Mr VG Smith

Chairperson of the Portfolio Committee on Justice and Correctional Services

For Attention: Mr V Ramaano

Per email: vramaano@parliament.gov.za

Dear Mr Smith

**WRITTEN SUBMISSION ON THE STATE LIABILITY AMENDMENT BILL [B16-2018]**

My name is James Wewege. I am a pre-final year Bacc LLB student at Stellenbosch University. I have included my contact details in a separate cover sheet which is attached to this email and entitled “Contact Details of James Wewege.”

If my submissions below are deemed to be worthy, I would be available to appear before the Portfolio committee to provide an oral presentation.

The contents of my submissions are the result of my research into the State Liability Amendment Bill as part of my Bacc LLB degree. This research was done under the supervision of Dr AB Wessels of the Private Law Department of Stellenbosch University. Dr Wessels is aware of the contents and supports this submission.

Thank you in advance for reading this written submission.

Yours faithfully,

James Wewege

**The written submission hereunder will address three separate aspects of the State Liability Amendment Bill (“hereafter referred to as the Amendment Bill”).**

1. In relation to section 2A(3), periodic payments are subject to an annual increase in terms of the average consumer price index. It is respectfully submitted that this is not the most appropriate mechanism to determine the annual increase.

2. The wording of section 2A(2)(b) of the Amendment Bill and the constitutional implications that are raised.

3. Periodic payments, in terms of section 2A(2), may have the inadvertent consequence of being regarded as an annuity for the purposes of the Income Tax Act 58 of 1962.This will draw problematic income tax consequences for litigants who are awarded periodic payments. In relation to this point, I wish to state, at the outset, that I am aware that the Income Tax Act does not fall within the ambit of this Portfolio committee. But I would nevertheless like to bring it to the attention of the Portfolio Committee as it will have significant practical consequences.

The submission below will address all of these points in turn.

**1. In relation to section 2A(3), periodic payments are subject to an annual increase in terms of the average consumer price index. It is respectfully submitted that this is not the most appropriate mechanism to determine the annual increase.**

As a means of compensation for future costs, future medical treatment and future loss of earnings the Amendment Bill, through section 2A(2), proposes “periodic payments”. Section 2A(2) of the Amendment Bill provides that these periodic payments will only be during the lifetime of the plaintiff and at an interval of no less than one year. Section 2A(3) emphasises two aspects relating to periodic payments;

1. That only the Consumer Price Index (“CPI”) is determinative of the annual increase in periodic payments and;
2. That the ordinary interpretation of the Amendment Bill provides that there can only be the increase periodic payments.

Periodic payments are the method of compensation proposed by the Amendment Bill for the payment of “costs of future care; future medical treatment and future loss of earnings of an injured party.”[[1]](#footnote-1) As far as future medical treatment and future care costs are concerned, I wish to respectfully contend that the use of CPI is an inappropriate measure to determine the increase. The same is however not contended in relation to future loss of earnings. Therefore, future loss of earnings falls outside the scope of the following discussion.[[2]](#footnote-2)

This submission relates only to future medical treatment and future care. For purposes of the following submission, *future medical treatment and future care costs will be broadly categorised as medical costs.*

 The reasons why the CPI is contended to be inappropriate are; in the determination of the CPI, medical costs have considerably small weighting; the rate of medical inflation is not necessarily equivalent to the CPI and the use of the CPI will result in the award of periodic payments being at a disjuncture with the purpose of a damages award.

