MEDICO-LEGAL CLAIMS

Strengthening accountability for medico-legal claims

Behind every claim is a person.
Audit insight must lead to action that protects care.

Presented by Ms Tsakani Maluleke | Auditor-General of South Africa

SAMLA Conference · Thursday, 8 October 2026 · aha Kopanong Hotel and Conference Centre, Benoni

top EMPLOYER South Africa 2026 FOR A BETTER WORLD OF WORK

AUDITOR-GENERAL

Our vision



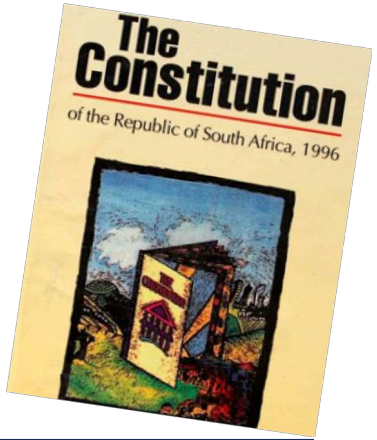
To be recognised by all our stakeholders as a relevant supreme audit institution that enhances public sector accountability.

Our mission



The AGSA has a constitutional mandate and, as the supreme audit institution of South Africa, it exists to strengthen our country's democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence.

Constitutional and legislative mandate



Chapter 9 of the Constitution

Mandate and functions

- Chapter 9 of the Constitution of the Republic of South Africa, 1996, establishes the Auditor-General of South Africa (AGSA)
- The functions of the AGSA are described in section 188 of the Constitution and further regulated by the Public Audit Act 25 of 2004 (PAA)



Section 188

The AGSA must **audit and report** on the **accounts, financial statements and financial management** of all national and provincial state departments and administrations; all municipalities; and any other institution or accounting entity required by national or provincial legislation to be audited by the AGSA.

Accountability

The AGSA is accountable to the **National Assembly** in terms of section 181(5) of the Constitution and section 3(d) of the PAA, and has to report on its activities and performance of its functions in terms of section 10 of the PAA.

Constitutional mandate and the work we do

1 000+

audits across all spheres of government each year

The AGSA has a unique whole-of-government view. Across financial, performance and compliance audits, the office generates credible information for management, oversight, citizens and the broader accountability ecosystem.

Financial information

Are the financial statements reliable and free from material misstatement?

Performance information

Is reported delivery reliable and useful for accountability?

Compliance with legislation

Were public resources used lawfully and within the prescripts that protect fairness and value?

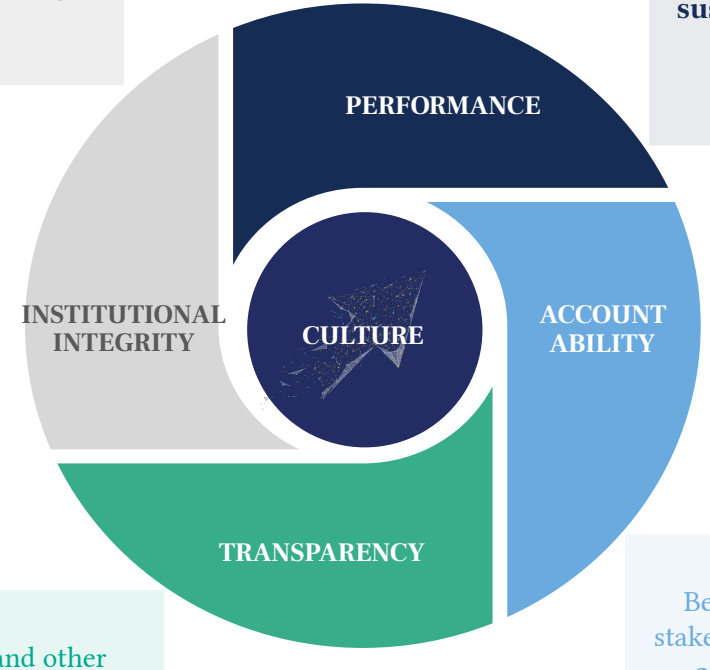
Together, these audits serve as an early-warning system: they reveal weak controls, poor procurement, missing evidence, financial loss indicators and risk to service delivery before matters become investigations or commissions.



