IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: 2025-125411

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Second Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY TRADE UNION	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Fifth Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SOUTH AFRICA	Seventh Respondent
THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Eighth Respondent
HEALTH FUNDERS ASSOCIATION	Ninth Respondent

In re: eight matters (Case No: 2024-057449, Case No: 2024-058172, Case No: 2024-111209, Case No: 2025-020969, Case No: 2025-045340, Case No: 2025-083348, Case No: 2025-134493)

HEALTH FUNDERS ASSOCIATION'S HEADS OF ARGUMENT

TABLE OF CONTENTS

INTRODUCTION

1 The Health Funders Association ("**HFA**") has applied to this Court to declare the National Health Insurance Act 20 of 2023 ("**the NHI Act**") unconstitutional and invalid. It has done so because the Act is an irrational, unworkable measure that, if implemented, will cause substantial harm to the constitutional right of access to healthcare.

2 The HFA is not alone in challenging the NHI Act. Several parties, including the HFA, have applied to declare the Act unconstitutional and invalid because key provisions are substantively inconsistent with the Constitution. Others have brought review proceedings to set aside the President's decision to assent to the Act on legality grounds. Still others seek to invalidate the Act on the basis that Parliament's public participation process was constitutionally deficient.

3 The HFA launched its application on 4 June 2025 – more than six months ago. To date, the Minister and President have not delivered answering affidavits in that application. Had they done so within reasonable timelines, the matter would be well advanced and likely ripe for hearing.

4 Instead, the Minister[1] has applied for two forms of relief, both of which aim to bring the HFA's application to a grinding halt.

5 First, the Minister seeks an order staying the HFA's main application, and several other applications brought in the High Court which challenge the

[1] When we refer to the Minister in these submissions, unless the context indicates otherwise, we should be taken mean the Minister of Health (the first applicant) and the Director-General (the second applicant).

NHI Act, pending the final determination of various applications currently before the Constitutional Court. The pending applications in the Constitutional Court concern (i) preliminary questions regarding the reviewability of, and jurisdiction over, the President's decision to assent to an Act; (ii) the legality and rationality of the President's assent to the NHI Act; and (iii) the constitutionality of the parliamentary public participation process that preceded the passage of the NHI Act.[2]

6 Second, the Minister seeks an order consolidating the HFA's application with those of other litigants, including Solidarity Trade Union ("**Solidarity**"), the Board of Healthcare Funders ("**BHF**"), the South African Private Practitioners Forum ("**SAPPF**"), the Hospital Association of South Africa ("**HASA**"), the South African Medical Association ("**SAMA**"), and Sakeliga NPC ("**Sakeliga**").[3]

7 The HFA opposes both of these forms of relief.

8 The proposed stay is fundamentally unjust if it is not coupled with an undertaking not to bring the NHI Act into operation or to stay its implementation. There is simply no basis for the Minister to say that he wants to continue implementing the Act, but, in the same breath, to say that the HFA and others should be stopped in their challenge to the Act.

9 In any event, the Minister's reasons for seeking a stay are without merit. The primary reason is cost saving and convenience: he says he should

---

2 Further Amended Notice of Motion, p001-544 and 545, prayer 1.

3 Further Amended Notice of Motion, p001-549 and 550, prayer 7.

not be required to incur the legal costs of defending the NHI Act on multiple fronts, given that Constitutional Court proceedings may render the High Court proceedings moot. He also claims that the proposed stay will prevent parallel proceedings being conducted in different courts, and that it is merely akin to a separation of issues granted under Uniform Rule 33(4).

10 The cost of litigation is no reason to hold up the HFA's constitutional challenge, which it has brought competently in this Court and which it has a right, under section 34 of the Constitution, to have adjudicated fairly and promptly. The litigation costs associated with defending the NHI Act against legal challenge are simply a function of government having enacted one of the most far-reaching pieces of legislation in our country's democratic history. And the suggestion that the HFA's application may be rendered moot is based on speculation and the occurrence of multiple, remote permutations in separate litigation, including that the Minister's arguments in that case fail.

11 The Minister's claim that the stay will avoid parallel inquiries or conflicting judgments is similarly mistaken. The matters in the Constitutional Court are fundamentally distinct from those in the High Court.

11.1 The High Court matters concern the constitutional validity of substantive provisions of the NHI Act. That is, they involve testing the NHI Act's provisions directly against the Constitution.

11.2 The Constitutional Court matters do not involve the same exercise. The review of the President's decision to assent to the NHI Act concerns the lawfulness and rationality of that decision.

The President may have acted lawfully and rationally in assenting to an Act that turns out to be substantively unconstitutional. Or he may have acted unlawfully and irrationally in assenting to an Act that turns out to be constitutionally compliant. Simply put, the inquiries are fundamentally distinct.

11.3 The challenges to the parliamentary process concern the extent to which the public and provinces were consulted before the NHI Act was passed. They have nothing to do with the consistency of substantive provisions of the NHI Act with provisions of the Constitution.

12 Lastly, the Minister's claim that the proposed stay is akin to a separation of issues is misguided. A separation of issues involves postponing one set of issues between two parties in particular proceedings, so that another set of potentially dispositive issues between the same two parties in the same proceedings can be determined upfront. In this case, the stay will *bar* the HFA, for as long as the stay is in operation, from pursuing the entirety of its case *at all*.

13 As against the negligible benefit that the stay will achieve, the HFA opposes the relief because, if granted, it will substantially delay the HFA's main constitutional challenge, and the other proceedings like it, likely for a number of years.

14 All the while, the President will be at liberty to bring the NHI Act into force, and the Minister will be at liberty to implement its provisions. Indeed, save

for a practically meaningless undertaking not to declare that medical schemes are prohibited from providing supplementary cover (under section 33 of the NHI Act) while the stay is in place, the President and the Minister have made clear that the NHI Act *will* be implemented for the duration of the stay.

15 The HFA has demonstrated, with the support of expert economic evidence from Genesis Analytics, that this implementation will cause substantial harm to the HFA, its members and the broader public. In these circumstances, the interests of justice weigh heavily against a stay of proceedings.

16 The HFA also opposes the formal consolidation of its matter with the other challenges currently pending in the High Court.

17 To be clear, the HFA is not opposed to the joint hearing of similar cases that are all ripe for hearing at more or less the same time. But this is an outcome that can be appropriately achieved by proper case management and does not require formal consolidation. There is no advantage to formal consolidation that cannot be achieved by a joint hearing of like cases.

18 On the contrary, a formal consolidation has many disadvantages in this case. It will, if granted, render the High Court proceedings unwieldy and unworkable. It would make the evidence in one matter evidence in all the matters, and would require the parties to deliver endless affidavits addressing issues arising in other applications. It would also mean that an interlocutory dispute arising in one matter becomes an interlocutory dispute for all, multiplying costs and delays and ensuring that every

application is forced to progress only at the pace of the slowest-moving case. Again, this is a fundamentally unfair consequence in circumstances where there is no undertaking to stay the implementation of the Act.

19 In these heads of argument, we address the following topics in turn:

19.1 First, we set out the factual background, and describe the HFA's main constitutional challenge, the other applications that have been instituted, and the contours of the Minister's proposed stay of proceedings.

19.2 Second, we argue that the stay relief should be refused, because it would be contrary to the interests of justice. In particular:

19.2.1 we set out the legal principles applicable to a stay of proceedings;

19.2.2 we demonstrate that the stay would cause substantial delay and is motivated by mere speculation about the possible outcome of unrelated litigation;

19.2.3 we show that the Minister's reasons – regarding the cost of litigation and the risk of parallel inquiries or conflicting judgments – do not justify a stay; and

19.2.4 we demonstrate that, in fact, the HFA, its members, and the general public will suffer substantial harm if the stay is granted and the NHI Act is implemented.

19.3 Third, we show that the consolidation of the HFA's application with the other constitutional challenges would be inappropriate, inconvenient and prejudicial.

19.4 Lastly, we address the Minister's opposition to, and application to strike out, the second Genesis report and the paragraphs of the HFA's second supplementary answering affidavit referring to that report.

FACTUAL BACKGROUND

The HFA's main constitutional challenge

20 The President signed the NHI Act into law on 15 May 2024.[4]

21 On 4 June 2025, the HFA – which represents some of South Africa's largest medical schemes and their members, making up 46% of total medical scheme membership in South Africa[5] – launched an application challenging the constitutionality of the NHI Act on substantive grounds.[6]

22 In its constitutional challenge, the HFA contends that the NHI Act

22.1 is irrational, as it is unworkable, fiscally unachievable and incapable of achieving its own stated objectives;[7]

22.2 infringes the constitutional right of access to healthcare of existing medical scheme beneficiaries;[8]

22.3 contravenes the state's obligation in section 27(2) of the Constitution to adopt reasonable measures to achieve the progressive realisation of access to healthcare services;[9]

22.4 delegates sweeping and unchecked power to the Minister.[10]

---

4 HFA's AA, p008-10, para 12; p008-21 and 22, para 54.

5 HFA's AA, p008-21 and 22, para 54.

6 HFA's AA, p008-10, para 12.

7 HFA's AA, p008-11, para 14.

8 HFA's AA, p008-11, para 15.

9 HFA's AA, p008-11 and 12, para 16.

10 HFA's AA, p008-12, para 17.

23 Based on these grounds, the HFA has applied to declare the NHI Act unconstitutional and invalid in its entirety. In the alternative, it seeks to declare only certain sections unconstitutional – namely, sections 7(2)(f)(i), 31(2), 33, 39(2)(c)(i), 49(2)(a)(ii) and 55.[11]

The other applications

24 Apart from the HFA, Solidarity Trade Union ("**Solidarity**"),[12] the Hospital Association of South Africa ("**HASA**"),[13] the South African Medical Association ("**SAMA**"),[14] the South African Private Practitioners Forum ("**SAPPF**")[15] and Sakeliga[16] have all also brought challenges to the substantive constitutional validity of the NHI Act. Their grounds for doing so include, amongst others, rationality, various rights violations, unconstitutional delegation of plenary power, and the usurpation of provincial powers. In keeping with the HFA's answering affidavit, and in order to emphasise that these are direct challenges to the provisions of the NHI Act itself, we refer to these as the "***legislation challenges***".