Consumer Price Index: An overview

“The CPI is a current social and economic indicator constructed to measure changes over time in the general level of prices of consumer goods and services that households acquire, use, or pay for.”[[3]](#footnote-3) The CPI ultimately attempts, through the measurement of the purchasing cost of a “fixed basket of consumer goods and services of constant quality and similar characteristics,” to determine what the change in the consumer prices are over a period of time is.[[4]](#footnote-4) The CPI is used as an economic indicator to determine the measure of inflation or deflation within a country.[[5]](#footnote-5)

Medical costs are included in the basket of goods and services used by Stats South Africa (“StatsSA”) to determine the CPI. Pharmaceutical products, which include both prescription and non-prescription medicine, are included as a good.[[6]](#footnote-6) Dental, hospital and medical services are included as services.[[7]](#footnote-7) As with all indicator products, there is a weight of inclusion assigned to the good or service which is used to determine the CPI.[[8]](#footnote-8) This weight is a function of the relative importance of the particular good or service to the overall index.[[9]](#footnote-9) In the March 2017 CPI Index, pharmaceutical products receive a weighting of 0.53% and all medical services, including hospital and dental services, receive a weighting of 0.87%.[[10]](#footnote-10) Therefore it is clear that the weighting of medical related costs in the determination of the CPI is almost negligible – as it is cumulatively less than 2% of the entire index. The remainder of the CPI is determined by other goods and services.

Problems with the reliance on CPI

Although the CPI is a universally accepted measure of inflation, it is incorrect to state that the inflation relating to medical costs is necessarily equivalent to the CPI. There is one particular concern which is raised when the periodic payments for medical costs are linked to an annual increase which depends on CPI;

This concern is:

1. By increasing the periodic payment in terms of the CPI, there is no guarantee that the plaintiff will be able to meet the costs of future medical care.

The reason why this is a concern is related to the manner in which the CPI is determined. The measure of the CPI includes a vast number of indicator products in its determination which results in an average inflation rather than a particular, indicator related, inflation being produced. Furthermore, the CPI is not an adequate representation of the inflation applicable to medical costs as is illustrated by the fact that since 2003, the inflation relating to health care has not been equal to annual headline inflation.[[11]](#footnote-11)

This is illustrated by the following graph,



Graph 1: Source: H Fourie “Unpacking health inflation in South Africa” (29-09-2017) <https://econex.co.za/unpacking-health-inflation-in-south-africa/> (accessed 16-07-2018).

As illustrated in the above graph; CPI inflation has not been the same as “health” inflation for the past 14 years.

The object of damages in the law of delict is, as far as monetary compensation can, to place the plaintiff in the financial position they would have been in had the delict not occurred.[[12]](#footnote-12) If an inapplicable value, which does not adequately represent the inflation relating to medical costs, is used to determine future medical costs, the plaintiff may not be placed in the financial position that they would have been in had the delict not occurred. The reason for this is where the CPI inflation does not equal medical costs inflation, the annual periodic payment adjustments will not replicate the relative change in the underlying cost sought to be compensated for.

The practical consequences of using the CPI:

It is acknowledged that whether the differential between the CPI and actual medical cost inflation is positive or negative will determine whether the use of the CPI will be beneficial are disadvantageous to the National Department of Health (“hereafter referred to as NDoH”).

If the CPI is used, it will be disadvantageous to the state, in particular the NDoH if the CPI inflation exceeds medical costs inflation. This is because the NDoH will have to an obligation to pay an annual increase, in terms of the current construction of section 2A(3), that is greater than the actual increase in medical costs. This will mean that the state will over compensate the plaintiff.

1. Given the context of the impact of medical malpractice litigation on the NDoH as illustrated below;
	1. The context is broadly illustrated by: the NDoH having to have paid out just shy of R500 million in damages between 2010 and 2014.[[13]](#footnote-13)
	2. That “since the start of the 2017/18 financial year, the department [of health] has paid out over R400m in medical negligence cases”[[14]](#footnote-14)
	3. Furthermore, the contingent liabilities of the NDoH for 2018 is currently at R56 Billion which is a R17 Billion increase from the 2016 contingent liability of R41 Billion.[[15]](#footnote-15)

It is hardly appropriate to make the NDoH pay annual increase in terms of the CPI if the actual increase in medical costs is much lower.