Advocating for an effective government culture

Implement and maintain **institutionalised controls** to ensure leadership and officials **behave ethically, comply with legislation and act in best interest** of institution, **avoiding conflicts of interest**

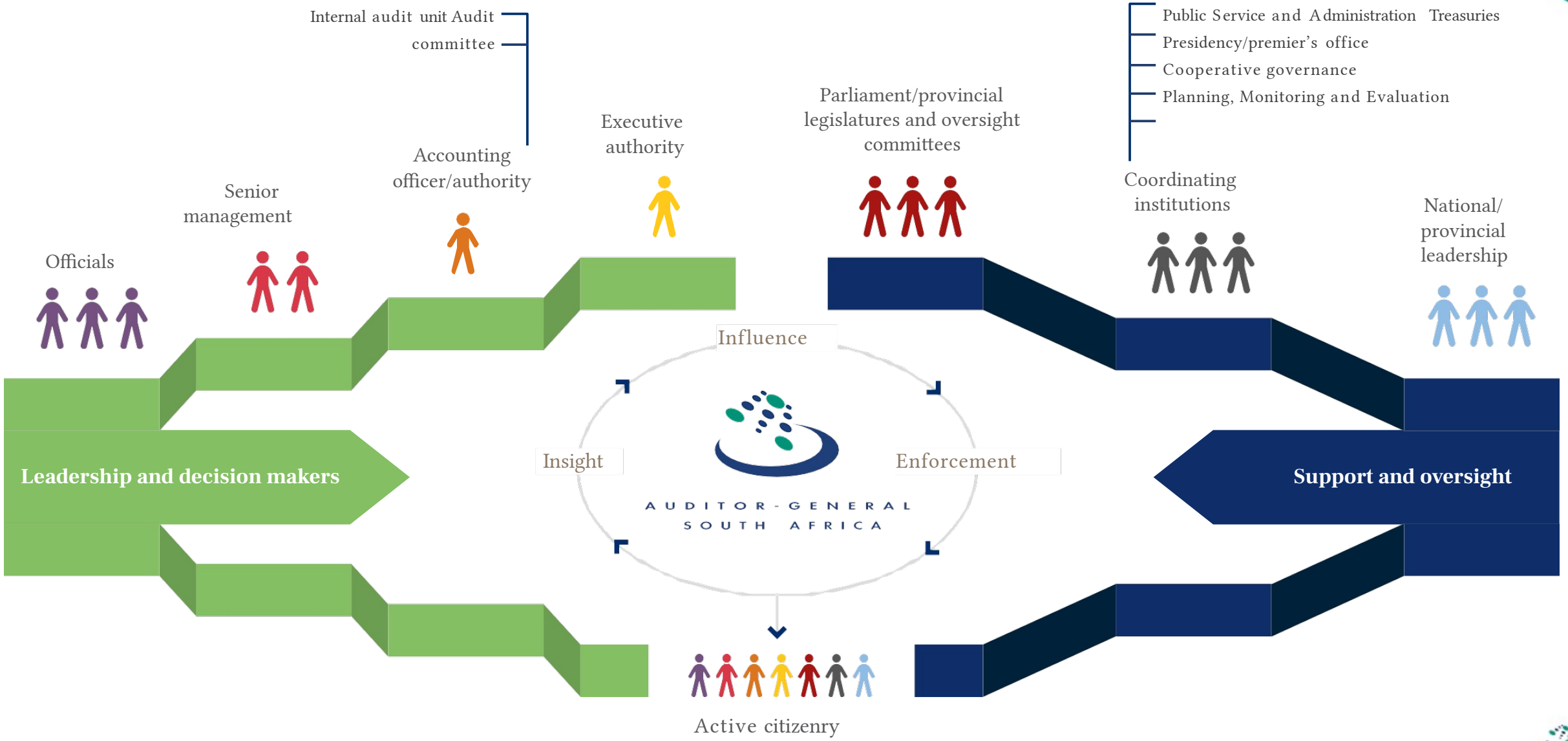
Demonstrate commitment to improving lived realities of South Africans by **delivering on legislated mandate and strategic objectives aligned to people's needs**, being **financially sustainable**, and **avoiding harm to public and public sector institutions**



