



TO WHOM IT MAY CONCERN:

PER EMAIL: [lockdowncomments@cogta.gov.za](mailto:lockdowncomments@cogta.gov.za)

CC:

THE PRESIDENCY: NATIONAL COMMAND COUNCIL

c/o: Ms Khusela Diko & Mr Mike Louw

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THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS:

DR NKOSAZANA DLAMINI ZUMA, MP

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**27 April 2020**

**RE: A SCHEDULE OF SERVICES TO BE PHASED IN AS PER THE COVID-19 RISK  
ADJUSTED STRATEGY**

To Whom it May Concern,

1. The Equality Collective is a non-profit company based in Nqileni Village in the Eastern Cape. We work with rural communities and advice offices to advance access to justice, build the infrastructure for collective participation and share research and learning to create a more just and caring society.
2. We also form part of C19 People's Coalition which has made various submissions to your offices regarding amendments to COVID-19 regulations and directions already: <https://c19peoplescoalition.org.za/coalition-submissions/>.
3. We refer to the draft "Schedule of services to be phased in as per the Covid-19 risk-adjusted strategy" ("**the Draft Sector Framework**") published on 25 April 2020 for public comment.
4. In the below table, in the format requested by the "Guidelines on Submission of Comments" provided, we include specific comments on Level 4 Guidelines as requested. However, before proceeding to do so we raise some key general comments on the Draft Sector Framework which we hope can be addressed as the process moves forward.

### **Status and implications of existing Regulations**

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5. It is unclear how the Draft Sector Framework relates to existing Regulations issued in terms of the Disaster Management Act 57 of 2002 (“**Lockdown Regulations**”) and accompanying Directions.
6. We assume that the Draft Sector Framework will be provided as an Annexure to existing Lockdown Regulations. This means that the Lockdown Regulations will need to be amended accordingly. Without full sight of such regulatory amendments that will accompany the publication of this schedule, our comments on the schedule itself are necessarily incomplete.
7. A full record of suggested amendments to Lockdown Regulations and Directions made by, amongst others, members of the C19 Coalition are available here: <https://c19peoplescoalition.org.za/coalition-submissions/>.

### Existing Permit Regime

8. It is unclear whether the existing permit regime developed by Lockdown Regulations will continue to apply and at what levels these regimes may be relaxed or dispensed with.
9. In this regard, we note that the current permit regime has resulted in reported uncertainty and challenges in some sectors. It is therefore necessary to ensure that Regulations clearly set out whether a permit regime will be applied, the sectors to which it would apply, and the manner in which the regime will be implemented.
10. We suggest that permits already issued should expressly remain valid and that there should not be a requirement to continuously renew permits for each phase of the Lockdown.

### Curfews and Criminal Penalties

11. Although purporting to present a phased opening of the economy and a relaxation of lockdown measures the Schedule itself appears to introduce some additional, potentially more stringent measures to existing lockdown including at Level 5. The curfew being introduced (from 8pm to 5am) appears to be intended to apply to Levels 2-5.
12. The curfew is not clearly defined and has been widely announced publicly. Curfew measures that are imposed should be done with as much advanced warning as possible and should be sufficiently flexible to accommodate for a wide range of contexts - from



urban to rural life. This is particularly so because as the Lockdown Regulations are currently framed a violation of a curfew will carry with it a criminal charge.

13. As we do not have clarity regarding the manner in which the existing Lockdown Regulations will be applied in relation to the Draft Sector Framework (as noted above), we are not in a position to fully comment on any proposed enforcement mechanism pertaining to curfew provisions. However, we do note that we are concerned about curfews being imposed with the threat of criminal sanction.

14. As it stands, the proposed curfew is problematic in at least the following respects:

- Any curfew imposed should be done with sufficient advanced warning to allow individuals to adjust their affairs accordingly to prevent themselves from unnecessary vulnerability to criminal prosecution;
- The public health reasons motivating for a curfew at each of the relevant levels have not been made clear to the public;
- It does not adequately account for the progressive return of migrant labourers from their homes to places of work as the economy is opened up over time;
- The blanket time periods of 8pm to 5am have not been explained and are problematic since they may prevent essential services workers and others for whom work will commence for traveling to and from work within curfew hours. Strangely provision is made for essential services workers under Level 5 but not from Level 4 onwards. A general exclusion of essential service workers returning from or going to work should apply; and
- The blanket time periods of 8pm to 5am does not take into account the realities of rural life where commuting to access essential service requires leaving very early and returning late.