The converse is however also true, it will be beneficial to the state, and disadvantageous to the plaintiff, when the CPI inflation is less than inflation in relation to medical costs, because if the state had to pay the medical costs inflation the relative increase in the periodic payments would be greater. The consequences would be;

1. It will have tangible impacts on the ordinary South African, who is now living a life subject to a medical condition that arose from treatment in a public health establishment. If compensation is increased at a rate that does matches the increase in the expenses (medical expenses) that the plaintiff has to cover, it will be to their extreme detriment.
2. Plaintiff’s, who are in desperate need accurate compensation for future medical expenses, will be under-compensated.
3. Under-compensating them is not the interests of the plaintiff.
4. Would unduly disadvantage the plaintiff who has already suffered harm and will now be in a worse off position to be able to afford medical costs.

Section 2A(4):

Section 2A(4) provides that either the state or the creditor, as defined in the Amendment Bill, can apply to court for the variation of, *inter alia,* the amount of periodic payments. Although this recourse to a court application provides an ambit for the amount to be varied where the CPI is an inadequate measure, it nevertheless will result in more litigation and legal fees which is neither in the interests of the state, nor the plaintiff.

It furthermore places a *double cost* on both the state and the plaintiff. What I mean by a *double cost* is that both the state and the plaintiff will have had to incur costs (legal or otherwise) in the initial court case relating to the harm they suffered. This court case then results in them being awarded damages in the form of periodic payment.
The cost is duplicated if the litigants have to reapproach the courts for a variation of this initial order. Furthermore, as Ponnan JA in *City of Cape Town v South African National Roads Authority Limited*[[16]](#footnote-16)(“*Cape Town*”) held, access to justice is undermined where application proceedings, despite their availability, cannot be pursued by people with limited funds.[[17]](#footnote-17) This principle is of increasing relevance when it is considered that a vast majority of those who will rely on the Amendment Bill, will have sought medical treatment in a public health establishment solely on the basis of the unaffordability of a private health establishment. This ultimately is an issue of access to justice, a right in terms of the Bill of Rights of the Constitution of the Republic of South Africa, 1996.

Suitable Alternatives to CPI

Whether a replacement metric of the CPI is to be considered a suitable alternative is proposed to be a function of accuracy; costs and practicality.

1. Accuracy: the metric used must be accurately and reliably measurable.
2. Cost: Cost relates to how expensive it is for the litigants to rely on this alternative. Reliance on the the CPI does not result in either litigant facing any additional costs because the CPI is frequently published by StatsSA and is accessible by both the state and the plaintiff.
The metric proposed should therefore replicate the free accessibility of the CPI.
3. Practicality: This is interpreted as meaning that the metric must be readily ascertainable and capable of being used by the court.

Using a the matrix of accuracy; costs and practicality it is proposed;

That the annual net increase in the budget expenditure of the NDoH on the medical costs relating to the particular medical treatment required in future by the plaintiff be used instead of the CPI.

This metric is of particular relevance because it is in relation to the public healthcare system and is therefore reflective of the rising costs within public healthcare. It is easily ascertainable and therefore decidedly practical. It is furthermore without any additional costs, as the NDoH determines a budget on a per annum basis.

Reliance on this metric will enable the increase in medical costs to be replicated by the increase in periodic payments, which will not result in further proceedings in terms of section 2A(4) and allow the plaintiff to receive compensation which is of significantly greater accuracy.

The proposed drafting: The proposed additions are indicated as such below by means of being underlined.

Original section 2A(3):

“(3) The amount payable by way of periodic payments must increase annually in accordance with the average of the consumer price index, as published from time to time by Statistics South Africa established in terms of section 4 of the Statistics Act, 1999 (Act No. 6 of 1999), for the immediately preceding period of 12 months.”

Proposed re-drafted Section 2A(3):

(3) The amount payable by way of periodic payments for future loss of earnings must increase annually in accordance with;

(a) the average of the consumer price index, as published from time to time by Statistics South Africa established in terms of section 4 of the Statistics Act, 1999 (Act No. 6 of 1999), for the immediately preceding period of 12 months

(4) The amount payable by way of periodic payments for future care and future medical expenses must be increased annually in accordance with;

(a) the amount by which the Department of Health has increased its budget allocation in the current financial year, in respect of that particular medical treatment that is required by the plaintiff in the future.