25 Other parties, specifically the Board of Healthcare Funders ("**BHF**") and the SAPPF, have applied to review and set aside the President's decision to assent to and sign the NHI Act into law.[17] These are review applications,

---

11 HFA's AA, p008-12, para 18.

12 FA, p001-38, para 19.1.

13 FA, p001-38, para 19.2.

14 FA, p001-38, para 19.3.

15 FA, p001-37, para 18. SAPPF's legislation challenge was initially brought in the alternative to its assent challenge in the same proceedings. However, it subsequently "decoupled" the distinct challenges, launched its legislation challenge by way of a separate self-standing application. See SAPPF AA, p005-11, para 22; p005-16, para 40.

16 See SAPPPF AA, p005-9, para 19.

17 FA, pp001-37 and 38, paras 16 and 17.

which concern the legality and rationality of the President's decision to assent to the NHI Act. They do not directly challenge the constitutionality of the Act's substantive provisions. We continue to refer to these, as in the answering affidavit, as the "***assent challenges***".

26 The assent challenges involve some procedural complexity. The HFA is not a party to those proceedings and has no control over how they unfold, but the position, briefly, is as follows:

26.1 The BHF and SAPPF both instituted assent challenges in the High Court. In response, the Minister and the President raised preliminary points of law alleging that the Constitutional Court has exclusive jurisdiction in relation to these issues, that the President's decision is not reviewable, and that there is no obligation to produce a Rule 53 record.[18]

26.2 The High Court (per Twala J) dismissed these points of law, holding that the Court has jurisdiction, that the President's decision is reviewable, and that the President must deliver the Rule 53 record.[19]

26.3 In other words, Twala J merely decided the preliminary points of law in favour of the BHF and SAPPF. The review itself remains pending.[20]

---

[18] FA, p001-39, para 23.

[19] FA, p001-39, para 24. See Board of Healthcare Funders of Southern Africa NPC v President of the Republic of South Africa 2025 (5) SA 395 (GP).

[20] HFA's AA, p008-23, para 61.

26.4 However, the President did not deliver the Rule 53 record and thereby allow the review application to proceed.

26.5 Instead, in response to the judgment, the President and the Minister applied conditionally to this Court for leave to appeal to the SCA, and also applied for leave to appeal directly to the Constitutional Court, on the basis that they would withdraw their application in this Court if leave is granted by the Constitutional Court.[21] The President and the Minister also applied directly to the Constitutional Court, only to the extent necessary, for declaratory relief on the points of law.[22]

26.6 In addition, both the BHF and SAPPF have brought conditional assent challenges directly to the Constitutional Court. That is, if it is found that the Constitutional Court has exclusive jurisdiction in relation to the assent challenges, then the BHF and SAPPF seek to review and set aside the President's decision in the Constitutional Court.[23]

26.7 On 22 September 2025, the Constitutional Court issued directions in the applications for leave to appeal against the judgment of Twala J, prescribing dates for the filing of the appeal record and written submissions.[24] The matter has since been set down for hearing on 26 February 2026. To repeat, this is merely

---

21 FA p001-46, para 48.

22 FA p001-40, para 25; SAPPF AA, p005-14, para 31.

23 FA p001-40, para 26; 001-41, para 28; SAPPF AA, p005-17, para 44.

24 SAPPF AA, p005-205, para 37.

the application for leave to appeal on the preliminary points. It does not concern the merits of the review application, and it has no conceivable bearing on the HFA's legislation challenge.

26.8 On the same day, the Constitutional Court issued an order directing that the BHF's application to the Constitutional Court remain in abeyance pending the final determination of the application for leave to appeal by the Minister and President.[25]

27 Lastly, the BHF and the Western Cape Government have applied to the Constitutional Court to declare the NHI Act invalid on the basis that Parliament did not fulfil its obligation to facilitate public participation.[26] These applications do not concern the substantive constitutionality of the provisions of the NHI Act. Nor do they concern the lawfulness or rationality of the President's decision to assent to the Act. Instead, they are concerned only with the sufficiency of the involvement of the public and the provinces in the legislative process. We refer to these as the "***public participation challenges***".

28 The BHF launched its public participation challenge on 5 August 2025.[27] The Western Cape Government launched its public participation challenge on 2 September 2025.[28] As far as we are aware, the Constitutional Court has not yet issued directions in either matter, and the respondents have therefore not yet been called upon to file answering papers.

---

[25] SAPPF AA, p0005-205, para 38.

[26] First RA, p010-25, para 16.2.

[27] SFA, p001-472, para 16.

[28] First RA, p010-25, para 16.2.

The proposed stay

29 The Minister's application for a stay has evolved during the course of these proceedings. In particular, as further applications have been instituted, either in the High Court or in the Constitutional Court, the Minister has amended his notice of motion to include these matters within the scope of the stay – either as matters sought to be stayed, or as matters which must be finally determined before the stay is lifted.[29]

30 In the most recent version of the amended notice of motion,[30] the Minister seeks to stay all the legislation challenges, including, but not limited to, the legislation challenge brought by the HFA. The legislation challenges are sought to be stayed, pending the final determination of:

30.1 the President and Minister's applications for leave to appeal to the Constitutional Court against the judgment of Twala J dismissing their points *in limine* regarding jurisdiction and the Rule 53 record in the assent challenges;[31]

30.2 the President and the Minister's direct applications to the Constitutional Court for relief pertaining to the reviewability of the President's decision to assent to and sign the NHI Act, the applicability of Rule 53, and the question whether or not the

---

29 See first RA, p010-24, para 16.

30 Amended NoM p001-544.

31 HFA's AA, p008-14, para 26.1.

President is obliged to make available the record of his decision;[32]

30.3 conditional applications brought by the BHF and SAPPF directly in the Constitutional Court to review the President's decision to assent to the NHI Bill;[33]

30.4 any future appeals against the judgment of Twala J heard by the SCA or the Constitutional Court (in the event that the Constitutional Court declines to entertain the matter at this stage);[34]

30.5 the BHF's application for direct access to the Constitutional Court in relation to its assent challenge;[35]

30.6 the SAPPF's conditional application for direct access in relation to its assent challenge;[36]

30.7 the SAPPF's conditional application seeking leave to intervene in the BHF's assent challenge;[37]

30.8 the BHF's public participation challenge;[38] and

---

32 HFA's AA, p008-15, para 26.2.

33 HFA's AA, p008-16, para 30.

34 HFA's AA, p008-16 and 17, para 31.

35 HFA's first supplementary AA, p008-356, para 8.1.

36 HFA's first supplementary AA, p008-356 and 357, para 8.2.

37 HFA's first supplementary AA, o008-356 and 357, para 8.3.

38 SFA, p001-474, para 22.

30.9 the Western Cape Government's public participation process challenge.[39]

31 The Minister has made clear that if any parties seek to bring further legislation challenges, they will also be subjected to the stay.[40] In this way, the proposed stay functions as a rolling, ever-expanding moratorium on access to court to challenge the NHI Act.

[39] First RA, p010-25 and 26, paras 16.2 and 16.3; Annex "RA2", p010-108 to 110.

[40] First RA, p010-27, para 19.1.

THE STAY SHOULD BE REFUSED

Legal principles

32 The Court's power to stay proceedings is derived from section 173 of the Constitution, which affirms the Court's inherent power to protect and regulate its own process, taking into account the interests of justice.[41] Whether it is in the interests of justice to order a stay of proceedings depends on the facts of each case.[42]

33 The power under section 173 of the Constitution must, however, be exercised sparingly, and only in exceptional circumstances.[43] The default position is that a litigant is entitled to the adjudication of its dispute promptly. A stay will only be granted where an applicant establishes strong grounds to deviate from this default position.[44]

34 The prompt adjudication of disputes is a requirement of the rule of law, which recognises the need for finality.[45] It is also an important component of the section 34 right of every person to have their dispute determined in a fair public hearing – a right which the Constitutional Court has held requires "*very powerful considerations*" before its limitation can be considered reasonable and justifiable.[46]

---

41 Mokone v Tassos Properties CC 2017 (5) SA 456 (CC) at para 67.

42 Calata v Government of the Republic of South Africa (005245/2025) [2025] ZAGPPHC 1078 (3 October 2025) at para 19.

43 Systems Applications Consultants (Pty) Ltd t/a Securinfo v Systems Applications Products AG (1371/2018) [2020] ZASCA 81 (2 July 2020) at paras 21 and 25.

44 Gilfillan t/a Grahamstown Veterinary Clinic v Bowker 2012 (4) SA 465 (ECG) at para 30; Equisec (Pty) Ltd v Rodriguez 1999 (3) SA 113 (W) at 117 D – I.

45 See Sanderson v Attorney-General, Eastern Cape 1998 (2) SA 38 (CC) at para 37.

46 Chief Lesapo v North West Agricultural Bank 2000 (1) SA 409 (CC) at para 22.

35 An intrinsic component of the right of access to courts is the speed with which disputes are resolved. Indeed, our courts have repeatedly recognised that undue delay in resolving legal disputes subverts the right to a fair hearing – encapsulated in the adage "*justice delayed is justice denied*"[47] – and that the judicial process must provide "*a structure and mechanism whereby conflicts can be resolved and their consequent tensions can be relieved openly, fairly and efficiently".*[48]

36 The operative verb in section 34 is that the dispute must be "*decided*" by a court in a fair public hearing. A dispute that languishes for years is not fairly *decided*. Judicial officers have thus been held to *"bear the principal, but not exclusive, duty to ensure that the disputes that come before their courts are decided fairly, in public hearings, and within a reasonable time."*[49]

37 The key consideration in determining whether to grant a stay of proceedings is prejudice. The court considers, on one hand, whether there is a real likelihood of prejudice if the matter proceeds, which the stay would prevent.[50] If there is no tangible benefit from the stay, or no prejudice that would be prevented, then a stay will generally be refused.[51] The Court then weighs any such prejudice in the balance with the prejudice that a stay of the proceedings would occasion.

