

Comment on the National Health Laboratory Services Bill

Government Notice No 1999 of 1999

1. The Preamble to the Bill

The preamble to the Constitution of the Republic of South Africa states that everyone has the right to have access to health care services. It does not guarantee the right to health care services. There is a substantial difference in the meaning of the two sets of underlined words. The words in the Constitution mean that the state will ensure that no one will be prevented from having access to health care. Those in the preamble to the Bill mean that the state is compelled to ensure that health care services are available, which is incorrect. The preamble should therefore be corrected to read:

RECOGNISING that the Constitution of the Republic of South Africa states that everyone has the right to have access to health care services the state is required to introduce measures to ensure that the right is protected.

Naturally, such an introduction does not lead to legislation or the centralisation of control over laboratory services. It therefore does not mean that the realisation of the intent of the Constitution can be achieved by:

- "the establishment of a single national public entity to provide public health pathology services in the country;
- the restructuring and transformation of the public health sector clinical laboratory services in order to make them part of a single national public entity;
- the development of policies that will enable the single national public entity to provide pathology services as the preferred provider for all government departments rendering health services ..."

In fact, it could very well mean an interference with the right to have access to health care services as stipulated in the Constitution. This would be the case if, for instance, the best method to ensure that everyone had access to laboratory services were to be for the state to ensure that all laboratory services in the country were privately provided.

Whatever the case, the inaccurate quote from the Constitution, as contained in the preamble, must be corrected.

1.2 **Privatisation rather than centralisation**

1.2.1 ***Legislated monopolies are the most deleterious methods of delivering services to the public***

A monopoly, protected by legislation, as described in the preamble to the Bill is the most deleterious arrangement for the delivery of services to the public, whether such a monopoly is privately or publicly owned and controlled. The public would be much better served by a large number of competing laboratory services vying to supply services to the state, subject to rigorous control of quality, price and level of service. The competition to deliver the services would be most intense and the cost of the services to the state consequently lowest if the laboratories were to be privately owned and controlled.

1.2.2 ***Government can reduce costs and improve services by privatising***

If the objective of the Department of Health is to reduce costs and improve the standard of delivery of pathology services to government departments rendering health services it should not centralise control over all the existing services. This will merely create a vast and dysfunctional bureaucracy, answerable and accountable only to itself. The proposal for the creation of this monolithic entity comes at a time when governments and private businesses everywhere are discovering the value of down-sizing to small and accountable units whose efficacy can be properly monitored. Instead of centralising control of the laboratories, the Department of Health should be privatising them and putting the delivery of services out to contract.

1.2.3 ***Unwarranted criticisms of privatisation***

- **The belief that privatisation automatically results in job losses is wrong**

It is not true that jobs are always lost when privatisation occurs. There are many different ways of privatising and the best methods take full account of the interests of existing staff. In some cases assets are sold to existing staff themselves at a slightly preferential rate and with a first contract in place to allow the business to get off the ground. Care is taken to ensure that the business has adequate capital and sufficiently proficient management to give it a high probability of success.

In other cases the business is sold to outside shareholders but provision is made in the agreement for retention of staff for a specified period. In such instances the new owners are precluded from retrenching staff for the specified period except in cases of grave offences or dereliction of duty.

However, if a particular government-provided service is maladministered and over-staffed the situation should be corrected whether or not it is privatised. Staff levels should be adjusted in the interests of the citizens who have to bear the burden of the unnecessary extra wages. What is more, an over-staffed service provider cannot function efficiently. It is dishonest and contrary to the interests of citizens, and especially the poorest citizens, to allow an over-staffed government service-provider to continue unreformed. Any squandered resources are resources that could have been used elsewhere by more efficient owners to improve offerings of goods and services to the nation.

- **The belief that government pays more for inferior services after privatisation is wrong**

If government enters into bad deals the blame rests squarely on the shoulders of the officials entering into the contracts. If they do not have the expertise to negotiate, conclude, write, and monitor contracts effectively, they should hire that expertise. In all cases it is a grave error to enter into excessively long contracts. It is also vitally important that contracts should be carefully written to ensure that there are penalties and the right of exit for below-standard delivery. This means that a method of measuring the quality of delivery must be written into the contract.