In order for the re-drafted section to retain its interpretative clarity, it is proposed that it be separated from section 2A(3).

This proposed amendment should be taken into account for the following reasons:

1. The annual increase of periodic payments will reflect the relative change in the expense. This will mean:
	1. The plaintiff will be more accurately compensated.
	2. The NDoH will at no stage have to pay an increase in periodic payments which exceeds the actual increase in the medical expenses that the periodic payments compensate.

1. The plaintiff will not have to incur the legal costs or the time delays of bringing a court application in terms of section 2A(4) which clearly makes the remedy more just and equitable and in line with the spirit, purport and object of the Bill of Rights.

**2. The wording of section 2A(2)(b) of the Amendment Bill and the constitutional implications that are raised.**

Section 2A(2)(b) currently provides as follows.

*“(b)* The court may—

(i) in lieu of the amount; or

(ii) at a reduced amount,

of compensation that would have been paid for the future medical treatment of the injured party, *order the State to provide such treatment to the injured party at a public health establishment*.” (My emphasis added)

This aspect of the submission concerns part of Section 2A(2)(b) that has been italicised above “*order the State to provide such treatment to the injured party at a public health establishment.*”

It was suggested by Mr Buthelezi of the Portfolio Committee that the implementation of section 2A(2)(b) the Amendment Bill will result in the plaintiff having to return to the hospital that caused the harm.[[18]](#footnote-18) This must be considered alongside the ordinary grammatical interpretation of section 2A(2)(b) which indicates that the court, in granting the award in terms of section 2A(2)(b) of the Amendment Bill, would particularise the hospital that the plaintiff will have to attend as a plaintiff. By particularise, I mean that the court would direct the plaintiff towards a specific hospital. This is illustrated by the following example: Plaintiff X, who was successful in terms section 2A(2)(b), would have attend Chris Hani Hospital for future medical treatment and future care.

If a court were to award such an award and particularise the public health care establishment, it would certainly raise constitutional concerns. If the Amendment Bill is challenged through the courts on the basis of its constitutionality, this will the implementation of the Amendment Bill to be delayed pending the outcome of the court. This would be in direct conflict with the purpose of the Amendment Bill which “promoted in the interim pending the outcome of the larger investigation into medico-legal claims by the South African Law Reform Commission”.[[19]](#footnote-19)

I submit that the constitutional concerns include the violation of a number of Constitutional rights provided for in the Bill of Rights. The particular rights are; Freedom of movement and residence;[[20]](#footnote-20) Freedom of trade, occupation and profession[[21]](#footnote-21) and Freedom and security of the person.[[22]](#footnote-22) These rights are relevant because if a person were to be directed towards a particular public health care establishment, it is unclear how the order can accommodate the reality of people having to move residences or areas. It will limit the persons freedom of movement and residence. Similarly, if a person received a work opportunity in another province, would they still have to attend that particular public health care establishment in their home province? If they did have to attend that particular public health care establishment, it would undoubtedly amount to a limitation of the right to freedom of trade, occupation and profession.

Outside of the Bill of Rights, the right of choice provided for in the National Health Act 61 of 2003, would furthermore be infringed upon if a court particularised the public health care establishment that a successful plaintiff were to have to attend.

The constitutionality concerns raised by the Amendment Bill and delayed implementation thereof can be avoided through clearer drafting. This will be expanded upon below.

Interpretation of Legislation:

There is an established approach to the interpretation of legislation by our courts. It was provided for by the Supreme Court of Appeal. It has been applied in the Constitutional Court.[[23]](#footnote-23) The Supreme Court of Appeal matter which provided this approach is the *Natal Joint Municipal Pension Fund v Endumeni Municipality*[[24]](#footnote-24) (“*Endumeni*”) matter. The approach of *Endumeni* is furthermore supported by the principles indentified in the Constitutional Court case of *Cool Ideas 1186 CC v Hubbard*[[25]](#footnote-25) (“*Cool Ideas*”).In *Endumeni* Wallis JA provided that;

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors.”[[26]](#footnote-26)

Wallis JA furthermore provided that the process of interpretation requires the language and the context to be considered together from the outset.[[27]](#footnote-27) The scope of the interpretation which judges can attribute to legislation is however delimited by the language of the provision.[[28]](#footnote-28) Therefore the process is interpretative and not inventive. In *Cool Ideas* Majiedt AJ provided that “all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity.”[[29]](#footnote-29) It is with regard to these authoritative matters that section 2A(2)(b) will be interpreted.