Provide public, oversight, auditors and other stakeholders with **timely, relevant and reliable information on institution's finances, performance, use of resources and compliance with legislation**

Be responsive to public, oversight and other stakeholders through **reporting and providing answers on mandated responsibilities fulfilled, actions taken and decisions made**; ensure **swift consequences** for transgressions and poor performance

Every roleplayer contributes to an effective accountability ecosystem



The AGSA's role in medico-legal accountability – our interest in this

Healthcare in South Africa is vital because it supports public well-being, economic productivity, and social equity for roughly 84% of the population who depend on public services.



WHY HEALTH CARE MATTERS IN RSA?

- **Disease management:** Manages massive public health challenges like HIV/AIDS and tuberculosis (TB) at the primary care level.
- **Economic growth:** Keeps the workforce healthy and productive, which helps local businesses grow.
- **Poverty reduction:** Acts as a financial safety net to protect families from falling into extreme poverty due to medical costs.
- **Social justice:** Aims to bridge the deep gap between the majority relying on under-resourced public facilities and the minority using private medical aid.

The AGSA's role in medico-legal accountability – current realities of the sector

Overall: South Africa's healthcare challenges stem from a combination of historical inequalities, limited resources and mismanagement, infrastructure limitations, workforce shortages, and a high disease burden.

From an AGSA perspective, the most critical systemic risks are inadequate governance, weak infrastructure management, human resource shortages, ineffective procurement and contract management, and poor accountability for healthcare outcomes, all of which directly affect service delivery and citizen well-being.

OPERATIONAL AND RESOURCE CONSTRAINTS ON THE GROUND

- **Staff challenges**: High workloads at facilities (PHCF) and high staff-to-patient ratios limits capacity to keep record and support audits.
- **Weak stock controls**: Medical supplies, consumables and equipment not consistently available in wards.
- **Infrastructure and maintenance gaps**: Audits frequently reveal facilities operating without basic maintenance schedules or struggling with significant delays in infrastructure deployment or hygiene hazards.

CORE AUDIT AND FINANCIAL MANAGEMENT CHALLENGES:

- **Significant financial pressure:** Nine, all provincial, out of ten health departments have liabilities exceeding their assets.
- **Unpaid accruals:** Accumulated unpaid bills across the sector exceed R21 billion.
- **Irregular expenditure:** Continued non-compliance in supply chain management (SCM) compromises value for money and increases risk of fraud.
- **Unreliable record-keeping:** Minimal value from systems - including manual paper books/ underutilisation of systems - prevents transparent tracking of finances and performance.

GOVERNANCE AND INSTITUTIONAL FAILURES

- **Leadership instability**: Some vacancies in (AO, CFO) senior management and many acting roles at hospital level weaken administrative oversight.
- **Governance structures:** at some facilities absent, incomplete or not functioning.
- **Lack of consequence management**: Failures in financial mismanagement, and irregular procurement rarely result in action against responsible officials.
- **Slow remediation**: Senior management delays implementing action plans to resolve external and internal audit findings.

