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HEALTH
REPUBLIC OF SOUTH AFRICA
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Dear Ms Majalamba

THE DEPARTMENT OF HEALTH'S RESPONSES TO THE ISSUES RAISED DURING THE PUBLIC HEARINGS ON THE NAPHISA BILL

By direction of Ms Precious Matsoso, Director-General of the National Department of Health, please find herewith the two documents that contain responses on the issues raised during the Public Hearings on the NAPHISA Bill.

We trust that the Chairperson and the Committee will find these in order.

Kind regards

MR JM KGATLA
ACTING CHIEF OF STAFF

DATE: 04/09/2017

THE NATIONAL DEPARTMENT OF HEALTH'S RESPONSE TO SUBMISSIONS ON PUBLIC HEARINGS: THE NAPHISA BILL, 2016

04 SEPTEMBER 2017

| NAME OF STAKEHOLDER | NAPHISA BILL | COMMENTS FROM STAKEHOLDER | DEPARTMENT'S RESPONSES |
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| SOUTH AFRICAN MEDICAL RESEARCH COUNCIL | LONG TITLE/PURPOSE OF THE BILL | That "research" be qualified so to minimise overlap in the mandate of the NAPHISA and the SAMRC. It is suggested it be changed to "conduct related research." | NAPHISA will conduct Research in relation to the core mandate or the objects of the NAPHISA Act once promulgated. The SARMC has defined areas of research in terms of the South African Medical Research Act, 1991 (Act No. 58 of 1991). This limits the opportunity for any overlap. There's been a comparison between the objects and functions of the SAMRC as provided for in the enabling legislation and NAPHISA resulting in clear distinct functions between the two. Document attached hereto as Annexure A . |
| | PREAMBLE | That the following be inserted to the purpose provision of the 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; "To establish a regulatory regime for co-operation, collaboration and hierarchy of precedence in the areas of work and relationships with Science Councils, Universities and Schools of Public Health" and to provide for matters connected therewith. | The purpose of the NAPHISA Bill is not to establish a regulatory regime or entity. The Bill is aimed at establishing a public health institute with the specific mandate to coordinate and conduct, disease and injury surveillance and to provide for specialised public health services and interventions through training and research directed towards the major health challenges affecting the population of the Republic. |
| | | It is recommended that a third bullet be added as follows: <i>"RECOGNISING the South African Medical Research Council's statutory mandate to conduct, fund, innovate and oversee health research: a n d it being not the intention of the NAPHISA entity to duplicate the mandate of the SAMRC."</i> | The mandate of NAPHISA is clearly distinct and does not amount to duplication thus it is not necessary to include the proposed amendments in the preamble. |
| | | It is suggested that "such as surveillance and research" be changed to "such as surveillance and public health interventions." | The mandate of NAPHISA includes conducting research in accordance with the objects and functions of the NAPHISA Bill hence this cannot be amended as proposed. |

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| | | <p>It is recommended that a further bullet is added under the paragraph beginning with "WINDFUL..."; Such additional bullet to read:</p> <p><i>"equitable sourcing, utilisation and retention to the scarce of skills and limited funding available from co-operating and collaborating entities; and"</i></p> | <p>Statement is not appropriate for the purposes of the NAPHISA Bill and does not add value to the operations of NAPHISA.</p> |
| | DEFINITIONS | <p>It would seem that the definition of "public health" was in fact intended to be <u>"public health service"</u></p> | <p>NAPHISA is not intended to be a service delivery organisation but predominately surveillance and disease detection with specific activities.</p> <p>Public Health Service is the mandate of Provincial Health Departments.</p> |
| | SECTION 2: ESTABLISHMENT OF NAPHISA | <p>It is recommended that 2(c) be changed to <u>"Occupational and Environmental Health"</u>. This is proposed in order to encompass concerns about the impact of water quality, air quality, climate change on health, it is essential that appropriate surveillance systems are developed.</p> | <p>Occupational health by its nature includes the Environmental factors that influence the health of workers hence there's no value in including environmental health.</p> <p>Furthermore, the World Health Organisation (WHO) defines Occupational Health as <i>"a discipline devoted to prevention of occupational accidents and disabilities and the elimination of occupational factors and conditions hazardous to health and safety at work; development and promotion of healthy and safe work, work environments and work organizations; enhancement of physical, mental and social well-being of workers and maintenance of their working ability, professional and social development at work, and productivity of workers; and enablement of workers to conduct socially and economically productive lives and to contribute positively to sustainable development"</i> (WHO, 1995).</p> <p>In light of the above, the Department is of the opinion that occupational health encompasses environmental health, thus there is no need for specific mention of environmental health in the NAPHISA Bill.</p> |

