial year. This

significantly reduces the cost of transition. There are advanced discussions with the Service around shared corporate functions during the transition processes, reducing the need for additional funding that needs to be made available. Lastly, implications on the personnel budget have been reduced due to the decision to align the staff of NAPHISA with the Department of Public Service and Administration's remuneration scales and conditions of service.

PARLIAMENTARY PROCEDURE

30. The legislative authority of Parliament is provided for in Chapter 4 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"). Section 44(1)¹ of the Constitution confers on the National Assembly the power to amend the Constitution, to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4 to the Constitution but excluding, subject to subsection (2), a matter within a functional area listed in Schedule 5 to the Constitution. The section also confers on the National Council of Provinces the power to participate in the amendment of the Constitution, to pass in accordance with section 76 of the Constitution legislation with regard to any matter within the functional area listed in Schedule 4, and to consider, in accordance with section 75 of the Constitution, any other legislation passed by the National Assembly.
31. Part A of Schedule 4 to the Constitution lists the functional areas of concurrent national and provincial legislative competence, whilst Part B of that Schedule lists local government matters that may be legislated upon within the framework provided for in section 155(6)(a) and (7) of the Constitution. Part A of Schedule 5 to the Constitution on the other hand lists the functional areas of exclusive provincial competence, with Part B of that Schedule listing local government matters that may be legislated upon within the framework mentioned above.
32. Sections 74 to 77 of the Constitution outline the process to be followed when processing Bills in Parliament. Section 75 outlines the process to be followed when the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 applies. Section 76 on the other hand outlines the process when the National Assembly passes a Bill referred to in subsection (3), (4) or (5) of that section. Section 76(3) of the Constitution reads as follows:

“(3) A Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4 or provides for legislation envisaged in any of the following sections:

- (a) Section 65(2);
- (b) section 163;
- (c) section 182;
- (d) section 195(3) and (4);
- (e) section 196; and
- (f) section 197.” (emphasis added).

¹ “(1) The national legislative authority as vested in Parliament—

- (a) confers on the National Assembly the power—
 - (i) to amend the Constitution;
 - (ii) to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, subject to subsection (2), a matter within a functional area listed in Schedule 5; and
 - (iii) to assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government; and
- (b) confers on the National Council of Provinces the power—
 - (i) to participate in amending the Constitution in accordance with section 74;
 - (ii) to pass, in accordance with section 76, legislation with regard to any matter within a functional area listed in Schedule 4 and any other matter required by the Constitution to be passed in accordance with section 76; and
 - (iii) to consider, in accordance with section 75, any other legislation passed by the National Assembly.”.

33. In terms of section 76(3) of the Constitution, a Bill falling within a functional area listed in Schedule 4 to the Constitution must be dealt with in accordance with the procedure set out in section 76(1) or (2) of the Constitution.
34. In order to determine if a provision of a Bill falls in an area listed in Schedule 4 to the Constitution, the courts have developed tagging guidelines. In *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others*², the Constitutional Court indicated the following regarding the test for tagging and purpose of tagging:

“[59] . . . the tagging test is distinct from the question of legislative competence. It focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.

[60] The test for tagging must be informed by its purpose. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how the Bill should be considered by the provinces and in the . . . (National Council of Provinces), and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content.

. . .

[64] The purpose of tagging is, therefore, to determine the nature and extent of the input of provinces on the content of legislation affecting them. Indeed, all the legislation mentioned in s 76(3) is legislation that substantially affects the interests of provinces.

. . .

[71] . . . the ‘substantial measure’ test permits a consideration of the provisions of the Bill and their impact on matters that substantially affect the provinces. This test ensures that legislation that affects the provinces will be enacted in accordance with a procedure that allows the provinces to fully and effectively play their role in the law-making process. This test must therefore be endorsed.

[72] To summarise: any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in . . . (section) 76. This naturally includes proposed legislation over which the provinces themselves have concurrent legislative power, but it goes further. It includes Bills providing for legislation envisaged in the further provisions set out in . . . (section) 76(3)(a)–(f), over which the provinces have no legislative competence, as well as Bills, the main substance of which falls within the exclusive national competence, but the provisions of which nevertheless substantially affect the provinces. What must be stressed, however, is that the procedure envisaged in . . . (section) 75 remains relevant to all Bills that do not, in substantial measure, affect the provinces. Whether a Bill is a . . . (section) 76 Bill is determined in two ways. First, by the explicit list of legislative matters in . . . (section) 76(3)(a)–(f); and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.” (footnotes omitted and emphasis added).

² 2010 (8) BCLR 741 (CC).

35. The *Tongoane* judgement therefore laid down the substantial measure test for the tagging of a Bill which requires the determination whether the legislation under consideration to a substantial extent regulates matters falling within Schedule 4 to the Constitution.
36. “Health services” is a functional area of concurrent national and provincial legislative competence listed in Schedule 4 to the Constitution.
37. The Collins English Dictionary defines “health” as follows:
- “ **‘health’** means—
1. the state of being bodily and mentally vigorous and free from disease
 2. the general condition of body and mind: *on poor health*
 - ...
 6. (*modifier*) of or relating to health, esp to the administration of health: *a health committee; health resort; health service*”.
38. Section 1 of the National Health Act, 2003 (Act No. 61 of 2003), defines “health services” as follows:
- “ **‘health services’** means—
- (a) health care services, including reproductive health care and emergency medical treatment, contemplated in section 27 of the Constitution;
 - (b) basic nutrition and basic health care services contemplated in section 28(1)(c) of the Constitution;
 - (c) medical treatment contemplated in section 35(2)(e) of the Constitution; and
 - (d) municipal health services;”.
39. The functions entrusted to the NAPHISA in the Bill through the various divisions of the NAPHISA are aimed at the coordination and, where appropriate, conducting of disease and injury surveillance, as well as the provision of specialised public health services, public health interventions, training and research directed towards the major health challenges affecting the population of the Republic.
40. The provisions of the Bill therefore in substantial measure fall within a concurrent provincial legislative competence and must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution.
41. Section 18 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), provides as follows:

“Referral of Bills to National House of Traditional Leaders

18. (1) (a) Any parliamentary Bill pertaining to customary law or customs of traditional communities must, before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House of Traditional Leaders for its comments.

(b) The National House of Traditional Leaders must, within 30 days from the date of such referral, make any comments it wishes to make.

(2) A provincial legislature or a municipal council may adopt the same procedure referred to in subsection (1) in respect of the referral of a provincial Bill or a draft by-law to a provincial house of traditional leaders or a local house of traditional leaders, as the case may be.” (emphasis added).

42. The Bill in clause 14 seeks to protect any work, invention, discovery or improvement derived from indigenous knowledge, originally held by any person or community, in such a manner that the person or community participates in the benefits arising from such protection. Since the Bill contains provisions pertaining to customs of traditional communities it is necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003.

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