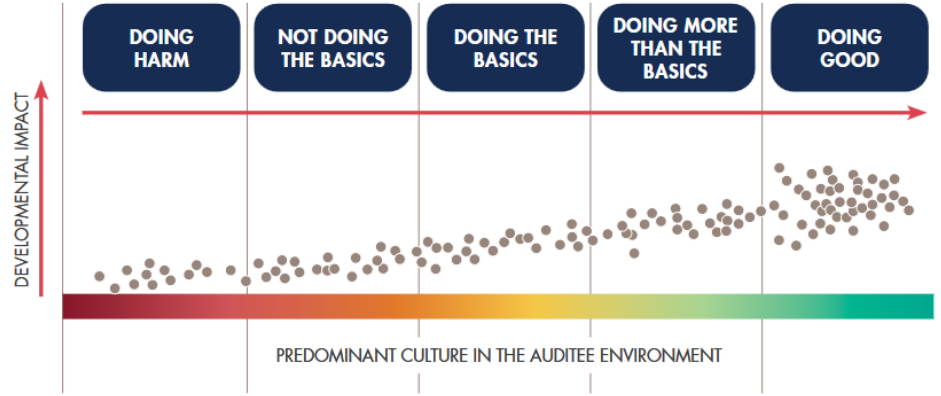
IN SHORT:

Our audits show that the public health sector faces systemic challenges – financial distress, leadership instability and weak internal controls – that require decisive corrective action by accountable leaders.

The AGSA's role in medico-legal accountability – what we then do

Our intention and focus remains the achievement of culture shift among a critical mass of auditees across the value chains that deliver critical services such as Health (sector approach) that it results in a direct, meaningful and consistent impact on the lived reality of South Africans.

Medico-legal claims affect patients and public resources in the Health sector. Our audits examine the controls and accountability behind that expenditure.



PUBLIC RESOURCE ACCOUNTABILITY: Public Audit Act (PAA)

We audit how public funds are used. Medico-legal claims payments reduce the resources available for patient care; their root causes and management are therefore a public accountability matter.

INDEPENDENT AUDIT INSIGHTS

Since 2017-18, our audits have examined management of medical records, and claims management. The findings identify weaknesses that require corrective action.

OVERSIGHT AND FOLLOW-THROUGH

We report to Parliament and provincial legislatures and follow up on departments' commitments to address the findings.

IN SHORT

Audit evidence must inform corrective action. Each roleplayer has a responsibility to address weaknesses and protect public resources for care.

Our sustained audit focus on medico-legal claims

Medico-legal claims have consistently featured in AGSA's health sector audits since 2017-18.

2017-18

Maternal health review

Our maternal health review highlighted poor storage of maternity case records.

2018-19

Medical records audit

A dedicated audit examined how institutions filed, stored, archived and disposed of medical records.

2021-22

Claims management audit

Our audit examined claims management and departments' capacity to handle the caseload.

2022-23 to date

Indicators and fiscal impact

We reviewed the sector's medico-legal indicators and targets, and the fiscal impact of claims.

WHY THIS MATTERS

Complete, accessible records are a basic control for defending claims. Our audit work has consistently highlighted this responsibility since 2017-18.

Audit insights and the accountability response

Our audit evidence connects the scale of claims to control weaknesses and the action required across the accountability ecosystem.

01

PART 1

Financial exposure

The value and concentration of claims against provincial health departments, and the pressure on patient care.

STARTS ON SLIDE 13

02

PART 2

Control weaknesses

Audit findings on incidents, complaints and medical records, and the capacity to manage them.

STARTS ON SLIDE 16

03

PART 3

Accountability and reform

Progress on reform and the responsibilities of health leaders, clinicians, legal practitioners and oversight bodies.