---

47 Ex Parte Minister of Safety and Security: In Re S v Walters 2002 (4) SA 613 (CC) at para 63.

48 Id.

49 Social Justice Coalition and Others v Minister of Police 2022 (10) BCLR 1267 (CC) at para 137.

50 Gilfillan t/a Grahamstown Veterinary Clinic v Bowker 2012 (4) SA 465 (ECG) at paras 12, 22, 31 and 35.

51 Calata v Government of the Republic of South Africa (005245/2025) [2025] ZAGPPHC 1078 (3 October 2025) at para 32.

A stay is not in the interests of justice

38 The proposed stay of proceedings is not in the interests of justice. Simply by way of summary, the reasons (which are addressed more fully below) are as follows.

39 First, the stay will likely result in many years of delay, on the speculative basis that some other litigation, in which the HFA is not involved and over which it has no control, *might* result in the invalidation of the NHI Act.

40 Second, there is no merit in the reasons given by the Minister for a stay of proceedings. In particular:

40.1 the alleged cost of the litigation is not a valid reason to halt the challenges to the NHI Act;

40.2 there is no risk of parallel proceedings or conflicting judgments, as the matters in the Constitutional Court and those in the High Court concern fundamentally different questions;

40.3 the proposed stay is not akin to a separation of issues, for the primary reason that the proposed stay would not defer some issues between the HFA and the Minister in order for some other issues between them to be decided upfront; instead, the stay would halt the HFA application altogether.

41 Third, the HFA, its members and the general public will suffer substantial harm if the stay of proceedings is granted and the NHI Act is, in the interim, brought into effect and implemented.

41.1 The NHI Act stipulates a specific time period for its implementation. As a matter of law, until or unless the Act is amended or repealed, this Court must assess the likely harm occasioned by the stay on the basis of the timeframes in the Act, and not on the basis of various claims made by the Minister, for the first time in his replying affidavit, about the period over which, and manner in which, he says the Act will actually be implemented.

41.2 The implementation of the NHI Act during the period of the stay will cause irreparable harm to the healthcare system and the people using it. It will also undermine the very purpose of the HFA's application and the relief it seeks, which is to prevent such harm.

41.3 Indeed, even if the Minister is taken at his word regarding the gradual implementation of the Act, and the demands imposed by the Act are ignored, substantial prejudice will still be inflicted if the stay of proceedings is granted and the NHI Act is implemented in the manner now suggested by the Minister.

41.4 Harm will also be done to the rule of law by requiring the legislation challenges to languish in the High Court, with the result that the NHI Act will continue to operate – while it is implemented – under a cloud of constitutional uncertainty.

Delay and speculation

42 Even on a conservative estimate, the proposed stay is likely to persist for several years, during which time the President may – and will – bring the NHI Act into operation, and the Minister may – and will – implement the Act.

43 The Minister acknowledges that there are "*several potential outcomes*" of the matters currently before the Constitutional Court. The stay is sought on the speculative basis that one or more of these potential outcomes might involve the Constitutional Court declaring the NHI Act invalid. The Minister and President rely on this speculation despite the fact that their argument before the Constitutional Court is precisely that the applications seeking this relief lack merit.

44 The shortest conceivable period for the stay to be in place and for this speculative outcome to arise would be if the Constitutional Court were to (i) decide the appeal against the decision of Twala J (on the *in limine* points); (ii) thereafter agree to decide SAPPF's and BHF's assent challenges as a court of first and last instance; (iii) review and set aside the President's decision to assent to the NHI Act; and (iv) exercise its just and equitable discretion to declare the NHI Act invalid and set it aside.

45 But even that outcome – relying as it does on a number of speculative permutations – will take a substantial period of time to achieve:

45.1 Following the hearing on 26 February 2026 (on the *in limine* points), the Court will reserve judgment. One cannot predict how

long it will take to deliver judgment, but it will inevitably be several months at the very least. Even then, all that will be decided are the *in limine* points in the assent challenges – i.e. whether the Constitutional Court has exclusive jurisdiction, whether the President's assent is reviewable, and whether the Rule 53 record must be produced. Those questions, of course, have *no bearing at all* on the HFA application languishing in this Court.

45.2 If the Constitutional Court upholds the appeal on the basis that it has exclusive jurisdiction, but finds that the decision is reviewable, then it would need to issue directions regarding the filing of a Rule 53 record (allowing for any interlocutory disputes regarding the content of the record), the delivery of supplementary founding, answering and replying papers, the delivery of heads of argument, and the scheduling of oral argument. Following argument, it would need to deliver a judgment.

45.3 On the applicants' own version, if the legislation challenges in the High Court were to be stayed, all that time would be *wasted* if the Constitutional Court were ultimately to find that the President acted lawfully and rationally by assenting to the NHI Act (i.e. the very arguments advanced by the Minister and the President in those proceedings).

45.4 If the Court upholds the appeal on the basis that the President's assent is not reviewable at all, then that would be the end of the

assent challenges. Nothing useful would have been achieved by staying the legislation challenges pending such an outcome.

46 If, however, the Constitutional Court refuses leave to appeal directly, and declines to entertain the assent challenges directly, then the application for leave to appeal against the decision of Twala J will be heard in this Court. In terms of prayer 2.6 of the notice of motion, the stay would persist pending the President and Minister seeking leave to appeal, first from the High Court, and, if unsuccessful, then from the Supreme Court of Appeal. Any decision by the Supreme Court of Appeal would then be subject to a further application for leave to appeal to the Constitutional Court. And all that these appeals would determine are questions of reviewability and access to the record – matters irrelevant to the HFA's application.

47 If the Constitutional Court hears and decides the appeal on the *in limine* points, but dismisses it on the grounds that the High Court has jurisdiction to determine the assent challenges, and declines to determine the assent challenges itself, then the matters will go back to the High Court for the merits of the assent challenges to be heard and determined (including the resolution of any interlocutory disputes regarding the content of the Rule 53 record).

48 The Minister clearly anticipates that he will, at that stage, ask this Court to "*decide the review separately and before the other issues are determined*" – in other words, to hold the legislation challenges in *further* abeyance.[52]

---

[52] FA, p001-216, para 50.4.

49 Simply put, we are likely to be years away from the final resolution of the assent challenges, in circumstances where those challenges may well produce an outcome that is entirely irrelevant to the legislation challenges sought to be stayed in the High Court.

50 This is all before even considering the public participation challenges. Indeed, insofar as the public participation challenges lodged by the BHF (on 5 August 2025) and the Western Cape Government (on 2 September 2025) are concerned, the Constitutional Court has not yet issued directions for the further conduct of the proceedings. Once it does so, the respondents will need to deliver answering affidavits, which will inevitably entail detailed evidence regarding the public participation process that was followed.[53] The BHF and Premier will then require time to reply. Only then will heads of argument be filed and the matter be set down for hearing by the Constitutional Court.

51 On the Minister's version, all these matters must be *finalised* before the Minister and President will even *deliver their answering affidavits* in the High Court legislation challenges.

52 In truth, the Minister knows that the stay he seeks will postpone the final resolution of the legislation challenges interminably. That is why he characterises the relief as an "*indefinite stay*", and then proposes, as mitigation for the obvious prejudice, that the Court can require him to file an affidavit "*every twelve months*" reporting on the progress of the

[53] HFA's first supplementary AA, p008-361, para 24.

Constitutional Court litigation and the steps being taken to implement the NHI Act.[54]

53 This suggestion is no remedy at all. It does nothing to address the HFA's complaints in its constitutional challenge or the immediate and irreparable harm that will arise during the period of the stay, while the Act is implemented.

54 In short, the proposed stay threatens a severe violation of the HFA's section 34 right of access to courts.

55 The Minister is dismissive of the HFA's section 34 concern. He relies on the Constitutional Court decision in *Mukaddam,* which held that "*the guarantee in section 34 of the Constitution does not include the choice of . . . forum in which access to courts is to be exercised*."[55] He also relies on *Richards Bay Coal Terminal* for the proposition that rules and procedures must be designed for efficiency in the administration of justice, and that the right of access to court "*does not contemplate that a litigant will at all times have access to all available remedies and procedures*".[56]

56 But this is not a case about the choice of a specific forum, remedy or procedure. It is quite unlike *Mukaddam*, which concerned whether to recognise opt-in class action proceedings, in circumstances where a party has other remedies and procedures available to it. And it is quite unlike

---

54 First RA, p010-28, para 19.4.

55 Minister's stay HoA, p019-66, para 102; Mukaddam v Pioneer Foods (Pty) Ltd 2013 (5) SA 89 (CC) at para 28.

56 Commissioner for the South African Revenue Service and Another v Richards Bay Coal Terminal (Pty) Ltd 2025 (5) SA 617 (CC), para 96.

Richards Bay Coal Terminal, which concerned whether a taxpayer may bring a review application, where it has the alternative remedy of a statutory wide appeal to the High Court under the Customs and Excise Act.

57 The HFA has appropriately brought its constitutional challenge in the only forum in which it is entitled, *as of right*, to do so: the High Court.[57] The stay would, if granted, prevent its case from being determined at all, probably for a number of years. Its case would not, in the interim, be determined in some other forum or according to some other procedure or remedy.

58 As the Court affirmed in *SAHRC v Standard Bank*, subject to certain exceptions, "*in general a court is bound to entertain proceedings that fall within its jurisdiction".*[58]

59 This Court recently cautioned in *Calata* that a stay might indeed undermine a litigant's right to have its dispute fairly and finally determined under section 34 of the Constitution.[59] This is precisely such a case.