The problematic aspect is the use of the word “a” in Section 2A(2)(b). (this has been bolded below)

*“(b)* The court may—

(i) in lieu of the amount; or

(ii) at a reduced amount,

of compensation that would have been paid for the future medical treatment

of the injured party, *order the State to provide such treatment to the injured*

*party at* ***a*** *public health establishment*.” (My emphasis added)

Ordinary grammatical meaning of the word “a” is provided for in numerous dictionaries. In approaching the interpretation of legislation, courts will often being with the ordinary grammatical meaning of the word or phrase that is required to be interpreted. I will therefore approach this the same way.

The Cambridge Dictionary defines as being “used before a noun to refer to a single thing or person that has not been mentioned before, especially when you are not referring to a *particular* thing or person.”[[30]](#footnote-30)

The ordinary grammatical meaning of the word “a” clearly results section 2A(2)(b) envisaging a particular/specific health care establishment. This, as has been elaborated on above, would raise a number of constitutional questions and would delay the implementation of the solutions provided for in the Amendment Bill.

In order to avoid constitutional problems, the Amendment Bill should cater for a range of public health care establishments or a choice of future public health care establishments by the successful plaintiff.

It is in this regard that it respectfully submitted that the relevant section be re-drafted. Below is a suggestion of what the re-drafted section should state.

Original section 2A(2)(b):

*“(b)* The court may—

(i) in lieu of the amount; or

(ii) at a reduced amount,

of compensation that would have been paid for the future medical treatment of the injured party, order the State to provide such treatment to the injured party at a public health establishment.”

Redrafted section 2A(2)(b): The proposed amendment is underlined below and the aspect of the section that must be removed is indicated as such with a ~~strikethrough~~

*“(b)* The court may—

(i) in lieu of the amount; or

(ii) at a reduced amount,

of compensation that would have been paid for the future medical treatment of the injured party, order the State to provide such treatment to the injured party ~~at a~~ a range of public health establishments. The injured party may, in terms of this order, approach any of the public health establishments in the range.”

It is submitted that this redrafted section will:

1. Avoid constitutional right violations.
2. Provide greater certainty as to what the meaning of the relevant section is.
3. Indicating a range will be allow for the availability of a public hospital to be catered for.
4. It will cater for an instance whether the public hospital is inaccessible to the plaintiff.
5. It will be in line with a more long term view and prevent the Amendment Bill from being constitutionally challenged.
6. Reconcile with the purpose and the object of the Amendment Bill.

**3. Periodic payments, in terms of section 2A(2), may have the inadvertent consequence of being regarded as an annuity for the purposes of the Income Tax Act 58 of 1962.This will draw problematic income tax consequences for litigants who are awarded periodic payments.**

As it has been stated above, I am aware that the Income Tax Act does not fall within the ambit of this Portfolio Committee. But I would nevertheless like to bring this concern to the attention of the Portfolio Committee as it will have significant practical consequences and the Portfolio Committee can refer it to the state law advisers and the Portfolio Committee responsible for the Income Tax Act.

The discussion below will be limited to periodic payments as provided for in Section 2A(2) of the Amendment Bill.

The essence of the submission below is that there is a significant risk that the periodic payments received by a plaintiff in terms of the State Liability Amendment Bill will be subject to income tax in terms of Income Tax Act 58 of 1962.

The consequences of subjecting a successful plaintiff to Income Tax:

1. The plaintiff will receive less money per annum. This is because a portion of the periodic payments will have to be paid to the South African Revenue Services (‘SARS”).
2. Successful plaintiffs will receive less compensation, placing the plaintiff in an adverse position, without any justifiable reason for this.
3. It may place an undue burden on a successful plaintiff to submit a tax return.
4. The purpose of a damages award, where a claim has been based on the law of delict, is to compensate the plaintiff. Taxing the plaintiff on the compensation undermines this significantly.