STARTS ON SLIDE 18

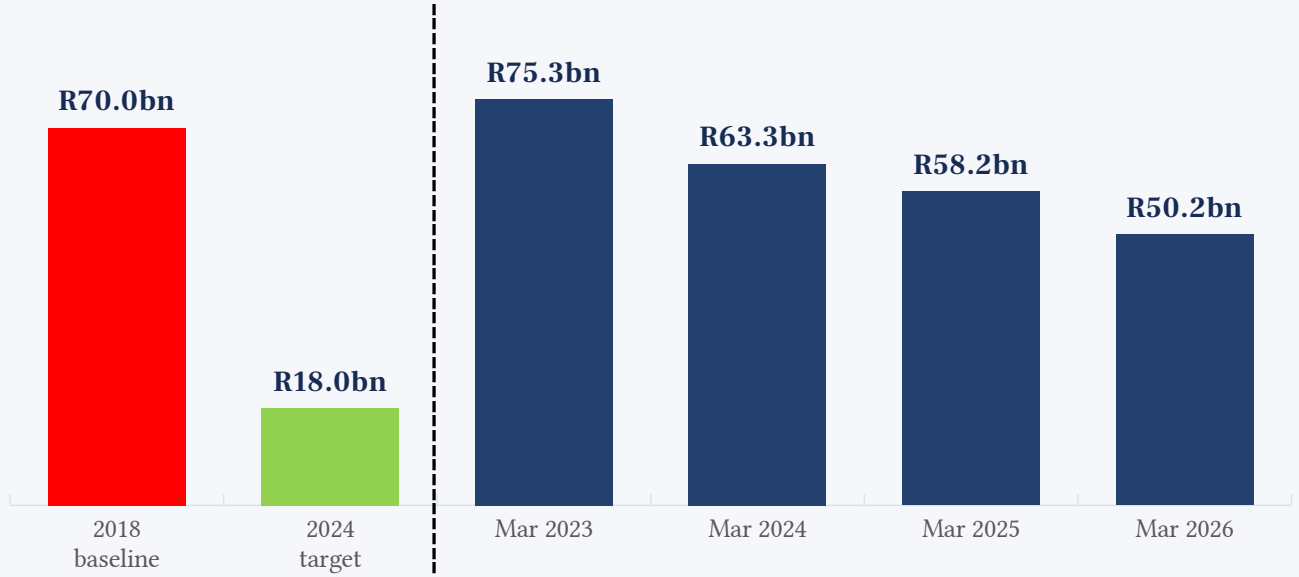


Audit insights on medico-legal claims and accountability

AUDITOR-GENERAL

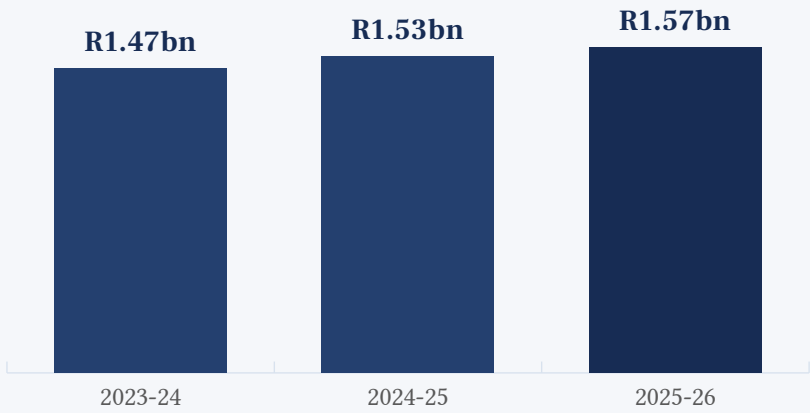
PART 1 - A lower claims balance has not reduced annual payments

Claims against health departments



Still almost three times the 2024 MTSF target of under R18 billion.

Paid to claimants



About R4,6 billion paid out in three years

(Payments across all nine provinces)