---

[57] See Pharmaceutical Society of South Africa v Minister of Health; New Clicks South Africa (Pty) Limited v Tshabalala Msimang N.O. 2005 (3) SA 238 (SCA) at para 10, making the same point, albeit about the SCA ("If properly engaged, this court has a constitutional duty to deal with a matter and deal with it expeditiously… In any event, and this the applicants allege is their dilemma, the Constitutional Court is entitled to refuse to hear appeals directly and may require that they first be heard by this court.")

[58] South African Human Rights Commission v Standard Bank of South Africa Ltd 2023 (3) SA 36 (CC), citing Goldberg v Goldberg 1938 WLD 83 at 85.

[59] Calata v Government of the Republic of South Africa (005245/2025) [2025] ZAGPPHC 1078 (3 October 2025) at paras 29 to 32.

The Minister's reasons do not justify a stay

The alleged cost of litigation

60 In the introduction to his founding affidavit, the Minister summarised the reason why the stay of proceedings is in the interests of justice, as follows:[60]

> "To defend all of these applications at the same time but separately, is not convenient. It involves expending extensive financial, time and human resources that may ultimately prove entirely unnecessary, alternatively which can be curtailed. This is not in the interests of justice."

61 In other words, the primary prejudice of which the Minister complains, if a stay of proceedings is not granted, is the money, time and human resources that he will spend if he is required to oppose the various legislation challenges, in circumstances where those proceedings may be rendered moot by the pending Constitutional Court proceedings.[61]

62 We shall shortly explain that the mootness concern is not only speculative but also overblown, given the fundamentally distinct nature of the pending proceedings in the Constitutional Court and in this Court. There is no basis to stay pending proceedings for years on the basis of speculation about future mootness.

---

[60] FA, p001-42, para 32.

[61] RA, p010-38, para 42; Minister's stay HoA, p019-44 para 38 to 019-55 para 75.

63 For present purposes, our focus is on the Minister's specific complaint of prejudice in the form of the cost of litigation. That consideration carries little, if any, weight in the enquiry whether an exceptional remedy such as a stay should be granted. The state assumed the burden of defending the NHI Act when it enacted such far-reaching legislation. There is nothing unfair or prejudicial about requiring government to defend the laws that it makes, including where the challenges are levelled on multiple fronts. It is simply the corollary of the right of everyone to challenge those laws in a fair public hearing before a court.

64 Indeed, if anything, the existence of several challenges to the NHI Act and the President's decision to assent to the Act, are consequences of how widespread the concern is about the constitutionality of the NHI Act. The appropriate response to this widespread concern is not to grant an order stopping matters from proceeding. It is, instead, to ensure that they are managed effectively, and resolved promptly and definitively, in a manner that provides clarity and certainty to the litigants and the public.

65 Moreover, the Minister's argument about litigation costs rings hollow when one considers that the Department's annual budget is R64.8 billion, and the Department has already spent over R106 million on NHI "*advertising*" – funds that will self-evidently be rendered wasted if the NHI Act is declared invalid and set aside. The Minister describes these costs as "*modest*",[62] yet complains of the burden of roughly R9 million in legal

[62] Second RA, p010-285 para 259.

fees.[63] The legal fees that the Minister would incur in opposing the legislation challenges also pale in comparison to the billions of Rands in annual public expenditure that will be diverted through the implementation of the NHI.[64]

No risk of parallel enquiries or conflicting judgments

66 The Minister claims that a benefit of a stay of proceedings is that it will prevent parallel proceedings being conducted by the High Court and the Constitutional Court, and will also prevent those courts from delivering conflicting judgments.

67 At the heart of this argument – and indeed the stay application as a whole – is a fundamental misconception. The Minister contends that, if the Constitutional Court entertains the assent and public participation challenges, and the High Court entertains the legislation challenges, there will be parallel enquiries and the risk of conflicting judgments.

68 Although the Minister acknowledges that the matters rely on distinct causes of action,[65] he claims that there is "cross-pollination" of substantive and procedural complaints[66] and that the assent challenges and public participation challenges "*anticipate*" findings on the NHI Act's constitutionality.[67] The Minister says that one of the benefits of the

---

63 HFA's second supplementary AA, p008-394, para 50; p008-395 and 396, paras 52 and 53.

64 HFA's second supplementary AA, p008-395, para 52.1.

65 Minister's stay HoA, p019-52, para 66.

66 Minister's stay HoA, p019-53, para 69.

67 Minister's stay HoA, p019-59, paras 78 to 88.

proposed stay is that it will avoid different courts conducting parallel enquiries into the constitutionality of the NHI Act.

69 But the Minister is mistaken.

70 First, the granting of leave to appeal against the judgment of Twala J will obviously have no impact on any of the legislation challenges. The applicants do not suggest otherwise. Twala J merely decided that the High Court had jurisdiction to determine the review of the President's decision to assent to the NHI Act, that the decision is reviewable, and that the Rule 53 record must be produced. Therefore, staying the legislation challenges pending the final determination of the state's appeal against the judgment of Twala J cannot serve the purpose of avoiding parallel enquiries. It serves no purpose other than delay.

71 Second, if the Constitutional Court were to decide the assent challenges itself, as a court of first and last instance, and were to *dismiss* the challenges – as the Minister and President urge it to do – then, again, the judgment could have no conceivable bearing on the validity of the NHI Act or the pending legislation challenges.

72 Therefore, on the applicants' version, it is only in the scenario where the Constitutional Court (i) agrees to entertain the review; and (ii) reviews and sets aside the Minister's decision, that the stay application would "*prevent parallel enquiries into the constitutionality of the Act*". That permutation depends on the Minister and the President being unsuccessful in the review proceedings.

73 But even then, the Minister is mistaken. The enquiry in the review applications is fundamentally distinct from that raised in the legislation challenges. If the relief sought in the review applications brought by the SAPPF and BHF is granted, the President's decision to assent to the Bill will be reviewed and set aside. The relevant question for purposes of assessing the President's decision is not whether the Act is substantively unconstitutional. The question is whether the President acted lawfully and rationally in determining that the Bill did not require referral to Parliament for reconsideration.

74 The President may have acted unlawfully and irrationally, notwithstanding the NHI Act's objective constitutionality. Conversely, the President may have acted lawfully and rationally, notwithstanding the objective unconstitutionality of the NHI Act. The enquiries are different and independent.

75 Moreover, at the level of remedy, if the review applications brought by the SAPPF and BHF were to succeed, the NHI Bill would be remitted to the President to decide whether to assent to the Bill again, or whether to remit it to Parliament for reconsideration.

75.1 If the President decided to assent to the Act again, this time acting lawfully and rationally, the Act would again be law.

75.2 If the President decided to remit the Bill to Parliament for reconsideration, Parliament would be at large to pass the Act in unchanged form, to tinker with the Act, or to make wholesale changes. Because Parliament would not be reconsidering the

Act in the face of any findings of substantive unconstitutionality, there is no reason to think that any of the HFA's concerns would be addressed.

76 There is similarly no risk of parallel enquiries or conflicting judgments in respect of the public participation challenges. These matters concern the sufficiency of the process of public participation prior to the enactment of the NHI Act.[68] They have nothing to do with the substantive unconstitutionality of any of the provisions of the Act.

77 For the same reasons, the Minister's argument that the stay of proceedings will ensure comity between the courts and between arms of government is misguided. The High Court will not, by deciding the legislation challenges, be showing any lack of deference to the separation of powers.[69] Nor will it be "*pre-empting the Constitutional Court judgments*".[70] It will be deciding the constitutional challenges, brought competently before it, and over which it has jurisdiction, which are fundamentally distinct from any case currently before the Constitutional Court.

Not akin to a separation of issues

78 The Minister seeks to justify the proposed stay of proceedings by relying on an analogy with a separation of issues under Uniform Rule 33(4).

---

[68] See Doctors for Life International v Speaker of the National Assembly and Others 2006 (6) SA 416 (CC).

[69] Cf Minister's stay HoA, p019-63 para 93.

[70] Cf Minister's stay HoA, p019-63, para 92.

79 The analogy is misguided and inapposite. A separation means that, in the interests of convenience, parties to a dispute separate out certain issues *between them* for prior determination to facilitate the expeditious disposal of the litigation.[71] It is, in other words, a mechanism for streamlining litigation between the parties in an efficient manner.

80 The proposed stay has the opposite effect. It does not result in the prompt resolution of any disputes that arise in the HFA's application. Instead, it defers the *entirety* of the HFA's case, while other cases, involving different parties, raising different issues, and seeking different relief, are litigated over many years.

Prejudice if the stay is granted

81 The Minister claims that the proposed stay of proceedings will not prejudice the parties. He claims that there will be no undue delay, and that the implementation of the Act during the stay will not be prejudicial, because the transition to NHI will be gradual and not immediate.

82 We have already dealt with the likely delay caused by the proposed stay. As explained, even on the most conservative estimate, it is likely to be substantial and persist over several years.

83 In this section, we focus on the likely harm that will eventuate during the period of the stay, as a result of the implementation of the NHI Act. It is

[71] Koch & Kruger Brokers CC and Another v Financial Sector Conduct Authority 2023 (11) BCLR 1329 (CC) at para 1 and fn 2.

necessary, in this regard, to begin with what the Act itself says about implementation.

What the Act requires

84 The Minister criticises the HFA, as well as the other respondents, for having "*mistakenly assumed a rapid scaling up of the implementation of the NHI Act during the period of the stay*".[72] He says that the respondents have "*completely overlooked*" section 57(1)(b) of the Act, which requires gradual implementation of NHI, subject to the availability of financial resources.[73]

85 But it is, in fact, the Minister who has overlooked provisions of the Act.

86 Section 57 of the NHI Act, which the Minister says the President will soon bring into force, provides for "*Transitional arrangements*". It uses peremptory language to prescribe the two phases over which the Act must be implemented.[74]

87 Phase 1, which is for a period of four years from 2023 to 2026, requires implementing health system strengthening initiatives, the development of necessary legislation, the purchasing of personal healthcare services for vulnerable groups, and the development and implementation of administrative and personnel related arrangements to establish the Fund as a Schedule 3A entity.