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| | | <p>It is recommended that a 6th division described as "Evidence, Information and Policy" be added to the list.</p> <p>That there will be a need for a cross-cutting division to provide policy research, cross-cutting health statistics and synthesis of information to address the specified functions of NAPHISA.</p> | <p>Each division of NAPHISA will include issues of evidence, information and policy and this would cut across all five divisions hence there's no need for a separate division.</p> |
| | <p>SECTION 3: FUNCTIONS OF NAPHISA</p> | <p>It is recommended that section 3 (1) be amended to read as follows: <i>"The NAPHISA must, on its own, or where another public entity has concurrent statutory jurisdiction, then in consultation with such entity, must- "</i></p> <p>It is recommended that <u>Environmental Health</u> is added to the functions of the NAPHISA.</p> <p>Given that the National Health Research Committee has the mandate to co-ordinate research in public entities, the wording of function (o) should be changed from "coordinate research and, where appropriate conduct related research to inform policy and guidelines on communicable diseases, non-communicable diseases, cancer surveillance, injury and violence prevention and occupational health, and must develop processes for dissemination of research findings to key stakeholders" to <u>"utilise research to inform policy and guidelines on communicable diseases, non-communicable diseases, cancer surveillance, injury and violence prevention and occupational health, and must develop processes for dissemination to key stakeholders."</u></p> | <p>The amendment is not supported. The NAPHISA will perform its functions in accordance with the objects of the NAPHISA Bill.</p> <p>The NAPHISA Bill makes provision for collaboration with various stakeholders including the entities in the execution of its function as provided in sections 3 (1) (m), (o) and (p) of the NAPHISA Bill.</p> <p>See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill.</p> <p>The co-ordination in section (o) relates to the core mandate of NAPHISA i.e. communicable diseases, non-communicable diseases, cancer surveillance, injury and violence prevention and occupational health.</p> <p>The National Health Research Committee established in terms of the National Health Act, 2003 (Act No. 63 of 2003) is mandated to coordinate research activities of public health authorities.</p> |

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| | <p data-bbox="177 1592 231 1847">In respect of 3(3)(z), it is proposed that the provision be altered from:</p> <p data-bbox="231 1592 369 1847">"pay gratuities and pensions to its officers and employees" to</p> <p data-bbox="369 1592 515 1847"><i>"pay gratuities, form such Pension Fund entities or make such contribution as may be allowed under the Pension Funds Act and, 1957, as amended."</i></p> <p data-bbox="515 1592 700 1847">The reason for this proposal is that Pension Funds Act regulates the formation of Pension Funds which funds become juristic persons on their own right. Therefore, pensions would ordinarily be paid not by the Employer but by the Pension Fund, based on the particular rules of the fund and the category of membership (DC or DB) to the fund. There is no indication on the Bill that NAPHISA intends to, on its own, register as Pension Fund, hence it cannot be technically correct to make a provision for NAPHISA to pay pensions.</p> <p data-bbox="700 1592 823 1847">Given the desired close working relationship between the SAMRC and the NAPHISA, it is recommended that the Bill provides for an SAMRC official/employee to serve on the NAPHISA Board.</p> <p data-bbox="823 1592 947 1847">Given the reliance on information that will arise in the NHLS, it is recommended that the Bill provides for an NHLS official/employee to serve on the NAPHISA Board.</p> <p data-bbox="947 1592 1101 1847">In respect of 5 (1) (a), it is not clear from the Bill whether the official from the National Department of Health would be a deliberative and voting Board membership, or an observer Board membership. It is suggested that it be an observer membership so as to be consistent in demarcating the distinction between the role of the Accounting Authority (Board) and the Executive Authority (NDoH / Ministry).</p> <p data-bbox="1101 1592 1262 1847">In respect of 5 (1) (d) and (e), it is proposed that a distinction be drawn between these two as Executive Board Members, as opposed to the others being Non-Executive in that they are not involved in the day to day running of NAPHISA.</p> | <p data-bbox="177 741 231 1592">The payment of gratuities and pensions must be done within the ambit of the applicable legislation and as such there is no need to specifically mention the Act in the Bill.</p> <p data-bbox="231 741 515 1592">Appropriate board structure is vital for ensuring good governance.</p> <p data-bbox="515 741 823 1592">In accordance with the mandate of NAPHISA, the Board must collectively be comprised of individuals who together have the necessary skills, experience and competencies required for proper and efficient governing structure and not stakeholder representation (or representatives of organisations and/ or entities).</p> <p data-bbox="823 741 947 1592">In terms of the current composition the official has full fiduciary duties thus expected to act at all times in the best interest of the entity and as such has the deliberative and voting right (membership).</p> <p data-bbox="947 741 1039 1592">The Executive Authority is responsible for governance and management oversight of the entity.</p> <p data-bbox="1039 741 1208 1592">The King IV Report on Corporate Governance defines, an executive director as "an individual involved in the day to day management and/or in the full time salaried employment of the entity" and a non-executive director as "an individual not involved in the day to day management and not a full time salaried employee of the entity".</p> <p data-bbox="1208 741 1262 1592">There is a clear distinction between executive and non-executive board members in the NAPHISA Bill.</p> | |