The position relating to damages for personal injuries:

Ordinarily, lump sum compensation for personal injuries are capital in nature and excluded from capital gains tax in terms of paragraph 59 of the 8th Schedule of the Income Tax Act. This means that a successful plaintiff will not be taxed upon the compensation they receive for personal injuries, irrespective of whether the damages take on the form of an instalment payment or as a lump sum.

Section 2A(2) of the Bill:

As it has already been noted, there is a significant risk that periodic payments in terms of section 2A(2) of the Bill will be subject to income tax in terms of the Income Tax Act.

This is because there is a significant risk that the periodic payments will be considered as an annuity for the purposes of the Income Tax Act. Compensation in the form of an annuity changes an amount which would ordinarily be of a capital nature, to an amount which is of an income nature.[[31]](#footnote-31)

An annuity is a special inclusion into the gross income of the taxpayer in terms of paragraph (a) of the definition of gross income, section 1(1) of the ITA. In the absence of an applicable exemption for the particular annuity, the annuity will be included into the taxpayers income and the taxpayer will be taxed accordingly.

An annuity is undefined in terms of the Income Tax Act and the characteristics of an annuity have been clarified by means of case law.

In this regard, the Portfolio Committee must consider the following cases which are authoritative with regards to what an “annuity”, for the purposes of the Income Tax Act, includes:

1. *Deary v Deputy Commissioner of Inland Revenue*1920 CPD 541.
2. *Secretary for Inland Revenue v Watermeyer* 1965 4 SA 431 (A) 437.
3. *Kommissaris van Binnelandse Inkomste v Hogan* 1993 4 SA 150 (A) 157.

The relevant aspects of the Amendment Bill which are important to determine whether a periodic payment is an annuity is:

1. Section 2A(1) which provides that the court must order that compensation to be paid which will take on the form of, *inter alia*, periodic payments.
2. Section 2A(2)(a)(i) and (ii) which provide that the periodic payments are repetitive on an annual basis and limited to the lifetime of the injured party. The periodic payments are also of an uncertain number of payments as the lifetime of the plaintiff cannot be determined at the outset.

If the periodic payments amount to an annuity and are therefore included into gross income by means of the special inclusion in paragraph (a) of section 1(1) of the Income Tax Act, the plaintiff will have to pay income tax of this.

The reason why this is the case is because there is not an exemption in terms of section 10 of the Income Tax Act which is applicable specifically to compensation in the form of periodic payments arising from the State Liability Act, as amended by the State Liability Amendment Bill. There also exists no other applicable exemption in the Income Tax Act.

Suggested solution:

The solution to the adverse consequence of periodic payments being categorised as an annuity and therefore subjecting the plaintiff to income tax in terms of the Income Tax Act is simply an amendment to the Income Tax Act.

The amendment must include into the Income Tax Act an additional exemption for compensation paid in the form of periodic payments in terms of the State Liability Act, as amended by the State Liability Amendment Bill. This exemption can primarily be modelled on the exemption found in section 10(1)(gB)(iv) which is applicable to compensation in terms of the Road Accident Fund Act 56 of 1996.

This exemption must exempt income in terms of the State Liability Act (in its amended form to include this Amendment Bill)

Suggested Drafting:

Section 10(1)...Income Tax Act 58 of 1962:

“Compensation paid as periodic payments in terms of section 2A(2) of the State Liability Act 20 of 1957;”

