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URGENT

Our ref. D Eloff / MAT3252

15 April 2021

MINISTER N C DLAMINI-ZUMA

Minister of Cooperative Governance and Traditional Affairs
87 Hamilton Street
Pretoria
0002

BY HAND

BY EMAIL: Info@cogta.gov.za
NFCcomments@health.gov.za

Dear Minister Dlamini-Zuma,

RE: DEARSA // MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS – COMMENTS ON THE DRAFT AMENDMENTS TO REGULATIONS IN TERMS OF SECTION 27(2) OF THE DISASTER MANAGEMENT ACT, 2002.

1. With reference to the above mentioned. We confirm that we act on behalf of Dear SA, a registered national not-for-profit company and civil rights organisation with 750 000 members across the country. Our client acts in the interest of its supporters and the interest of the public through active participation and advocacy. Our client facilitates public

participation and comment on a variety of draft legislation in order to have ordinary South Africans' voices heard through an apolitical platform.

2. This letter is directed to the Minister of Cooperative Governance and Traditional Affairs in terms of Section 3 of the Disaster Management Act (No. 57 of 2002).

THE CONSTITUTION AND JUSTICE ADMINISTRATION

3. The Constitution of the Republic of South Africa makes provision for public involvement in law-making, oversight and other processes of parliament and the executive, thus allowing every citizen to have a say in matters that affect them. The most prominent being submissions and comments on legislative amendments, legislative adaptations and/or the new implementation of legislation.
4. Our Constitutional framework asserts public participation as one of the pillars of our democracy. Public participation creates a direct link between the public and the decision-makers in bureaucracy. At its most basic level, public participation is a way of ensuring that those who make decisions that affect South Africans' lives have a dialogue with that public before making those decisions. Public participation is entrenched in our Constitution in several sections (namely sections 17, 59, 70, 72, 115, 118) which sets the tone for public involvement and participation in the legislative and executive decision-making process. Moreover, the *Legislative Sector Policy and Strategic Framework* sets out as goal “*deepening public participation and representation.*” Pursuant hereto our client has instructed us to direct this letter to you.

REGULATIONS AND PUBLIC PARTICIPATION

5. On 15 April 2021, you published a Government Notice requesting public comment on amendments to the Regulations of the Disaster Management Act, 2002. Comment is required by no later than close of business on 19 April 2021. These regulations are of considerable importance given the impact of the COVID-19 pandemic and measures imposed to purportedly curb the spread of COVID-19. The amendments relate to the establishment of a COVID-19 Vaccine Injury No-Fault Compensation Scheme.

6. It is trite in South Africa law that public participation is a crucial element in the legislative and executive decision-making process. The nature of the legislation or decision-making concerned, the importance of the legislation or decision in question and the impact on the public have to be considered when determining whether public participation was reasonably allowed and adhered to.
7. Our client is of the firm view that the time allowed for public participation is unreasonably short. Consequently, in light of the importance of the subject matter, the mere four (4) days allowed is a gross violation of the right to just administrative action and is therefore unlawful, unreasonable and procedurally unfair.
8. In terms of Draft Amendments to Regulations issued in terms of Section 27(2) of the Disaster Management Act, 2002, the amendments, more so in terms of Regulation 88 – 96, should be of great concern to all South Africans, more so where it creates an element of zero-liability to vaccine manufacturers.

REQUEST

9. In light of the above, our client requests that the period for public comment be extended by no less than three (3) weeks to allow for sufficient and proper public comment.
10. Our client requests your urgent response on or before close of business **19 April 2021**.

Yours faithfully,



HURTER SPIES INC.

Per. Daniël Eloff

CC: Deputy Minister Of Cooperative Governance And Traditional Affairs – Local Government

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CC: Private Secretary to Minister of Cooperative Governance and Traditional Affairs

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CC: Chief of Staff to Minister of Cooperative Governance and Traditional Affairs

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