All tenders should be openly and transparently dealt with and the interests of the service-recipients should at all times be paramount. It is inexcusable for government to burden service-recipients with poor quality services for political reasons e.g. if small businesses are to be granted contracts to provide services, the levels of quality and

efficiency demanded of them must be as high as those expected of larger businesses. In pathology services, for instance, any deviation from standards should not be countenanced.

It is a world-wide phenomenon that government officials expect higher standards from private suppliers than they expect from in-house suppliers of services. Rigorous checks are built into contracts to ensure that quality is maintained and the quality targets are generally set much higher than have been provided by the pre-privatisation in-house government supplier. No fault can be found with strict quality controls on the services of private suppliers. That is as it should be. However, there is a great deal wrong with allowing government suppliers of services (such as pathology services) to function without as strict a set of quality controls as is imposed on private suppliers of similar services; quality controls that are carried out by independent inspectors.

Government-provided services are particularly difficult to cost. There are invariably a host of hidden costs that are not taken into account, such as market rentals for premises, interest on capital, depreciation of equipment, insurance cover, and services provided without charge by other departments. This has been discovered by parastatals in the process of corporatisation. Comparisons that are carried out by civil servants between what they believe their costs of services to be and what is charged by private suppliers therefore often leads them to believe that prices charged for outsourced services are excessive. Yet if they were to operate completely independently, and keep their books on the basis of generally accepted accounting principles, they would soon discover how efficient they would have to be in order to make a profit at the prices charged by private suppliers.

1.2.4 *It is wrong to make all government departments rendering health services the captives of the "single national public entity" supplying laboratory services*

If this Bill is adopted all government departments will become the captives of a single monopoly laboratory entity. Such a state of affairs will be contrary to the interests of the other services that are attempting to supply high quality and efficient health services. When there is a breakdown in the services provided by a private service-provider, an alternative can always be found. However, if government health services are compelled to use the services of the proposed "single entity" as the "preferred provider" they could face serious difficulties.

What happens if the "single entity" is badly managed? What happens if the service deteriorates badly? What will induce a shake-up in the service to make it efficient? What happens if the quality of work deteriorates badly? The answer in the case of a private service-provider is simple. It will lose business. It will change or go bankrupt. This discipline will be absent from the envisaged arrangement. Government health services will be compelled to use the "single entity" whether they like it or not.

There is another bleak scenario. Consider the staff of a "single entity" that is dedicated, highly qualified and efficient but the demands on them steadily increase. If they were a private organisation the high level of work would make it easy for them to raise capital and expand by buying equipment and hiring staff. But being a government organisation they have to compete with all sorts of demands on the government budget. They could become short of critical equipment and staff to do the job properly. Their services would gradually break down. Anyone who believes that such a scenario is far-fetched should speak to a cross-section of government service-delivery organisations around the world.

2. **The objects of the Service**

The Service will not be able to demonstrate that it is providing a cost-effective laboratory and pathology service to the public health sector. Legislators will have no way of knowing whether subsection (3)(a) of the Bill which reads "to provide a cost-effective laboratory and pathology service to the public health sector" is being complied with. As explained above, government institutions are not able to determine the real costs of services. This includes the inability to determine the relative costs of the various services they perform. They are totally reliant on private firms for this information.

How will the National Health Laboratory Service know whether it is being cost-effective if it has no way of comparing its costs with what would have been paid for a similar volume of services to private service-providers? How will it know if it is being effective if it has no way of measuring its efficiency against the efficiency of private service-providers? Perhaps the drafters of the legislation can explain to the legislators how the service is to demonstrate that it is complying with this subsection.

If the service were to be corporatised, all assets taken into account at market values, interest charged at market rates, and generally accepted accounting practices followed, there may be some chance of establishing costs, yet the corporatised service would then have to compete for government contracts with private firms to demonstrate its effectiveness. If it can win the contracts on equal terms, satisfy its customers, and make a reasonable return on the money invested in it, it will be able to claim that it is operating cost-effectively. Instead of going to all this trouble the laboratories might just as well be privatised from the outset.