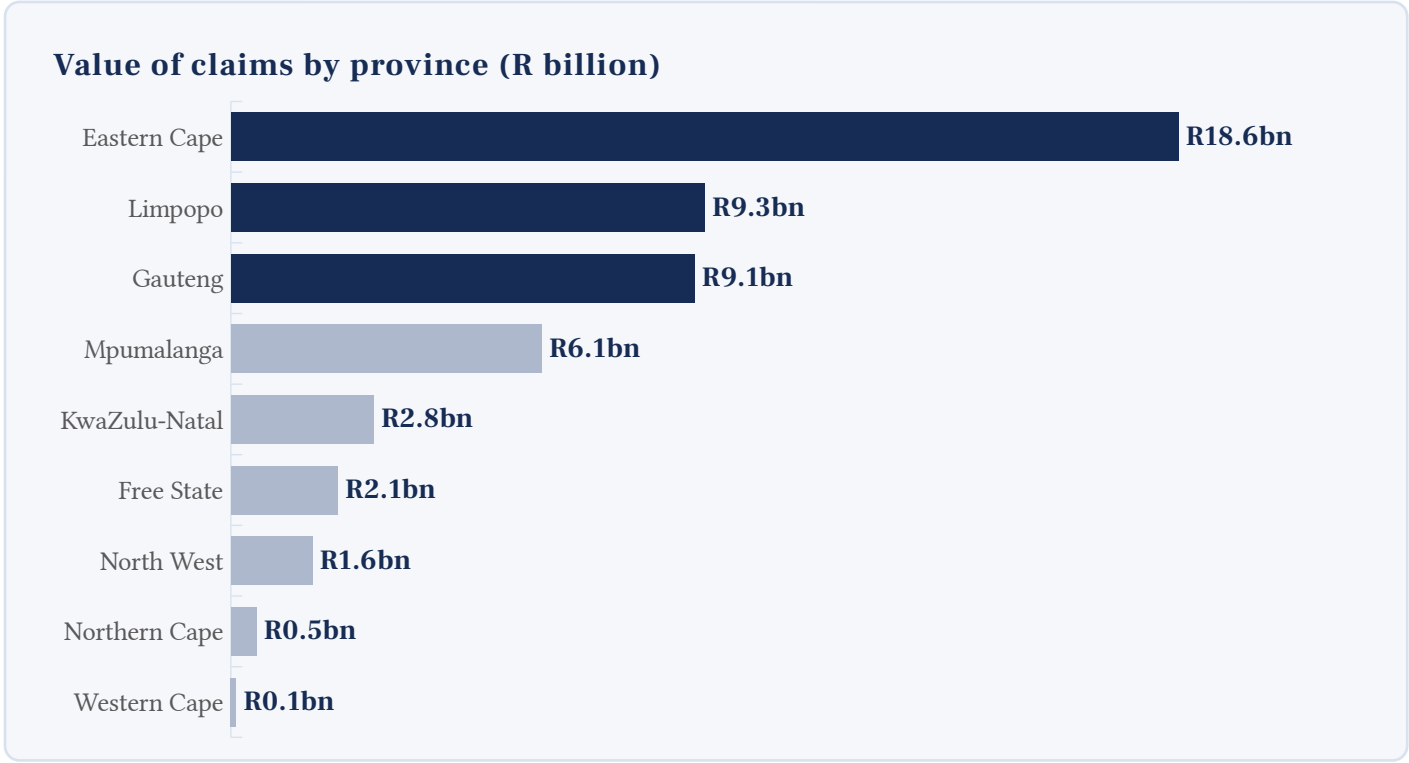
The Sector had set itself a target to reduce medico-legal claims from R70 billion to R18 billion by March 2024 in the 2019-24 MTSF.
This was not achieved – systemic root causes were not addressed.

WHY THIS MATTERS

When courts rule against public health departments, they must pull funds directly from existing operational budgets earmarked for essential service delivery, infrastructure, and direct patient care. **Severe Opportunity Costs:** Diverting cash to settle lump-sum legal awards creates deep financial strain, reducing the resources available for everyday medical supplies, equipment, and staffing.

PART 1 - Claims exposure is concentrated in three provinces

Value of claims against provincial health departments at 31 March 2026 as reported in the annual financial statements of the respective provincial departments.