---

72 Minister's stay HoA, p019-68 para 113.

73 Id.

74 RA, p010-47, para 58; p010-51, para 70; p010-60, para 103.

88 In terms of section 57(4), Phase 1 must achieve various objectives, including:

88.1 The migration of central hospitals, currently managed by provincial departments, to be funded, governed, and managed nationally as semi-autonomous entities.[75] This represents a profound shift in the constitutional division of powers and the operational management of South African hospitals. Once central hospitals are legally and operationally decoupled from provincial control, reversing the process would be costly and complex.[76]

88.2 The structuring of the Contracting Unit for Primary Health Care at district level in a cooperative management arrangement with the district hospital linked to several primary health care facilities.[77] This will result in the establishment of networks consisting of a district hospital, numerous clinics, ward-based outreach teams and private providers, creating a new *de facto* reality on the ground that will be entrenched by the time the HFA's constitutional challenge is finally heard.[78]

88.3 The establishment of the NHI Fund, including its governance structures.[79]

---

[75] Section 57(4)(a) of the NHI Act.

[76] HFA's second supplementary AA, p008-398, para 64.

[77] Section 57(4)(b) of the NHI Act.

[78] HFA's second supplementary AA, p008-401, para 70.8.

[79] Section 57(4)(c) of the NHI Act.

88.4 The development of a Health Patient Registration System.[80]

88.5 The process for the accreditation of healthcare service providers.[81]

88.6 The purchasing of health care service benefits, including personal health services such as primary healthcare services, maternity and child healthcare services including school health services, healthcare services for the aged, people with disabilities and rural communities from contracted public and private providers including general practitioners, audiologists, oral health practitioners, optometrists, speech therapists and other designated providers at a primary healthcare level focusing on disease prevention, health promotion, provision of primary healthcare services, and addressing critical backlogs.[82]

88.7 The purchasing of hospital services and other clinical support services, which must be funded by the NHI Fund.[83]

88.8 The initiation of legislative reforms to enable the introduction of the NHI.[84]

89 All of these implementation mechanisms will require substantial public funding and trigger significant changes in the healthcare sector,

---

[80] Section 57(4)(d) of the NHI Act.

[81] Section 57(4)(e) of the NHI Act.

[82] Section 57(4)(f) of the NHI Act.

[83] Section 57(4)(g) of the NHI Act.

[84] Section 57(4)(h) of the NHI Act.

particularly given that the "*vulnerable population*" that will be covered constitutes approximately 70% of the South African population.[85]

90 Phase 2, which is for a period of three years from 2026 to 2028, must include:

90.1 The continuation of health system strengthening initiatives on an ongoing basis.[86]

90.2 The mobilisation of additional resources where necessary.[87]

90.3 The selective contracting of healthcare services from private providers.[88]

91 In terms of section 57(5), Phase 2 must achieve the objective of establishing and operationalising the Fund as a purchaser of healthcare services through a system of mandatory prepayment.

92 On the Minister's own version, the NHI Act "*hard-wires*" and "*locks in*" these time periods – what he described as "*immutable temporal markers*"[89] – by which various objectives must be achieved.

93 It follows that, irrespective of what the Minister says in his effort to ameliorate the potential impact of a stay of proceedings, in the absence of

---

85 HFA's second supplementary AA, p008-392, para 44.4.

86 Section 57(2)(b)(i) of the NHI Act.

87 Section 57(2)(b)(ii) of the NHI Act.

88 Section 57(2)(b)(iii) of the NHI Act.

89 First RA, p010-79, para 175.

an amendment to the NHI Act, government is statutorily required to make substantial progress towards NHI implementation over the next few years.

94 Thus, when this Court considers what is likely to occur during the period of the stay of proceedings, we respectfully submit that it cannot rely on the Minister's say-so, where his version is in conflict with the Act. It must instead assume that the Act will be implemented in accordance with its provisions.

95 Indeed, the authorities upon which the Minister relies to say that it must be presumed that the Minister will implement the Act lawfully, properly and reasonably, are directly against him.[90] The implication of these authorities, on the facts of this case, is that it must be presumed that the Minister will implement the Act in accordance with its express terms, and according to its stipulated timeframes.

What the Minister says

96 The Minister claims that only minimal implementation of the NHI Act will occur during the period of the stay.

97 In particular, he says that NHI implementation will be gradual during the stay period, focusing on the establishment of the required NHI institutions, enhancing the provision of healthcare to vulnerable groups of children,

---

[90] Minister's stay HoA, p019-77 para 122, relying on Van Rooyen v the State 2002 (5) SA 246 (CC) at para 37 and SAPS v Public Servants' Association 2007 (3) SA 521 (CC) at paras 74 and 75.

women, people with disabilities, the elderly and rural communities, and health system strengthening initiatives.[91]

98 In addition, the Minister contends that:

98.1 the President will "*in the near future be requested*" to bring into force sections 1, 2, 12 to 31, 49(1), 49(2)(a)(i) and (ii), 57 (excluding section 57(4)(h)) and 59 of the NHI Act;[92]

98.2 the only provisions that may come into effect in the following financial year, 2026/2027, are sections 3, 5, 32, 34, 37 and, in limited respects, section 58 read with the Schedule;[93] and

98.3 the President will then bring the remaining provisions into force "*when the Minister requests him or her to do so*", on the basis that there is "*institutional readiness, consistency with the requirement of gradual implementation based on financial resource availability*".[94]

99 The Minister says that medical schemes will not be prohibited from providing supplementary cover during the stay period, or indeed for the next 10 to 15 years before full implementation of the NHI Act is declared under section 33.[95]

---

91 Minister's stay HoA p019-40, para 24.3; p019-68 and 69, paras 112 and 113; p019-68 and 69; p19-73, para 119; p109-74, para 120.3; p019-76, para 120.5; first RA p010-23, para 12.

92 First RA p010-51, para 70.

93 First RA p010-52, para 75.

94 First RA p010-52, para 72.

95 Minister's stay HoA, p019-17, para 120.7.

100 As regards the financing of NHI, the Minister claims that:

100.1 only medical scheme members who earn more than approximately R1 million per year will lose their medical-scheme tax credits;[96]

100.2 there will be no other NHI-related rise in taxes until the 2030/31 financial year, and no additional funds will be sourced from "*the public purse*" before the 2027/28 financial year.[97]

The proper approach

101 The first question in assessing the prejudice that is likely to arise if a stay of proceedings is granted, and the Act is implemented in the interim, is how to determine the likely implementation of the NHI Act.

102 In particular, should the Court assume that the Act will be implemented according to the timeframes in section 57, in terms of which, by 2026, the objectives in Phase 1 must be achieved and the implementation of Phase 2 must have commenced? Or should the Court assume that the Act will be implemented according to the timeframes articulated by Dr Crisp in the Minister's replying affidavit, even though they are inconsistent with the Act?

---

[96] First RA, p010-54, para 80.

[97] First RA, p10-53, para 78; HFA's second supplementary AA p008-392, para 44.5.

103 Respectfully, the Court cannot approach the question of implementation on the premise of the Minister's say-so in his replying affidavit. This is for five separate reasons.

104 First, as explained, it must be assumed that the Act will be implemented lawfully and according to its terms. The presumption that the President and the Minister will act lawfully includes a presumption that the Act will be implemented according to its terms, including as regards the timeframes for Phase 1 and Phase 2 of the Act.

105 Second, the Minister can neither fetter the President's power to bring provisions of the NHI Act into operation, nor bind the Minister of Finance, National Treasury, or Parliament on matters of taxation. As the Constitutional Court explained in *SARFU*:

> "*More conclusively, one member of the Cabinet cannot of his or her own accord enter into a contract with a third party which would preclude or constrain the President from exercising powers conferred upon him or her directly by the Constitution*."[98]

106 Simply put, statements from a public official without the relevant constitutional or statutory power to carry them out cannot weigh in favour of a stay. That is especially so when those statements are inconsistent with the NHI Act.

---

[98] President of the Republic of South Africa v South African Rugby Football Union 2000 (1) SA 1 (CC) at para 198.

107 The more appropriate undertaking, which ought to have been given if a stay were to be granted, is an undertaking by the *President* not to bring the NHI Act into operation for as long as the stay is in place.[99] The President has, however, refused to give such an undertaking.[100]

108 Third, the timeframes given in the Minister's replying affidavit never, in fact, rise to the level of undertakings. The only undertaking the Minister is willing to give is that for as long as the stay is in place, he will not promulgate regulations under section 33 of the NHI Act determining that NHI has been fully implemented. He has expressly refused to provide any further undertakings. The timeframes simply reflect the Minister's current thinking – as he puts it, what is "envisaged".[101]

109 Fourth, the Minister's statements in the replying affidavit are personal to the incumbent. Ministers change. A new Minister of Health appointed next month would be bound by the NHI Act, not by the implementation plan and litigation strategy of their predecessor.

110 Fifth, the Minister's version that only tax credits from those earning over approximately R1 million per year will be abolished during the stay period is also contradicted by the presentation he made to Parliament on 28 October 2025, which indicates that tax credits will be systematically

---

[99] See President's AA, p002-32 para 76.

[100] President's AA, p002-34, para 82.

[101] First RA, pp010-50 to 52, paras 68 and 71.

reduced over the next three years, raising in the region of R11.3 billion in 2026/2027, and R34 billion thereafter.[102]

Harm from the implementation of the Act

111 Genesis identified various harms in its initial report, which was attached to the HFA's main constitutional challenge, and which is also attached to the HFA's first answering affidavit in the stay application.[103] The first Genesis report explained that substantial harm would arise, not only at full implementation, but incrementally during the transition to NHI.