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| | | | <p>In light of the above, both the CFO and CEO are executive members by virtue of their offices as indicated in section 5 (1) (e) and (f) of the NAPHISA Bill and the rest are non - executive members.</p> |
| <p>NATIONAL INSTITUTE FOR OCCUPATIONAL HEALTH</p> | <p>SECTION 6: APPOINTMENT OF MEMBERS OF BOARD</p> | <p>In respect of subsection 6 (4), we propose that, <i>consistent with other research councils, the term of Board membership be 3 years and the envisaged reappointment be limited to one further term.</i></p> | <p>It should be noted that NAPHISA is not a research council however the five-year term of office was deemed appropriate given the nature of the mandate of the entity.</p> |
| | <p>TAGGING OF THE BILL AS 76 BILL</p> | <p>NAPHISA is classified as section 76 bill which means that it falls within a concurrent jurisdiction between the national and provincial spheres of government, and therefore may affect provinces in varying ways. It is unclear what the concurrent jurisdiction is.</p> | <p>The tagging of the Bill as section 76 bill was done by the joint tagging committee which is of the view that the Bill will affect the Provinces.</p> <p>Schedule 4 of the Constitution listed health services as a functional area of concurrent national and provincial legislative competence.</p> <p>Concurrent jurisdiction is an authority that has been conferred on two or more courts to hear and decide similar cases or it is a jurisdiction of a government agency and a court with the same jurisdiction. However, the Constitution confer concurrent legislative functions to both National and Provincial Government when it comes to health issues.</p> |
| | <p>PREAMBLE</p> | <p>RECOGNISING that communicable and non-communicable diseases, occupational health, injuries and prevention of violence are important health challenges in South Africa;</p> <p>Change to:</p> <p>RECOGNISING that communicable and non-communicable diseases, <u>occupational and environmental health and safety</u>, injuries and prevention of violence are important health challenges in South Africa;</p> | <p>See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill.</p> |

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| | | <p>IN ORDER TO - 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,</p> <p>The provision of training and conducting research is covered in previous bullet. Therefore, the bullet should read as follows</p> <p><u>"support interventions aimed at reducing the burden of communicable and non-communicable disease and injuries and at improving occupational and environmental health and safety"</u></p> | <p>The last two bullets focus on different issues relating to training and conducting research as follows:</p> <p>(1) Bullet 2: Focus is directed towards the major problems affecting the population; and</p> <p>(2) Bullet 3: is aimed at reducing the burden of communicable and non-communicable diseases and injuries and improving occupational health.</p> |
| | DEFINITIONS | <p>"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, <u>work place exposure or other risk factors</u>, epidemic and pandemic situations,</p> <p>Include <u>"workplace exposures"</u> in the definition for surveillance</p> | <p>The definition as is stands is inclusive of all risk factors including work place exposure.</p> |
| | | <p><i>As the NAPHISA will be dealing with confidential patient and client information and will be required to share information and have access to information which may introduce legal impediments to the collection of information from national surveys of other organisations such as Statistics South Africa, the bill make need to make reference to the protection of personal information Act (PoPI Act) and Promotion of Access to information Act (PAIA) to achieve its objectives.</i></p> | <p>Reference can be made to applicable legislation instead of naming, as inclusion of one is the exclusion of the other.</p> |
| SECTION 2(1) ESTABLISHMENT OF NAPHISA | | <p>(c) Occupational Health; Should be <u>"occupational and environmental Health and Safety"</u></p> | <p>See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill.</p> |
| SECTION 3 – FUNCTIONS OF NAPHISA | | <p>3.(1) should be organised according to specific categories (e.g. coordination, advisory/policy, capacity development, technical, public health intelligence, communication, advocacy)</p> | <p>The functions as stipulated in the NAPHISA Bill are cross-cutting thus cannot be categorised as proposed and may not be consistent with legislative drafting.</p> |