15. Though curfews may well be a legitimate and/or necessary measure for addressing COVID-19 they raise various legal and human rights concerns which justify a cautious approach from any government intending to implement them. There is a growing body of jurisprudence regionally and internationally which should guide the Government in its determination of whether an imposition of a curfew is consistent with human rights law and under what terms and conditions this will be so.

### **Policing of Lockdown measures**

16. There has rightly been a large public outcry about the sometimes heavy handed policing of Lockdown Regulations by “enforcement officers” which has already resulted in multiple deaths and various other human rights abuses.



17. All enforcement activity of enforcement officers should be proportionate and undertaken within the limits of the law. The use of criminal penalties to enforce lockdown regulations raises a range of concerns and should be imposed only where there are clear empowering provisions and the rules which can lead to criminal sanction are readily clear and understandable. It is also important to reiterate that the objectives of the lockdown should not be seen as an instrument of force but rather as a public health intervention to protect the public.
18. We draw specific attention to the submission made by members of the C19 People's Coalition regarding the "minimum use of force" by enforcement officers in this regard: [https://www.dropbox.com/s/vrb3hhdi0k5lntq/%5BUrgent%5D%20Recommendations%20for%20amendment%20to%20Covid19%20Regulations\\_11%20April%202020.pdf?dl=0](https://www.dropbox.com/s/vrb3hhdi0k5lntq/%5BUrgent%5D%20Recommendations%20for%20amendment%20to%20Covid19%20Regulations_11%20April%202020.pdf?dl=0). In our view, the Lockdown Regulations and Directions remain an inadequate indication from the National Executive to enforcement officers that force may only be used if "strictly unavoidable"
19. In our view, the justification from criminal sanction for violating Lockdown Regulations decreases substantially as the risk of exposure to COVID-19 decreases or varies depending on the nature of the transgression (regardless of the level). For example, the change between different Levels should be reflected in a progressive and proportional decrease in the severity and degree of consequences for and policing of non-compliance. This is not reflected in the Lockdown Regulations or the Schedule.
20. The Disaster Management Act specifically allows for "penalties" which fall short of criminal offenses for the violation of disaster response measures. Penalties such as "administrative penalties" or "administrative fines" constitute less restrictive means of achieving the enforcement Lockdown Regulations. They are generally more appropriate and proportionate measures. The justification for criminal penalties decreases substantially as the risk of exposure to COVID-19 decreases and this should be reflected in policing at different Levels.

### Immigration Enforcement During the Lockdown

21. There is an urgent need for clear and widespread communication and public statements indicating that non-citizens will not be discriminated against in Covid-19 testing, screening and tracing measures.
22. We note that immigration enforcement activities continue during the lockdown period. Such enforcement may have the effect of forcing migrants, asylum seekers and



refugees into hiding, which could in turn have serious consequences in terms of COVID-19 screening, testing, and contact-tracing measures.

23. To ensure the protection of non-citizens rights, at the very least, formal Directions are required to: address potential expiry of immigration, asylum seeker, and refugee documentation; clearly communicate the continuation of existing services provided to asylum seekers and refugees; clarify the inclusion of non-citizens in economic and social support packages.

### Rural Life

24. As is reflected in our comments above on curfews and various comments and questions raised in the table below, it is our observation that, in general, the Lockdown Regulations and Directions assume as their base point application in a somewhat urban setting. This means that several Regulations and Directions - as well as details provided in this Schedule - have limited application or relevance in the context of rural life.
25. We recommend generally that the more attention is given in the expansion of Schedules, Directions and Regulations to the differing experiences, needs, rights and realities of South Africa's substantial rural population.

### Consultation on Directions

26. A large number of our comments on the Schedule relate to the vagueness of certain terms used in the Schedule. Vagueness of Regulations and Directions is important as this has resulted in confusion, misunderstanding and even abuse by enforcement officers.
27. One of the ways in which the Schedule seeks to deal with this is in repeatedly referring to further Directions which will be issued. We recommend that, similarly to this process, the public at large are given as much time as is reasonably practicable to give input on such Directions. This will assist in ironing out and eliminating potential enforcement problems before they arise through unnecessary and often harsh enforcement by enforcement officers.