112 The harms articulated by Genesis in its first report assumed that government would implement the NHI Act in order to achieve its underlying objective – that is, the delivery of comprehensive healthcare services to all South Africans – and that it would do so in accordance with the phased approach articulated in the NHI Act.

113 On this premise, the HFA contended that four primary harms would arise during the transition period.

114 **First**, loss of medical scheme cover:

114.1 Once the President commences the NHI Act, the transition to NHI under Phases 1 and 2 will need to be funded. This entails rolling out a comprehensive package of benefits for 50 million people. This, in turn, requires substantial funding.

---

[102] Annex "FAAA6" to the SAPPF's Further Supplementary Answering Affidavit, p005-286. The contradictions are dealt with by SAPPF at pp005-240 para 39 to p005-242, para 44.

[103] First Genesis report, "AA1", p008-55.

114.2 One of the ways in which government intends to fund this package is by abolishing medical scheme tax credits – a critical subsidy which keeps scheme membership affordable for millions of people.[104]

114.3 The Minister claims that only tax credits from those earning over approximately R1 million per year will be abolished.[105] But Genesis has explained that the removal of tax credits from these higher-income individuals would only raise a maximum of R3.5 billion, a minuscule proportion (approximately 1.25%) of the additional R280 billion required to capture all private sector spend under the shared resources model, and an even smaller proportion of the amount required to fund comprehensive coverage for the whole population.[106]

114.4 The likelihood, therefore, is that a greater proportion of tax credits would need to be abolished to fund NHI. That would have an adverse impact on many medical scheme beneficiaries, particularly lower- and middle-income earners, who rely on the tax credit to keep monthly contributions at an affordable level.

114.5 That is why Genesis explained that the removal of tax credits will act as an immediate, effective tax hike, pushing 500,000 to 884,000 existing medical scheme beneficiaries past their

---

[104] HFA's AA p008-27, paras 79 and 80.

[105] First RA, p010-54, para 80.

[106] HFA's second supplementary AA, p008-390, para 43.1.

affordability threshold, forcing them to terminate their cover immediately.[107]

114.6 Those beneficiaries will then have nowhere to turn but to an already collapsing public health system.[108] This transition will hurt lower-income earners the most.[109] The very households that lose their medical scheme coverage will still pay the NHI tax, yet no longer receive the robust coverage they once had.[110] And the cost of absorbing these former medical scheme beneficiaries into an overburdened public sector will act as a massive fiscal drain.[111]

114.7 Even if all medical scheme tax credits were abolished, this could raise, at most, about R30.5 billion in additional personal income tax revenue (charitably assuming that the tax change does not lead to leakages from tax avoidance and income reduction strategies, and that all resulting funds are allocated to the NHI, despite competing priorities).[112]

114.8 To raise the additional R252 billion in required revenue, other taxes will inevitably need to be increased. It is simply not feasible to suggest that R3.5 billion and some reallocated funds can

[107] HFA's AA, p008-27 to 30, paras 79 to 85; First Genesis Report, p008-171 at section 6.6.3.

[108] HFA's AA, p008-29 para 87.

[109] HFA's AA, p008-34, para 96.

[110] HFA's AA, p008-34, para 96.

[111] HFA's AA, p008-32, para 88.2.

[112] HFA's second supplementary AA, p008-390, para 43.3.

cover the NHI Act's implementation costs, unless the reallocation will be very substantial, will result in NHI cannibalising existing health budgets, and will leave other programmes underfunded.[113]

115 **Second**, adverse selection:

115.1 The initial implementation of the NHI Act will result in the dismantling of medical schemes before the NHI can replace them, through an economic phenomenon known as adverse selection.[114]

115.2 In particular, the removal of tax credits will effectively increase the net cost of medical scheme membership for households. As costs rise, members will withdraw from medical schemes.[115] Medical schemes will suffer from adverse selection, as younger, healthier members abandon their scheme coverage, leaving older, sicker beneficiaries as members of schemes, and imperilling the sustainability of such schemes.[116]

115.3 Medical schemes, facing higher per-person costs, will be forced to raise contributions, which drives out yet more healthy, cost-sensitive beneficiaries. This cycle, referred to as the "actuarial

[113] HFA's second supplementary AA, p008-392, para 44.5.

[114] HFA's AA, p008-33, para 92.

[115] HFA's AA, p008-34, para 94.

[116] HFA's AA, p008-34, para 94; First Genesis Report, p008-167 at section 6.6.

death spiral", risks collapsing schemes or making the few remaining, comprehensive plans, prohibitively expensive.[117]

116 **Third**, loss of investment and human resources:

116.1 South Africa already faces a critical shortage of doctors, with 21.6% of South African-trained physicians practising abroad.[118] Human capital in the healthcare sector is highly mobile.[119] When healthcare professionals emigrate during the transition period, they will be unlikely to return.[120]

116.2 The healthcare system depends on skilled professionals, yet the implementation of the NHI Act creates an environment that actively drives them away at a time when the NHI model requires a 77% increase in health resources to function.[121]

116.3 Additionally, the implementation of the NHI Act will harm healthcare investment in South Africa. Due to policy uncertainty, exacerbated by the pending legislative challenges – which the Minister seeks to keep in limbo – healthcare investment will be discouraged.[122]

117 **Fourth**, catastrophic expenditure:

---

[117] HFA's AA, p008-34, para 94; HFA's AA, p008-33 and 34, paras 90 and 96. First Genesis Report, pp008173 and 174, at section 6.6.4 (paras 329 and 330).

[118] HFA's AA, p008-36, para 101.

[119] HFA's AA, p008-36, para 101.

[120] HFA's AA, p008-37, para 104.

[121] HFA's AA, p008-37, para 103.

[122] HFA's AA, p008-37 and 38, para 105.

117.1 By stimulating demand while simultaneously constraining supply, the price of healthcare services will surge as the NHI Act is implemented.[123]

117.2 Taxpayers will suffer a significant reduction in disposable income due to NHI taxes, and the majority of the population will be unable to afford medical scheme cover.[124]

117.3 This means that when the NHI Fund rations healthcare services due to resource constraints, millions of people will be required to pay out-of-pocket for services that are not covered by the NHI Fund, to the limited extent that they are able to afford to do so.[125] This will regressively increase South Africa's share of current out-of-pocket payments, which is among the lowest in the world.[126]

117.4 Certain vulnerable groups, including asylum seekers and foreign nationals, will also legally lose their entitlements to various healthcare services when the NHI Act is implemented. [127] It is no good for the Minister to recognise the constitutional infirmity of this limitation, and to say that the provision will be

[123] HFA's AA, pp008-39 and 40, paras 107 and 108.

[124] HFA's AA, p008-40, paras 109 and 110.

[125] HFA's AA, pp008-40 and 41, paras 110 to 112.

[126] HFA's AA, p008-41, para 112.

[127] HFA's second supplementary AA, p008-394, para 47.

"reconsidered".[128] It is part of the statute, and it must be assumed that it will be implemented.

118 The harms described above are premised on the NHI Act being implemented according to its terms in the next few years. As explained, that is the correct footing on which to assess the stay application.

119 However, even if the Court accepts that the implementation of the NHI Act will occur in the more gradual manner contended for by Dr Crisp in the Minister's first replying affidavit, Genesis has made clear, in its second report, that substantial expenditure and fundamental changes to the healthcare landscape will nevertheless be required during the period of the stay.[129]

120 There are, in short, three separate primary impacts that will occur even on the approach to implementation now adopted by Dr Crisp.

121 **First,** substantial expenditure.

121.1 Dr Crisp says that sections 57(4)(f) and 57(4)(g) will be brought into force by the President. From this point onwards, the NHI must purchase various benefits from contracted providers, and expand its services to include hospital services, emergency healthcare services and pathology services.[130]

---

[128] Section 4(2) of the NHI Act; First RA, p010-53, para 77.

[129] Second Genesis report, "SSAA1", p008-419.

[130] HFA's second supplementary AA, p008-391, para 44.2.

121.2 Dr Crisp also says that sections 9 to 11 will be brought into force in the 2027/2028 financial year. This will entail the establishment of the NHI Fund, and the exercise by the Fund of its functions and powers, including contracting for the supply of healthcare services, medicines, health goods and health-related products with accredited healthcare service providers.[131]

121.3 All of these implementation mechanisms will require substantial public funding and trigger significant changes in the healthcare sector. As Genesis explains, it is simply not feasible to suggest that the Minister's proposed R3.5 billion and some reallocated funds can cover these costs, unless the "*reallocation*" will be very substantial, will result in NHI cannibalising existing health budgets, and will leave other programmes underfunded, inflicting significant harm.[132]

121.4 It follows that, contrary to what Dr Crisp says, even in the early stages of implementing NHI, further tax increases will inevitably be required. As taxes are increased, the effects identified by Genesis will become progressively more substantial and significant.[133]

122 **Second**, government will be required to effect large-scale changes to the management and organisation of vast areas of the South African

---

[131] HFA's second supplementary AA, p008-391, para 44.3.

[132] HFA's second supplementary AA, p008-392, para 44.4 and 44.5.

[133] HFA's second supplementary AA, p008-392, para 44.6.

healthcare system, impacting existing economic networks and business and millions of individuals.[134] There will also be significant changes to national and provincial healthcare budgets, as well as legislative changes.[135] This threatens to lead to an enormous waste of public resources in the event that the HFA's constitutional challenge – which, if the stay is granted, will be left languishing in this Court – ultimately succeeds.[136]

123 **Third**, the continued implementation of the NHI Act in the face of challenges to its constitutional validity creates an unsettled healthcare sector, undermining confidence and increasing uncertainty. It also does damage to the rule of law.[137]

123.1 Every day that passes without a decision is a day on which the "*dispute*" remains unresolved, and the potential unconstitutionality continues to operate.

123.2 Moreover, the mere spectre of the NHI's implementation has already unsettled the healthcare sector.[138] Proceeding with its implementation during a stay of the HFA's constitutional challenge will exacerbate the harmful impact.[139]

---

[134] HFA's second supplementary AA, p008-392, para 45.