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| | | <p>(b) coordinate, develop and maintain surveillance systems to collect, analyse and interpret public and occupational <u>and environmental Health and Safety</u> data in order to guide health interventions;</p> <p>(d) use public and <u>occupational and environmental Health and Safety</u> information for monitoring and evaluation of policies and interventions;</p> <p>(e) coordinate <u>and where appropriate provide</u> reference laboratory and referral services;</p> <p>(f) provide leadership and direction to provinces, <u>other government departments and local authorities in respect of disease and injury surveillance and outbreak response and occupational and environmental Health and Safety assessments;</u></p> <p>(g) strengthen capacity in public <u>and occupational health surveillance</u> in order to reduce the burden of disease and injury;</p> <p>(h) strengthen the capacity of the workforce in occupational health by <u>developing advising regarding the curricula for occupational and environmental Health and Safety;</u></p> <p>(i) strengthen cross-border, regional and international collaboration on communicable diseases, non-communicable diseases, injury and violence prevention and <u>occupational and environmental Health and Safety;</u></p> <p>(j) strengthen epidemiology and surveillance of communicable diseases, non-communicable diseases, cancer, injury and violence prevention and occupational <u>and environmental health and safety;</u></p> <p>(m) collaborate with relevant government departments and government agencies to implement communication strategies on public and <u>occupational and environmental Health and Safety</u> issues and outbreak response;</p> | <p>See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill.</p> <p>This section is meant for the coordination of reference laboratory and referral services thus the proposed insertion is not supported.</p> <p>See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill.</p> <p>The deletion of occupational health is supported.</p> <p>The insertion of advising and not developing curriculum for occupational health is supported.</p> <p>See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill.</p> <p>See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill.</p> |

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| | | <p>(n) provide technical support to all different spheres of government and other regulatory bodies, <u>organised labour and employment bodies</u> on surveillance of communicable diseases, non-communicable diseases, cancer, injury and violence prevention and <u>occupational and environmental Health and Safety</u> and mitigation strategies for <u>occupational and environmental exposures</u>;</p> <p>(o) coordinate research and, where appropriate, conduct <u>research including operational research</u> to inform policy and guidelines on communicable diseases, non-communicable diseases, cancer surveillance, injury and violence prevention and <u>occupational and environmental Health and Safety</u>, and must develop processes for dissemination of research findings to key stakeholders;</p> <p>(q) strengthen advocacy, social mobilisation and partnerships in order to address communicable diseases, non-communicable diseases, cancer surveillance, injury and violence prevention and <u>occupational and environmental Health and Safety</u>;</p> <p>(r) <u>coordinate and where appropriate</u> provide training and technical information on health issues to health professionals, governmental and regulatory bodies <u>and lay cadres</u>;</p> <p>(t) maintain accredited reference and specialised laboratories for pathogen/<u>exposure</u> detection, disease and injury surveillance and monitoring, outbreak response and the provision of scientific evidence to prevent and control <u>infectious</u> diseases;</p> <p># <u>specialised laboratories within NAPHISA will not be limited to pathogen detection for communicable diseases but other sources of exposures result in non-communicable diseases as well</u></p> | <p>The insertion of organised labour and employment bodies is not supported as technical support should be provided to health workers including managers thus organised labour cannot be singled-out.</p> <p>See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill.</p> <p>Operational research is a form of research so there is no need to specifically include this.</p> <p>See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill.</p> <p>See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill.</p> <p>The function should remain to "provide training" as this is currently the function of NIOH and NICD which now form part of the NAPHISA.</p> <p>It is not clear what is meant by "lay cadres" thus the insertion is not supported.</p> <p>This amendment will detract from the intention of this clause of infectious disease control thus it is not supported.</p> |

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| | | <p>(u) monitor trends in <u>occupational and environmental Health and Safety</u> and conduct workplace health risk assessments;</p> <p>(w) produce and distribute reports on health and disease profiles, injuries and violence and <u>occupational and environmental Health and Safety</u>; and</p> <p>(x) <u>coordinate and where appropriate</u> provide specialised and referral services related to <u>occupational and environmental Health and Safety</u> and health, including—</p> <p>(i) specialised analytical laboratory services to support the practice of occupational medicine and occupational hygiene;</p> <p># <i>analytical may be too restricted.</i></p> <p>(iii) <i>analysis and /or</i> measurement of selected-hazardous contaminants from environmental and biological samples collected from the workplace and from <u>including</u> workers, and participation in quality assurance schemes for selected hazardous agents;</p> <p>(iv) analyses of workplace contaminants in biological and environmental samples for toxic metals, organic substances, pesticides and persistent organic pollutants;</p> <p># analytical may be too restricted</p> <p>(v) specialised testing for bio-aerosols and nano-particles;</p> <p># <i>we think that the Bill should no be so prescriptive as exposures may change overtime</i></p> <p>(vi) assessment of occupational allergies;</p> | <p>See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill.</p> <p>(x) The core mandate of NAPHISA is to provide specialised and referral services thus the proposed amendment is not supported. See comment above regarding inclusion of environmental health in the NAPHISA Bill.</p> <p>(i) Amendment not supported, as this relates to specialised services.</p> <p>(iii) insertion not supported as the intention is to measure contaminants from environmental and biological samples collected from the workplace.</p> <p>(iv) the above clause includes all hazardous agents.</p> <p>(v) Amendment not supported as this seeks to address specific function relating to bio aerosols and nano- particles.</p> <p>(vi) It is critical to assess occupational allergies thus the section cannot be deleted.</p> |