## Table of Comments on Level 4 of Schedule for Risk Adjusted Strategy

Clause No	Comments
E	<p>Commentary on E9 under Levels 5 and E10 under Level 4:</p> <p>This amendment was introduced a week ago and hardware stores in rural areas have remained closed because of the requirement to only sell such products to “qualified tradesperson”. The reality in rural and informal areas is that people do their own emergency repair work and this provision indirectly discriminates against them.</p> <hr/> <p>Suggested addition to E16 under Level 4 and E14 under Level 5:</p> <p>16. Children’s clothing <b>and maternity clothing;</b></p> <hr/> <p>Suggested amendment to E17 under Level 4:</p> <p>17 <b>stationary and educational books</b></p>
H	<p>Commentary on H7 under Level 4 and 5:</p> <p>The current provision is not broad enough to allow for legal practitioners to consult with new or existing clients during the lockdown period whose rights are threatened, who have been arrested, to commission affidavits etc. Please find a comprehensive submission made by public interest law clinics to the Minister of Justice and Correctional Services here:</p> <p><a href="https://www.dropbox.com/s/w005rq156g75b16/MEMORANDUM%20.pdf?dl=0">https://www.dropbox.com/s/w005rq156g75b16/MEMORANDUM%20.pdf?dl=0</a></p> <p>And</p> <p><a href="https://www.dropbox.com/s/41vp8w6lz06qxo9/%5BUrgent%5D%20Amendment%20to%20directions%20pertaining%20to%20legal%20practitioners_14%20April%202020.pdf?dl=0">https://www.dropbox.com/s/41vp8w6lz06qxo9/%5BUrgent%5D%20Amendment%20to%20directions%20pertaining%20to%20legal%20practitioners_14%20April%202020.pdf?dl=0.</a></p>
L	<p>Commentary on L1-3 under Levels 4 and 5:</p> <p>This amendment must ensure that persons performing such services in rural areas are permitted to do so, even if they do not have the formal qualification for such service. This is because of the requirement to only allow a “qualified tradesperson” to perform such work may indirectly discriminate against persons who ordinarily perform such work in rural areas. The reality in rural and informal areas is that people do their own emergency repair work and this provision indirectly discriminates against them.</p>

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O	<p>Proposed amendment to O1(b) under Level 4:</p> <p>b) Licensing, permitting, and deeds offices, birth and death certificates <u>(including to non-citizens)</u>, replacement of identification documents, <u>phased resumption of services at all Refugee Reception Offices with the first phase (Level 4) being the provision of renewal of refugee documentation and issuing of refugee IDs only, not asylum seeker documentation, subject to Directions being issued by the Department of Home Affairs regarding public health measures to be implemented at the Refugee Reception Offices ;”</u></p> <hr/> <p>Proposed addition to O1(h) under Levels 4 and 5:</p> <p>“Commissioners of the South African Human Rights Commission, Gender Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Public Protector and Deputy Public Protector, the Independent Electoral Commission <u>and the Judicial Inspectorate for Correctional Services.</u>”</p> <hr/> <p>Proposed addition to O1 under Levels 4 and 5: This was an amendment that was made to the Regulations on 16 April that seems to have fallen off in this Schedule:</p> <p>i): Services rendered by <u>or accredited by</u> the institutions referred to in item h;</p> <p>This is a very important proviso without which these institutions will not be able to effectively fulfil their mandates. This is not covered by O(c) as it would not cover the Independent Correctional Centre Visitors, for example.</p>
P	<p>Proposed amendment to P3 under Level 4:</p> <p>3. Recycling of glass, paper, metal <u>and plastic</u>, including informal recyclers permitted at 50% capacity;</p> <hr/> <p>Proposed amendment to P3 under Level 4 and P4 under Level 5:</p> <p>4. All social work, counselling, <u>humanitarian services</u>, care and relief activities, <u>including hot food at soup kitchens</u> permitted;</p>
R	<p>Proposed amendment to R2:</p>

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	“Stay at home, other than essential travel for work; to purchase essential goods; <b><u>and to obtain essential services</u></b> ”
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Sincerely,

*Peacock*

Equality Collective: **Executive Director**

Tess Nolizwe Peacock

[tess@equalitycollective.org.za](mailto:tess@equalitycollective.org.za)

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