1. Section 2A(2)(a) State Liability Amendment Bill [↑](#footnote-ref-1)
2. The application of the CPI to loss of earnings is established within the law. There are a number of cases which support this contention and the RAF has recently been amended in order to accommodate the increase in CPI inflation. [↑](#footnote-ref-2)
3. Stats SA “Consumer Price Index the South African CPI Sources and Methods Manual” (2017) [↑](#footnote-ref-3)
4. Stats SA “Consumer Price Index the South African CPI Sources and Methods Manual” (2017) 5. [↑](#footnote-ref-4)
5. Investopedia “Consumer Price Index – CPI” (n.a) <https://www.investopedia.com/terms/c/consumerpriceindex.asp/> (accessed 16-09-2018). [↑](#footnote-ref-5)
6. Stats SA “Consumer Price Index the South African CPI Sources and Methods Manual” (2017) 11. [↑](#footnote-ref-6)
7. Stats SA “Consumer Price Index the South African CPI Sources and Methods Manual” (2017)11-12. [↑](#footnote-ref-7)
8. Stats SA “Consumer Price Index the South African CPI Sources and Methods Manual” (2017) 13. [↑](#footnote-ref-8)
9. Stats SA “Consumer Price Index the South African CPI Sources and Methods Manual” (2017) 13. [↑](#footnote-ref-9)
10. Stats SA “Consumer Price Index the South African CPI Sources and Methods Manual” (2017)71-72. [↑](#footnote-ref-10)
11. H Fourie “Unpacking health inflation in South Africa” (29-09-2017) <https://econex.co.za/unpacking-health-inflation-in-south-africa/> (accessed 16-07-2018). [↑](#footnote-ref-11)
12. Lesetja *Assessment* 38. [↑](#footnote-ref-12)
13. South African Law Reform Commission “Medico-legal Claims” Paper 33 Project 141 (2017) 16. [↑](#footnote-ref-13)
14. V Mkize “Gauteng's R18bn medical liability headache” (25-03-2018) *News24* <https://www.news24.com/SouthAfrica/News/gautengs-r18bn-medical-liability-headache-20180325-2/> (accessed 13-10-2018) [↑](#footnote-ref-14)
15. South African Law Reform Commission “Medico-legal Claims” Paper 33 Project 141 (2017) 17. [↑](#footnote-ref-15)
16. 2015 JDR 0624 (SCA). [↑](#footnote-ref-16)
17. *City of Cape Town* para 43.  [↑](#footnote-ref-17)
18. This relates to Mr E Buthelezi’s comments on page 6 of “Criminal Procedure Amendment Bill; State Liability Amendment Bill; Legal Practice Regulations; Magistrates' suspension; with Deputy Minister” (15-08-2018)Accessed at *Parliamentary Monitoring Group <*https://pmg.org.za/committee-meeting/26832/*/>* (accessed 13-09-2018) [↑](#footnote-ref-18)
19. Purpose of the State Liability Amendment Bill. [↑](#footnote-ref-19)
20. Section 21 Constitution. [↑](#footnote-ref-20)
21. Section 22 Constitution. [↑](#footnote-ref-21)
22. Section 12(1)(a) Constitution. [↑](#footnote-ref-22)
23. Municipal Employees Pension Fund v Natal Joint Municipal Pension Fund (Superannuation) (2018) 39 ILJ 311 (CC) para 28. [↑](#footnote-ref-23)
24. 2012 (4) SA 593 (SCA). The matter of Municipal Employees Pension Fund v Natal Joint Municipal Pension Fund (Superannuation) (2018) 39 ILJ 311 (CC) para 28 confirmed that the *Endumeni* matter is authoritative. [↑](#footnote-ref-24)
25. 2014 (4) SA 474 (CC) . [↑](#footnote-ref-25)
26. *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18 (footnotes omitted). [↑](#footnote-ref-26)
27. Para 19. [↑](#footnote-ref-27)
28. Para 22. [↑](#footnote-ref-28)
29. *Cool Ideas 1186 CC v Hubbard* 2014 (4) SA 474 (CC) para 28. [↑](#footnote-ref-29)
30. Anonymous “Meaning of “a” in the English Dictionary” <https://dictionary.cambridge.org/dictionary/english/a/> (accessed 22-09-2018). [↑](#footnote-ref-30)
31. M Stiglingh (ed) *SILKE: South African Income Tax 2018* (2018) 56. [↑](#footnote-ref-31)