3. **The functions of the service**

Unfair competition with taxpayers

Subsection (3)(a) of the Bill states that the service shall "...provide efficient and cost-effective laboratory services to all public sector health care providers ... and any private health care provider that requests such services."

This subsection paves the way for the state monopoly to compete for business on an inequitable basis with the private sector. As the Service will not bear the same costs as the private laboratories in that it will:

- be exempt from income tax;
- pay less interest (as borrowings will be guaranteed by the state);
- will not have to provide a return on the monies invested in it;
- have no fear of bankruptcy if it charges uneconomic fees;

it is predictable that the Service will be tempted to undercut the private laboratories on service charges. The proposed arrangements could develop into a very unhealthy set of conditions. The state should not be in competition with its funders (ie taxpayers) on such unequal terms. The private laboratories, for their part, will be in the unenviable position of subsidising their competitors through the taxes they pay. In addition, the private laboratory services are unlikely to be granted any protection against the state monopolist under the Competition Act.

Commercialisation and privatisation

If the state were to commercialise these services, the resultant company would have to stand on its own feet financially. It would pay taxes, pay slightly higher interest rates, be compelled to provide the state with a return on its investment, and be compelled to function in a totally business-like manner in order to remain solvent. What is more, government health providers would be best served if they could then obtain competitive tenders from private laboratories.

It does not appear wise to create a "single national public entity" for laboratory services when government is in the process of commercialising and privatising other services. The most appropriate course of action consistent with government policy would appear to be commercialisation and privatisation of the services.

Research

If the state laboratory services were to be privatised the state would commission specific research on a contract basis. This would allow the state to keep a strict control on the type and cost of research being carried out. Essential research would therefore not be affected by commercialisation or privatisation.

4. Powers and duties of the service

The powers provided for in the Bill are designed to give the proposed National Health Laboratory Service a maximum amount of latitude with the minimum amount of Parliamentary control over its activities. The result is the creation of what has come to be known as a QUANGO (ie quasi NGO) - a government organisation pretending to be a non-government organisation. Such organisations avoid the close scrutiny to which all government agencies should be subjected. They have the power to borrow money without the prior approval of the Minister of Finance, their borrowings are not included in government borrowing figures, they engage in trading activities and even purchase private businesses. Placing such powers in the hands of a state agency is most unhealthy.

Arrangements more in keeping with accountable government are:

- Retaining the laboratories as part of the Department of Health, including them in the department's budget under the control of the Director General and making them directly responsible to the Minister.
- Forming the laboratories into a public company as part of a process of commercialisation and privatisation, under the ministry of Public Enterprises.
- Privatising the laboratories as single competitive entities.

The third proposed arrangement would result in the greatest amount of competition and would best serve the long-term interests of all South Africans.

5. Management of the affairs of the service

The proposed arrangements for the management of the Service are in keeping with its QUANGO nature. The Board is to be appointed by the Minister of Health who in terms of subsection (7)(3) "shall ensure that appropriate laboratory and pathology professionals are appointed". As this Service is to be running a business it is imperative, if the structure remains as it is now, that some members of the Board should be appointed for

their business and management skills. There appears to be no good reason why the Bill should prevent the Minister from making such appointments.

Having a Board comprised solely of "laboratory and pathology professionals" would mean that there would be no whistle-blowers to prevent a cosy arrangement whereby the professionals in control of the Service pursue their own self-interest at the expense of the general public.

However, the worst aspect of the proposed arrangement is the establishment of an Executive Management Committee under the chairmanship of the Chief Executive Officer and with "so many other members, who shall be employees of the Service, as the Board may deem necessary". (emphasis added) There appears to be no good reason why the Board should be prevented by legislation from appointing some of its members to the management committee or why the Minister should not have the power to appoint members to the management committee who are not employees of the service.

Conclusion

The centralisation of government laboratory services under one single state monopoly, and the creation of a QUANGO with excessive powers and insufficient control over its activities is not in the best interests of the citizens of South Africa. It is recommended that the intent and consequences of the arrangements contemplated in this Bill be reconsidered.

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