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| | | <p>Section 3 (2) For the purposes of subsection (1) (e), "referral services" means any specialist services that require specialist knowledge, skills and interventions.</p> <p>#This point may be better placed in the definition section.</p> <p>Section 3 (3) (c) undertake operational research; #covered in section 3 (1) (o)</p> <p>3 (3) (d) cooperate with persons and institutions undertaking basic and applied 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;</p> <p>3(3) (y) appoint officers and employees at such remuneration and on such conditions as it may deem fit aligned to Department Public Service Administration subject to the relevant labour legislation;</p> | <p>The definition is specific to section 3 (1) (e) hence it cannot be placed in the definition section.</p> <p>The research in 3 (1) (o) is general in nature and is mandatory for NAPHISA whilst the research in 3 (3) (c) is specific and is discretionary in nature.</p> <p>The insertion of applied research is not supported as the intention is not to limit the scope.</p> <p>Not supported, employees not under Public Service Act and remuneration ad conditions will be subject to the relevant legislation.</p> |

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| | SECTION 5: COMPOSITION OF THE BOARD | Section 5 (1)(c)(v) occupational and environmental health and safety ; #recommend representation from the private sector and worker representation on the board | See response to comments in section 2 on the establishment of NAPHISA regarding inclusion of environmental health in the NAPHISA Bill. In accordance with the mandate of NAPHISA, the Board must collectively be comprised of individuals who together have the necessary skills, experience and competencies required for proper and efficient governing structure. Given the fact that Health Promotion is not the core mandate of NAPHISA. |
| | SECTION 12: FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER | 12 (2) (g) the issuing of guidelines regarding the manner in which claims should be handled; #: <i>it is unclear which claims are referred to here.</i> | Refers to claims from Board members and Staff. |
| PUBLIC HEALTH SPECIALIST TRAINING | SECTION 2: ESTABLISHMENT OF NAPHISA | The following divisions should be added: (i) Healthcare Process Improvement (ii) Health Informatics | The proposed amendment is not supported. This is not the mandate of NAPHISA. |
| | SECTION 3: FUNCTIONS OF NAPHISA | 3.1 (e) 'co-ordinate reference laboratory and referral services' This seemingly applies only to referral processes related to laboratory services, and should be broadened to include optimization of actual patient referral systems. | The proposed amendment is not supported. Optimization of patient referral systems is not the mandate of NAPHISA. This falls under the mandate of the Provincial Departments of Health. |
| | SECTION 2: ESTABLISHMENT OF NAPHISA | 3.1 (f) 'advise the minister on strategies to improve the health of the population 'advise the minister on strategies to improve the health of the population <u>as well as healthcare service design</u> ' | The proposed amendment is not supported. Health Service design is not within the mandate of NAPHISA. |
| | SECTION 3: FUNCTIONS OF NAPHISA SECTION 3 (1) | 3.1 (r) 'provide training and technical information on health issues to health professionals, governmental and regulatory bodies' 'provide training and technical information on health and health systems issues to health professionals, governmental and regulatory bodies' | The proposed amendment is not supported. Health systems issues is not within the mandate of NAPHISA. |