[135] HFA's second supplementary AA, p008-392, para 45.

[136] HFA's second supplementary AA, p008-392, para 45.

[137] HFA's second supplementary AA, p008-393, para 46.

[138] HFA's second supplementary AA, p008-393, para 46.1.

[139] HFA's second supplementary AA, p008-393, para 46.1.

123.3 The cloud of uncertainty that hangs over the healthcare industry is likely to negatively impact healthcare resource availability by depressing investment and reducing healthcare worker participation.[140]

123.4 Medical professionals also face extreme uncertainty about their future under the NHI Act. Doctors and nurses are considering emigration or early retirement, rather than being caught in an NHI that may strip them of autonomy or income. These departures immediately reduce the quality and availability of care for patients. If NHI implementation proceeds during a stay of the HFA's application, this trend will accelerate, with fewer doctors and nurses at the bedside, longer wait times for healthcare services, and diminished medical expertise in our country.[141]

The undertaking is meaningless

124 When the Minister indicated his intention to seek a stay, the parties said that they could not agree to a stay unless there was an undertaking on the part of the President not to bring the Act into force.[142]

125 That undertaking was never given.

126 Instead, the Minister has given a narrow undertaking not to publish regulations under section 33 of the NHI Act for as long as the stay is in

---

[140] HFA's second supplementary AA, p008-393, para 46.2.

[141] HFA's second supplementary AA, p008-393 and 394, para 46.3 and 46.4.

[142] See the responses to the proposed stay set out in the founding affidavit (FA), at p001-60 para 88 to 001-67, para 101.

place.[143] The Minister suggests that this undertaking is "significant" because it addresses the "primary concern in the various applications".[144]

127 But that undertaking is effectively meaningless. Long before the regulations under section 33 are promulgated, as explained above, the implementation of the other provisions of the NHI Act will have caused substantial harm and prejudice to the healthcare sector, medical schemes, their beneficiaries, and the public.

128 Simply put, the HFA's concerns about the immediate and irreparable harm that the implementation of the NHI Act will cause are not limited to section 33 of the NHI Act. The undertaking not to apply section 33 is therefore of no assistance to the Minister's application for a stay.

The second Genesis report

129 The Minister opposes leave being granted to the HFA for the admission of the second Genesis report, and those portions of the HFA's supplementary answering affidavit which refer to it. Alternatively, the Minister asks for the second Genesis report, and those portions of the HFA's supplementary answering affidavit which refer to it to be struck out.[145]

130 In order to explain the circumstances in which the second Genesis report was filed, it is necessary to provide a brief chronology.

---

[143] FA p001-68, para 102.

[144] FA, p001-69, para 103.

[145] Minister's stay HoA para 117.

The facts

131 The HFA launched its main constitutional challenge in June 2025. Its founding affidavit contained an entire chapter, supported by the first Genesis report, dedicated to the irreparable harm that the NHI Act would cause to the healthcare sector.[146] These included the shrinking of medical schemes, adverse selection, loss of human resources, and catastrophic expenditure.

132 The Minister had been in possession of the HFA's main constitutional challenge, together with the first Genesis report, for nearly two months when he launched the stay application on 28 July 2025. He knew, in other words, that the HFA claimed that there would be immediate and irreparable harm when the Act was brought into force.

133 It was incumbent on the Minister, in his founding affidavit seeking a stay of proceedings, to address the potential harm that would arise from implementing the Act while the stay was in effect. If his case was that particular provisions of the Act would only be brought into effect many years in the future, that there would be no anticipated short-term tax increases, and that tax credits would only be abolished for a tiny proportion of the population, then the place to make that case was in the founding affidavit in the stay application.[147]

---

[146] FA in the HFA main application, p016-179 para 298 to 016-191, para 324.

[147] Betlane v Shelly Court CC 2011 (1) SA 388 (CC) at para 29.

134 Indeed, in addition to the HFA's main constitutional challenge, the Minister was put on express notice to address this issue by the HFA's letter of 7 July 2025, in which the HFA's attorneys explained that the Minister's proposed undertaking "*does not provide any immediate or practical assurance to our client regarding any of the harms outlined in its founding papers that will be imposed immediately by the commencement of the NHI Act before it is fully implemented*".[148]

135 Despite this, the Minister's founding affidavit in the stay application provided scant detail on why the alleged harm would not arise from the implementation of the Act.

136 The Minister addressed his claim that "*a stay will not prejudice the parties unduly*" in nine paragraphs:

136.1 The Minister said, in essence, that the stay would not prevent the parties from being heard and that, to the extent that there was a limitation of the right of access to court, it was reasonable and justifiable.[149]

136.2 The Minister then specifically noted that the parties claimed prejudice if the Minister was allowed to implement the NHI Act while their applications were held in abeyance. But he mischaracterised the concern as being one merely about wasted costs and the rendering of their applications as academic.[150] He

[148] Letter of 7 July 2025, NC26, p001-299, para 4.

[149] FA, p001-95 and 96, paras 168 to 170.

[150] FA, p001-96, para 171.

seemed not to recognise that there was a very real concern about irreparable harm.

136.3 In any event, the high-water mark of his answer was to say, without any detail, that:

136.3.1 the Act had not yet been brought into effect;[151]

136.3.2 implementation was expected to take place progressively, over many years, in terms of available funds, starting largely with administrative and governance structures;[152] and

136.3.3 other work that continued concurrently, relating to readying the system for NHI, could not be considered prejudicial to any party.[153]

137 The Minister did not say a word about the specific timeframes for implementing the Act. He did not indicate that he intended to deviate from the timeframes articulated in the NHI Act. Nor did he say a word about how NHI would, in those initial phases, be funded.

138 In those circumstances, the HFA could do no better in its answering affidavit than refer, again, to the first Genesis report, attach it to its answering affidavit in the stay application, and summarise the harms that

---

[151] FA, p001-96, para 172.

[152] FA, p001-96, para 173.

[153] FA, p001-96, para 174.

would arise from the implementation of the Act during the period of the stay. That is what it did.[154]

139 Then the Minister filed his first replying affidavit. It was in this affidavit that, for the first time, the Minister provided the details of his proposed approach for the gradual implementation of the NHI Act, including the specific provisions of the NHI Act that the President would be asked to bring into effect and when he would be asked to do so.[155] He did so, he said, for the specific purpose of making the point that there was no threat of harm as alleged during the period of the stay.[156] It was also in this affidavit, for the first time, that the Minister indicated that only high-income earners would lose their tax credits and that other tax increases were apparently years away.[157]

140 This obviously called for a response. The first aspect of the response was a legal one: that the Minister could not rely on timeframes at odds with the Act. But the second aspect of the response required the HFA to consider (i) whether the implementation and funding plans now articulated by the Minister are feasible given the demands legally imposed by the NHI Act; and (ii) what harms would eventuate even if the Minister were taken at his word as to the plan for implementation.

141 That is the primary purpose of the second Genesis report, attached to the HFA's supplementary affidavit. It deals solely with Dr Crisp's claim in the

---

[154] HFA AA, p008-27, paras 76 to 78 and following.

[155] First RA, p010-51 to 53, paras 70 to 76.

[156] First RA, p010-52, para 74.

[157] First RA, p010-53, paras 78 to 80.

Minister's replying affidavit that the phased implementation of the NHI Act will insulate the HFA and its members against immediate or medium-term harm.[158] It demonstrates that substantially more funds will be required than the Minister suggests, and that, even on the phased approach, harm will eventuate during the period of the stay.

142 Against this brief factual backdrop, we contend that:

142.1 leave to file the second supplementary answering affidavit, to which the second Genesis report is attached, has already been granted;

142.2 in any event, we respectfully submit that such leave plainly should be granted; and

142.3 there is no basis for a striking out.

Leave to file the supplementary affidavit and second Genesis report

143 On 16 September 2025, following a case management meeting, her Ladyship Justice Neukircher issued a directive requiring the Minister to deliver a replying affidavit by 17 September 2025, and an amended notice of motion by 26 September 2025. Her Ladyship specifically directed that "*any other party would be permitted to file a supplementary answering affidavit on or before 24 October 2025.*"[159]

---

[158] Second Genesis report, p008-421.

[159] "FSAA1", p005-209; HFA's second supplementary AA, p008-381, para 12.

144 We submit that this Court has, therefore, already granted leave for the filing of the HFA's second supplementary answering affidavit.[160] The second Genesis report is merely an annexure to the supplementary affidavit. The Court did not limit the nature of the evidence that could be included in the supplementary affidavit and certainly did not exclude expert evidence.

145 However, out of an abundance of caution, and to the extent necessary, the HFA has sought this Court's leave, under Uniform Rule 6(5)(e), for the filing of its second supplementary answering affidavit, including the second Genesis report.[161]

146 There is plainly good cause for the affidavit to be admitted in the exercise of this Court's discretion under Uniform Rule 6(5)(e).[162]

147 First, as explained, the need for the supplementary affidavit and the second Genesis report arises from the new matter in the Minister's replying affidavit. The Minister alleged new facts, and adopted a novel stance, despite the requirement for the Minister to stand or fall by his founding affidavit. It was not possible for the HFA to anticipate in its initial answering affidavit that the Department would adopt this position.

148 There is thus a proper and satisfactory explanation for the filing of the supplementary affidavit, which negates any inference of bad faith or

---

[160] HFA's second supplementary AA, p008-381, paras 12 and 13.

[161] HFA's second supplementary AA, p008-381, para 14.

[162] Hano Trading CC v J R 209 Investments (Pty) Ltd 2013 (1) SA 161 (SCA) at para 11.

culpable remissness, as to why the facts or information had not been put before the court at an earlier stage.[163]

149 Second, the new matter is highly material.[164] The new facts in the Minister's replying affidavit, which call for a response, relate primarily to the manner in which the Department intends to implement the NHI Act. This bears directly on the harm and prejudice that a stay of proceedings will cause – a pivotal consideration in this Court's determination of whether to grant a stay.

