# NATIONAL ASSEMBLY

**FOR WRITTEN REPLY**

**QUESTION NO. 2088**

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**(INTERNAL QUESTION PAPER NO. 20)**

**Mrs M O Clarke (DA) to ask the Minister of Health:**

(1) Whether public health practitioners are insured against medico-legal claims; if not, why not; if so, what are the relevant details of the insurer;

(2) whether there is a regulated framework in terms of the extent of the legal costs that can be charged; if not, why not; if so, will he furnish Mrs M O Clarke with a copy of the framework?

###### NW2491E

**REPLY:**

(1) Public health practitioners are not insured against medico-legal claims. Section 76 (1) (h) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“PFMA”) read with Treasury Regulation 12.2 provides for the claims against the State through acts or omissions of officials and how they must be dealt with.

Treasury Regulation 12.2 provides that an institution must accept liability for any loss or damage suffered by another person, as for a claim against the state, which arose from an act or omission of an official, provided the official acted in the course of his or her employment and was not reckless, wilful or malicious.

In terms of Treasury Regulation 12.2.3 provides that an amount paid by the institution for losses, damages or claims arising from an act or omission of an official must be recovered from the official concerned if the official is liable in law to compensate the institution unless the institution has accepted liability in terms of paragraph 12.2.1.

(2) The regulated framework with regard to the legal costs and in particular the extent of the legal costs that can be charged by legal practitioners is the responsibility of the Department of Justice and not the Department of Health.

Section 35 (4) of the Legal Practice Act, 2014 (Act No.28 of 2014) (LPA) mandates the South African Law Reform Commission (SALRC) to investigate and report back to the Minister of Justice and Constitutional Development with recommendations on issues of fees and tariffs payable to legal practitioners.

In light of this, the South African Law Reform Commission (SALRC) was requested to conduct an investigation into legal fees. In light of the above the SALRC started with their Project 142. On 10 September 2020, the SALRC issued a Discussion Paper 150 with recommendations. Below are some of the recommendations from the SALRC relating to legal fees.

Recommendation 7.1 of the Discussion Paper: The imposition of a universal and compulsory tariff is undesirable not only for the legal profession, but for the economy of South Africa too.

Recommendation 7.2 of the Discussion Paper: The LPC (Legal Practitioners Council), as the regulatory body for the legal profession in the Republic, is the appropriate body to develop service-based attorney and client Fee Guidelines for determining legal fees in respect of all branches of the law.

N.B. More information can be obtained from the Department of Justice.

END.