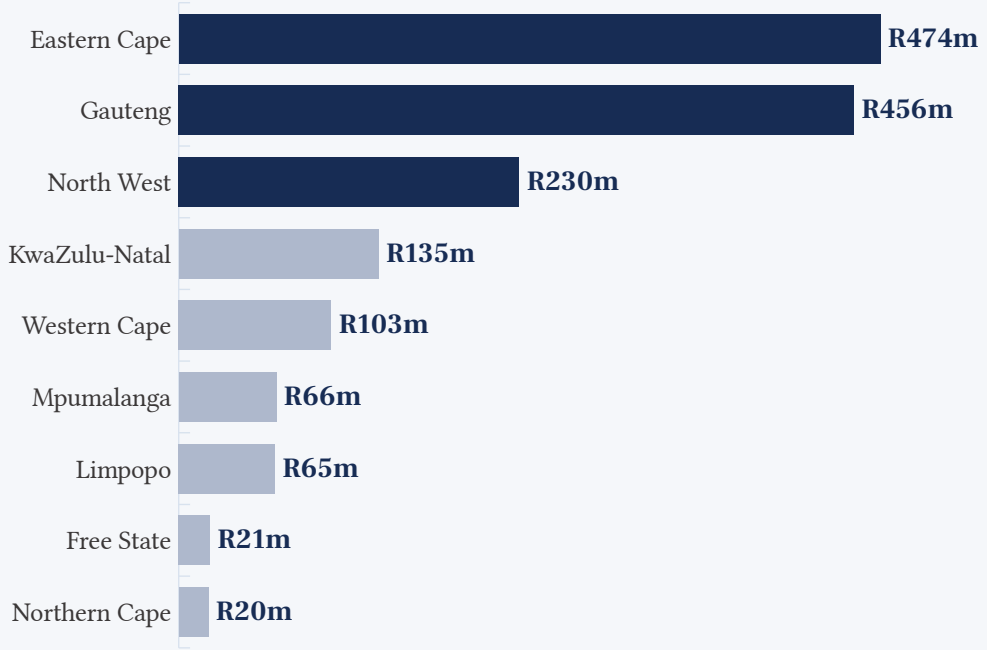
74% of claims value is in the Eastern Cape, Limpopo and Gauteng

WHY THIS MATTERS

Concentrated exposure calls for targeted corrective action in the provinces and facilities carrying the greatest risk.

PART 1 - Claims payments constrain resources for patient care

Departments paid about R1,57 bn in 2025-26. Only few provinces made specific budget provision for claims.



Limited budget provision

Few departments made specific provision for claims. The others met these obligations from their general budgets.

Pressure on care budgets

Departments divert funds from medical supplies, maintenance and other operating costs. Payments equalled 1,5% of the 2025-26 health appropriation of about R95,4bn, excluding employee compensation and transfers.

Strained budgets have driven up accruals and payables not yet recognized, with R25 bn carried over from the prior year having to be cleared from the 2025-26 appropriation before other spending.

Delayed settlement adds cost

Eastern Cape audits recorded late-settlement interest as fruitless and wasteful expenditure and raised significant doubt about financial sustainability.

WHY THIS MATTERS

Three provinces paid R1,16 bn, nearly three quarters of settlements. These payments reduced the resources available for care.

PART 2 - Delayed responses and weak records increase claims risk

Audit of 27 facilities across nine provinces (2021-22).

DELAYED RESPONSES CAN LEAD TO LITIGATION

Complaints closed late at 17 of 27 facilities. Incidents remained open beyond 60 working days at 14 of 27.

MISSING RECORDS WEAKEN THE RESPONSE

In 3 of 9 paid claims reviewed, the department conceded because it could not find the medical record.

15 of 27

facilities reported records missing or lost

17 of 27

did not properly track records after issue

25 of 27

had inadequate record storage conditions

18 of 27

- had too few records staff
  Legal staff shortages in 6 of 9 provinces

2025-26 recommendation: strengthen hospital record controls for fair assessment and accurate processing of claims.

WHY THIS MATTERS

Safe care, timely answers and complete records support patients, fair claims assessment and learning from failures.

PART 2 - Systemic issues - Primary healthcare weaknesses increase pressure on hospitals

Primary health care (PHC) facilities, such as local clinics and community health centers, serve as the foundational bedrock of South Africa's public health system!