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| SOUTH AFRICAN CIVIL SOCIETY COALITION FOR WOMENS, ADOLESCENTS AND CHILDREN'S HEALTH | SECTION 5: COMPOSITION OF THE BOARD | <p>3.1 (y) To analyse and improve healthcare service delivery via the use of Systems Thinking, Lean Management, and Plan-Do-Study-Act approaches.</p> <p>SACSoWACH proposes the addition of a women, child and adolescent health expert to join the composition of the NAPHISA board. The addition of a specific expert on adolescent, child and women's health is cross-cutting in nature and will ensure the holistic delivery of health services.</p> | <p>The proposed amendment is not supported. Health Care Service Delivery is not the mandate of NAPHISA.</p> <p>The Department is of the view that instead of having two community representatives, there should be formal processes of working with community organisations in accordance with Section 3 (1) (g) of the Bill which provides for strengthening advocacy, social mobilisation and partnerships.</p> |
| PROF. WELILE SHASHA | SECTION 3 (1) | <p>The emphasis on data systems, their maintenance as well as processes for data dissemination and management is significant. There is an inadequate coverage or recognition within the Institute's proposed functions and roles of the specific mechanisms that will be used to facilitate the coordination, dissemination, research and disease surveillance work in alignment, for instance, with the South African government's open data7 commitments.</p> <p>The Bill does not adequately address modern data considerations – particularly in relation to information and communication and technology (ICT) needs and management of vast national public health and disease surveillance trends.</p> <p>The Bill should, within its governance structures incorporate such expertise possibly through the inclusion of an ICT or open data expert.</p> | <p>This is an operational matter that should not be written in law, the ICT policy is essential for all entities and must be developed by the Board and implemented by management.</p> |

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| THE PUBLIC SERVICE ACCOUNTABILITY MONITOR | SECTION 2: ESTABLISHMENT OF NAPHISA ENVIRONMENT AND OCCUPATIONAL HEALTH | <p>The current NAPHISA Bill does not adequately consider the provisions of Section 24 of the Constitution which provides for protection of the environment towards ensuring the health and well-being of individuals.</p> <p>This could potentially translate to significant gaps in relation to research, monitoring and overall policy coordination within the Institute and between the Institute and other government departments.</p> | <p>The Department of Environmental Affairs is mandated to give effect to the right envisaged in section 24 of the Constitution. In this regard, there are several pieces of legislation to this effect and these include but not limited to:</p> <ol style="list-style-type: none"> 1. National Environmental Management Act, (No.107 of 1998); 2. National Environmental Management Act: Air Quality Act, (No. 39 of 2004); and 3. National Environmental Management Act: Waste Act, (No.59 of 2008). <p>Furthermore, section 83 of the National Health Act, 2003 (Act No.63 of 2003), also give effect to the right envisaged in section 24 (a) of the Constitution.</p> |
| | SECTION 3(1)(L) | <p>There is no mention of whether these recommendations (control measures for disease outbreaks: mitigating risks and hazards of injury and violence, cancer and workplace exposures) are of a binding nature or how the National Department of Health should implement such the recommendations and – whether any obligations are placed on the relevant Department to implement, consider or explain non-implementation of same recommendations.</p> | <p>Recommendations are by their nature matters which the National Department must consider for implementation.</p> <p>However, it would be inappropriate for such recommendations to be binding since there are a number of other factors which NDoH must take account of before implementing any recommendation.</p> |
| | SECTION 3(1)(W) REPORTING AND ACCOUNTABILITY MECHANISM | <p>It is recommended that the Bill require reports (health and disease profiles, injuries and violence; and occupational health) be produced according to the specific divisions and distributed on public platforms regularly - at least quarterly, in order to achieve the objective of surveillance.</p> <p>It would also be helpful if the Act provide specific sub-headings in terms of what information the reports would contain. These sub-headings should be determined in consultation with each division.</p> | <p>The details on how and when reports should be produced can be addressed through regulation.</p> <p>However, public entities are required to produce reports regularly and reports are made public.</p> |
| | SECTION 4: GOVERNANCE AND CONTROL OF NAPHISA | <p>It is also advisable for the Bill to outline some basic eligibility criteria of the community members on the panel in order to ensure greater representation of marginalised groups and those advocating for the rights of women and children in particular. It may be of benefit to stipulate that the public representatives must have a clear track record of community engagement.</p> | <p>Community representatives are selected based on the extent and nature of community involvement.</p> |