150 Third, there is no prejudice to the Minister.[165] He has filed a voluminous second replying affidavit, as well as a separate affidavit by Dr Crisp addressing the second Genesis report,[166] and he has instructed Professor Hongoro, who has dealt with the precise matters raised by the HFA and Genesis.[167]

The strike-out should be refused

151 In the alternative to its opposition to their admission, the Minister seeks to strike out the second Genesis report and the allegations in the HFA's supplementary answering affidavit that refer to it.

---

[163] Transvaal Racing Club v Jockey Club of South Africa 1958 (3) SA 599 (W) at 604A–E; Broode NO v Maposa 2018 (3) SA 129 (WCC) at 137G–138A.

[164] City of Johannesburg Metropolitan Municipality v Community Protection Solutions NPC (2023/003435) [2025] ZAGPJHC 283 (17 March 2025) at para 40; BP Southern Africa (Pty) Ltd v Commissioner for the South African Revenue Service (2021/49805) [2024] ZAGPJHC 21 (12 January 2024) at para 17.

[165] Garnnett-Adams Properties (Pty) Ltd v Thomas (029983/2023) [2024] ZAGPJHC 534 (4 June 2024) at para 16.

[166] Second RA pp010-283 and 284 para 249; Reply to the Supplementary Genesis Report, pp010-394 to 425.

[167] Second RA, p010-283 and 284, para 249; Affidavit by Professor Hongoro, pp010-429 to 438.

152 In terms of Uniform Rule 6(15), this Court is empowered to strike out averments in respect of:

> "*any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client*."

153 An applicant seeking to strike out matter must also demonstrate that, if the impugned material remains, they will suffer prejudice in the conduct of the case.[168] This is because Uniform Rule 6(15) expressly provides that:

> "*The court may not grant the application unless it is satisfied that the applicant will be prejudiced if the application is not granted*."

154 The Minister has failed to plead, let alone demonstrate, that the second Genesis report and the relevant portions of the HFA's supplementary answering are scandalous, vexatious or irrelevant, or that they otherwise constitute matter which may be struck out from an affidavit.

155 Indeed, in his heads of argument, the only basis for the striking out is that, properly considered, the second Genesis report did not arise from "new matter" in the replying affidavit.[169] That is mistaken. The chronology above clearly demonstrates that it was the new matter in the Minister's reply that prompted the second Genesis report.

---

[168] Helen Suzman Foundation v President of the Republic of South Africa; Glenister v President of the Republic of South Africa 2015 (2) SA 1 (CC) at para 27, citing Beinash v Wixley 1997 (3) SA 721 (SCA) at 733B and Tshabalala-Msimang v Makhanya 2008 (6) SA 102 (W) at 110C-111C.

[169] Minister's stay HoA, p019-85, para 146 and 147.

156 But in any event, even if we are mistaken, that would be no basis for granting a striking out. The HFA's second supplementary answering affidavit and second Genesis report are not scandalous, vexatious or irrelevant, and their filing did not cause any prejudice to the Minister.

157 In the circumstances, the striking out should be refused.

CONSOLIDATION SHOULD BE REFUSED

Legal principles

158 In addition to the stay, the Minister seeks an order consolidating all the legislation challenges in the High Court.

159 Uniform Rule 11, read with Rule 6(14), allows the Court to consolidate separate applications where "*it appears to the court convenient to do so*".

160 The first consideration in an application for consolidation is thus convenience – which encapsulates considerations of appropriateness, efficiency, interests of justice and the administration of justice.[170] In the exercise of the court's discretion, it will consider, within the context of convenience, considerations such as the extent of overlap in the factual and legal issues in the respective applications, fairness to the parties, and the saving of time and costs.[171]

161 The second limb of the test is the absence of prejudice. The Court in *New Zealand Insurance* clarified that "*prejudice*" in this context means "*substantial prejudice sufficient to cause the Court to refuse a consolidation of actions, even though the balance of convenience would favour it*."[172] In other words, even it appears that consolidation would be convenient, the application must fail if will cause substantial prejudice.

---

[170] Rail Commuters' Action Group & others v Transnet Ltd & others 2006 (6) SA 68 (C) at 88A–B.

[171] Qwelane v Minister of Justice and Constitutional Development and Others 2015 (2) SA 493 (GJ) at para 9 citing Erasmus Superior Court Practice B1-98A; Harms Civil Procedure in the Supreme Court B-109.

[172] New Zealand Insurance Co Ltd v Stone 1963 (3) SA 63 (C) at 70.

162 The onus rests on the party applying for consolidation to satisfy the court that consolidation is convenient and that there is no possibility of substantial prejudice.[173]

163 Our courts have also cautioned that consolidation should be refused where it would involve considerable delay.[174]

Consolidation is inconvenient and prejudicial

164 A formal consolidation would not merely result in a consolidated hearing of the constitutional challenges. It would result, in addition, in the creation of a single record of all the evidence across the various applications. It would also mean that every matter is forced to proceed at the pace of the very slowest, and that an interlocutory in one application has the result of delaying all the applications.

165 Despite bearing the onus, the Minister has failed to advance any cogent reasons why formal consolidation, with its radical consequences of a single record, and bound timelines in matters of vastly different stages of readiness, is superior to the pragmatic, less intrusive alternative of a joint and simultaneous hearing of matters ripe for adjudication, which can be achieved through effective case management.

166 The HFA contends that a consolidation of the legislation challenges would be inconvenient and prejudicial for four reasons.

---

[173] New Zealand Insurance Co Ltd v Stone & others 1963 (3) SA 63 (C) at 69A–C. See also Belford v Belford 1980 (2) SA 843 (C) at 846C–D; C v R (A5002/2022) [2022] ZAGPJHC 1015 (15 December 2022) at para 32.

[174] C v R (A5002/2022) [2022] ZAGPJHC 1015 (15 December 2022) at para 34; New Zealand Insurance Co Ltd v Stone 1963 (3) SA 63 (C) at 69H–70A; Belford v Belford 1980 (2) SA 843 (C).

167 **First,** the issues that arise in the HFA's application are different to those arising in the other applications.

167.1 The Minister argues, at an extreme level of generality, that avoiding multiple hearings of distinct constitutional challenges to the NHI Act satisfies the test of convenience.[175]

167.2 At such a high level of abstraction, virtually any concurrent litigation regarding a piece of legislation could be said to involve common issues. This does not satisfy the requirements of Uniform Rule 11.

167.3 The focus of the HFA's constitutional challenge is the specific impact of the NHI Act on medical schemes and the millions of existing beneficiaries they serve. This differs materially from the other litigants.[176]

168 **Second,** there is no prejudice in the Minister being required to replicate material in affidavits across multiple matters.[177] Whether he does so in separate proceedings, or consolidated proceedings, the Minister must still answer each of the founding affidavits that have been filed. It is therefore not clear why the considerable evidence required to answer the applications is a relevant consideration for purposes of consolidation.[178]

---

[175] Minister's consolidation HoA, pp019-102 to 109, paras 19 to 29.

[176] HFA's AA, p008-44, para 123.

[177] HFA's AA, p008-45, para 123.4.

[178] Minister's consolidation HoA, p019-112, para 32.

169 **Third,** consolidation is prejudicial to the HFA.[179]

169.1 Consolidation would mean, in essence, that the HFA application would be hamstrung from progressing any faster than the slowest-moving matter with which it has been consolidated. An interlocutory skirmish in an unrelated matter that is consolidated with the HFA application would result in the HFA application being halted for as long as it takes to adjudicate or resolve the interlocutory dispute.[180]

169.2 The HFA would also be prejudiced by having the record of its case contaminated by irrelevant disputes it did not plead in the other constitutional challenges against the NHI Act, forcing it to incur costs in relation to matters in which it is not a party.[181]

170 **Fourth,** the prejudice is exacerbated by the unfair conditions attached to the consolidation.

170.1 In the notice of motion, the Minister proposes that, while the state respondents would file a single, consolidated answering affidavit addressing all challenges holistically, each applicant would be restricted to filing a replying affidavit that addresses only the portions of the answer that respond directly to their specific founding papers.[182]

---

[179] HFA's AA, p008-45, para 124.

[180] HFA's AA, p008-45, para 124.2.

[181] HFA's AA, p008-45 and 46, paras 123 and 124.5.

[182] Further Amended Notice of Motion, p001-550, prayer 8.

170.2 This was a legally untenable and fundamentally unfair condition. Because of the consolidation, every applicant would be at risk of its application being dismissed on the basis of evidence arising in another application. But every applicant would, at the same time, be denied the opportunity to respond to the entirety of the answering affidavit.

170.3 In his heads of argument, the Minister has all but retracted this condition. He says he is willing to forego it if the Court considers it to be an unnecessary condition of the consolidation order.[183]

170.4 In truth, the fact that the condition was *ever* proposed demonstrates a recognition that the consolidation is cumbersome and unworkable. It was a self-serving attempt to consolidate the matter vis-à-vis the Minister (i.e. by allowing him to file a consolidated answering affidavit), but to keep the matters *separate* vis-à-vis the applicants (i.e. by denying the applicants the opportunity to reply holistically and keeping them to their own cases).

171 **Fifth** and finally, all of the benefits advanced by the Minister can be achieved by allowing the same Court to hear and decide any matters that are ripe together and simultaneously.[184] In this way, through effective judicial case management and a joint hearing of matters that are ready to be heard together, the Court can achieve all the benefits the Minister

[183] Minister's consolidation HoA, p019-119, para 66.

[184] HFA's AA, p008-48.

seeks, including avoiding conflicting judgments and saving judicial time, without the prejudice of formal consolidation.

CONCLUSION

172 For the reasons set out above, we submit that the application should be dismissed with costs, including the costs of three counsel on scale C.

Wim Trengove SC
Michael Mbikiwa
Daniel Sive
Counsel for the HFA
Chambers, Sandton and Cape Town
17 December 2025