| NAME OF STAKEHOLDER | NAPHISA BILL | COMMENTS FROM STAKEHOLDER | DEPARTMENT'S RESPONSES |
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| | | <p>Section 4 of the Bill states that the board is the accounting authority of the NAPHISA, and that the CEO is the administrative head as well as a board member.</p> <p>The recommendation in this respect that an oversight body be created in order to supervise expenditure within the Institute and to provide disciplinary proceedings if funds are spent in a way inconsistent with the Act.</p> | <p>The CEO is a member of Board by virtue of being CEO. The CEO is accountable to the Board.</p> <p>NAPHISA is a public entity and as such is accountable to the Executive Authority responsible for Health.</p> |
| | <p>SECTION 5: COMPOSITION OF THE BOARD</p> | <p>There is a clear need for the Bill to provide more opportunities for members of the public to contribute to the NAPHISA.</p> <p>This could be achieved through the inclusion of at least two members of the public, at least one ICT expert – possibly a civic technology expert and at least one member of civil society with a proven track record in health activism, research and community mobilisation.</p> | <p>It is proposed that, instead of having two community representatives, there should be formal processes of working with community organisations in accordance with Section 3 (1) (q) of the Bill which provides for strengthening advocacy, social mobilisation and partnerships.</p> |
| <p>HEALTH PROMOTION AND DEVELOPMENT FOUNDATION NETWORK</p> | <p>PREAMBLE</p> | <p>The NAPHISA bill does not mention health promotion in the preamble and as such the preamble should recognise the importance of health promotion as a strategy to improve health of populations.</p> | <p>Health Promotion is not the core mandate of the NAPHISA.</p> |
| | <p>SECTION 3: FUNCTIONS OF THE BOARD</p> | <p>One of the functions of NAPHISA should be to work with civil society organisations towards the establishment of an independent health promotion foundation.</p> | <p>NAPHISA is not intended to be a health promotion organisation, however it should be noted that section 3 (1) (q) of the NAPHISA Bill provides for strengthening advocacy, social mobilisation and partnerships with various stakeholders.</p> |
| | <p>SECTION 5: COMPOSITION OF THE BOARD</p> | <p>An expert in health promotion should be a member of the Board.</p> | <p>In accordance with the mandate of NAPHISA, the Board must collectively be comprised of individuals who together have the necessary skills, experience and competencies required for proper and efficient governing structure. Given the fact that Health Promotion is not the core mandate of NAPHISA, an expert in health promotion is not required in the Board.</p> |

ANNEXURE A

| HEADING | NAPHISA BILL | SAMRC ACT |
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| Objects of the Entity | Long Title - 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. | Section 3 - The objects of the MRC are, through research, development and technology transfer, to promote the improvement of the health and the quality of life of the population of the Republic and to perform such other functions as may be assigned to the MRC by or under this Act |
| Functions of Entity | 3. (1) The NAPHISA must— (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 | (1) The functions, powers and duties of the MRC shall be to achieve its objects with the means at its disposal, and for the purposes of achieving those objects the MRC may- (a) (i) undertake research of its own accord; or (ii) undertake research on behalf of the State or any other authority, or on behalf of any person or institution, or support such research financially; |

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| | <p>interpret public and occupational health data in order to guide health interventions;</p> <p>(c) use surveillance data and other sources of information, where appropriate, to advise on the setting of health policies, priorities and planning;</p> <p>(d) use public and occupational health information for monitoring and evaluation of policies and interventions;</p> <p>(e) coordinate reference laboratory and referral services;</p> <p>(f) provide leadership and direction to provinces and local authorities in respect of disease and injury surveillance and outbreak response;</p> <p>(g) strengthen capacity in public and occupational health surveillance in order to reduce the burden of disease and injury;</p> <p>(h) strengthen the capacity of the workforce in occupational health by developing the curriculum for occupational health;</p> <p>(i) strengthen cross-border, regional and international collaboration on communicable diseases, non-communicable diseases,</p> | <p>(b) operate and maintain national research facilities assigned to it by the Minister;</p> <p>(c) promote co-operation between the Republic and other countries with regard to research, development and technology transfer;</p> <p>(d) develop and utilize the technological expertise in its possession or make it available to any person or institution in the Republic or elsewhere;</p> <p>(e) promote the training of researchers and related personnel, and for this purpose grant study bursaries and loans, and make monetary contributions for research programmes;</p> <p>(f) establish and control research laboratories and other facilities in those fields of research which the Board may from time to time approve;</p> <p>(g) co-operate with persons and institutions undertaking research in other countries, by the exchanging of scientific knowledge by means of international meetings and other programmes;</p> <p>(h) make grants-</p> <p>(i) to universities, technikons, colleges, museums and scientific institutions in aid of research by their staff and to establish</p> |
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| | <p>injury and violence prevention and occupational health;</p> <p>(i) strengthen epidemiology and surveillance of communicable diseases, non-communicable diseases, cancer, injury and violence prevention and occupational health and safety;</p> <p>(k) advise the Minister on strategies to improve the health of the population;</p> <p>(l) support the health sector response and make recommendations to government on—</p> <p>(i) control measures for disease outbreaks; and</p> <p>(ii) mitigating risks and hazards of injury and violence, cancer and workplace exposures;</p> <p>(m) collaborate with relevant government departments and government agencies to implement communication strategies on public and occupational health issues and outbreak response;</p> <p>(n) provide technical support to all spheres of government and other regulatory bodies on</p> | <p>channels for the exchange and supplementation of knowledge and expertise;</p> <p>(ii) to universities, technikons, colleges, schools, museums and other institutions or to persons associated therewith, for research and development or for the provision of facilities with a view to research and development;</p> <p>(i) participate in joint research operations with departments of State, universities, technikons, colleges, museums, scientific institutions and other persons;</p> <p>(j) co-operate with educational authorities and scientific or technical societies or industrial institutions representing employers and employees, respectively, for the promotion of the instruction and training of researchers, technical experts and other supporting personnel in universities, technikons, colleges and schools;</p> <p>(k) enter into agreements with any person or, subject to the provisions of section 5, with any government or administration, upon such conditions as the MRC and that person, government or administration may agree;</p> |
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| | <p>surveillance of communicable diseases, non-communicable diseases, cancer, injury and violence prevention and occupational health and mitigation strategies for occupational exposures;</p> <p>(o) coordinate research and, where appropriate, conduct research to inform policy and guidelines on communicable diseases, non-communicable diseases, cancer surveillance, injury and violence prevention and occupational health, and must develop processes for dissemination of research findings to key stakeholders;</p> <p>(p) participate in research independently or collaborate with government, academic institutions, scientific institutions and any other similar institutions;</p> <p>(q) strengthen advocacy, social mobilisation and partnerships in order to address communicable diseases, non-communicable diseases, cancer surveillance, injury and violence prevention and occupational health;</p> | <p>(l) purchase, hire, possess or otherwise acquire movable property, and let, pledge, encumber or dispose of that property;</p> <p>(m) hire or let services and immovable property;</p> <p>(n) perform or exercise any function or power entrusted to or conferred upon the MRC in terms of any other law;</p> <p>(o) with the approval of the Minister, acting with the concurrence of the Minister of Finance-</p> <p>(i) purchase, possess or otherwise acquire immovable property and encumber or dispose of that property;</p> <p>(ii) borrow money from time to time on such terms and conditions as the Board may approve, by way of loans from any source and against the security which the Board may deem fit; and</p> <p>(iii) on its own, or in association with any person, establish a company for the purpose of developing or exploiting in any manner any invention or technological expertise, and for this purpose acquire an interest in or control over a company or statutory body referred to</p> |
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| | <p>(r) provide training and technical information on health issues to health professionals, governmental and regulatory bodies;</p> <p>(s) contribute to human resource development in the public health sector;</p> <p>(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;</p> <p>(u) monitor trends in occupational health and conduct workplace health risk assessments;</p> <p>(v) support the monitoring of workplaces in order to assess worker exposure to workplace hazards;</p> <p>(w) produce and distribute reports on health and disease profiles, injuries and violence and occupational health; and</p> <p>(x) provide specialised and referral services related to occupational safety and health, including—</p> <p>(i) specialised analytical laboratory services to support the practice of</p> | <p>in section 1 of the Exchequer Act, 1975 (Act 66 of 1975);</p> <p>(p) generate income by the marketing of its biomedical expertise and technology;</p> <p>(q) subject to the provisions of any other law relating to the regulating of and control over medicines, related substances and medical equipment, on its own or in association with any person, test and evaluate such medicines, related substances and medical equipment pertaining to preventative or curative medical care for medical scientific purposes or the promotion of technology in general;</p> <p>(r) in addition to any function, power or duty that the MRC is required or empowered to do in terms of the provisions of this Act or in terms of any other law, do everything that is conducive to the achievement of its objects or is calculated, directly or indirectly, to enhance the value of or render profitable the property or rights of the MRC.</p> <p>(2) The MRC shall, in addition to its other functions in terms of this Act or any other law-</p> |
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| | <p>occupational medicine and occupational hygiene;</p> <p>(ii) consultations on the appropriate collection of samples;</p> <p>(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;</p> <p>(iv) analyses of workplace contaminants in biological and environmental samples for toxic metals, organic substances, pesticides and persistent organic pollutants;</p> <p>(v) specialised testing for bio-aerosols and nano-particles;</p> <p>(vi) assessment of occupational allergies;</p> <p>(vii) advising on the prevention of occupational diseases and occupational injuries;</p> <p>(viii) conducting workplace visits and risk assessments of hazardous factors; and</p> | <p>(a) undertake the investigations or research which the Minister may assign to it; and</p> <p>(b) advise the Minister-</p> <p>(i) on the determination of policy and national priorities regarding research; and</p> <p>(ii) on development, promotion, implementation and co-ordination of research on a national basis.</p> |
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(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.

(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;

(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;

(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;

(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;

(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;
- (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;
- (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 surety ships and secure payment thereunder in line with the Public Finance Management Act;
- (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—
 - (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;
 - (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;
 - (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

(zB) produce and sell by-products.