Findings from a 2022-23 audit of 27 primary healthcare clinics, three in each province.

21 of 27

clinics did not have staff appointed in line with requirements

23 of 27

clinics had no maintenance schedule in place

24 of 27

clinics had not determined the stock levels they needed

59%

of primary healthcare facilities nationally had reached ideal clinic status

UNDERLYING CONTROL WEAKNESSES

Workforce capacity

Slow recruitment and limited training, alongside inconsistent compliance with clinic protocols.

Management oversight

Managers did not always enforce ideal-clinic improvement plans or hold staff to account.

Infrastructure and funding

Ageing buildings and no dedicated budget for the ideal clinic programme.

WHY THIS MATTERS

Weak primary healthcare redirects patients to hospitals and strains staff and resources. Corrective action at clinic level can help reduce the risk of harm and subsequent claims.

PART 3 - Reforms require sustained implementation and follow-through

Reform and investigation milestones since the 2015 medico-legal summit.

2015

Medico-legal summit

Doctors, lawyers and government agreed actions on patient safety, administration and the law. The Minister approved the declaration.

2021-22

Law reform proposals

The Law Reform Commission published a discussion paper. At the 2022-23 audit, the health department awaited its final work.

2022-23

SIU investigation mandate

Proclamation R74 of 2022 authorised the SIU to investigate alleged corruption, fraud and maladministration relating to public-sector medico-legal claims.

2025-26

Mediation before trial

The Gauteng High Court required mediation before allocating civil trial dates.

2025-26

Lump sums confirmed

The Supreme Court of Appeal upheld lump-sum payment of future medical costs, leaving reform to Parliament. Eastern Cape stated its intention to seek Constitutional Court review.

WHY THIS MATTERS

Legal reform does not remove management's responsibility for safe care, reliable records and timely responses to patients.

PART 3 - Audit insight must lead to corrective action

The findings call for stronger care, reliable records and accountability for corrective action.

Accountability must improve patient care

Meet legitimate obligations and prevent avoidable harm. Progress must protect patients and the public resources that support care.

PRIORITIES FOR CORRECTIVE ACTION

Operationally

Safer health care (*)

to prevent avoidable harm.

Governance

Reliable records

to establish what happened.

Timely responses

to address patient concerns.

Timely consequences

to uphold accountability.

THE AGSA will continue to audit claims and records, report findings and follow up on commitments to corrective action.

WHY THIS MATTERS

Public confidence depends on how institutions care for patients and respond when things go wrong. Leadership must turn audit findings into sustained improvements.

(*) Source: https://www.health.gov.za/wp-content/uploads/2025/07/Primary-Healthcare-Standard-Treatment-Guidelines-and-Essential-Medicines-List-8th-Edition-2024.pdf

PART 3 - Shared responsibility for action and reform

Audit evidence must lead to action.

Addressing the sector's challenges will require strengthened governance, investment in healthcare infrastructure and personnel, improved service quality, and successful implementation of reforms such as the National Health Insurance (NHI) aimed at achieving more equitable healthcare access and to sustainably manage medico-legal claims:

HEALTH LEADERS (EA, MECs, CEOs, HoDs) AND MANAGERS

- Ensure adherence to guidelines and provision of suitable care.
- Fill critical vacancies in records and claims posts and train staff.
- Ensure secure, retrievable records.
- Ensure proper governance over claims and assess their value.
- Act on non-compliance.

DOCTORS AND NURSES

- Deliver care aligned to guidelines and provision of care – Batho pele.
- Maintain clear, complete clinical notes.
- Report incidents promptly and honestly.
- Respond to complaints with respect.

LAWYERS AND MEDIATORS

- Use mediation and early settlement where liability is clear.
- Verify claims and identify duplication for proper defence.
- Ensure valid payments/ settlements reach rightful claimants.

PARLIAMENT, LEGISLATURES AND TREASURIES

- Require regular reports on claims controls.
- Have internal audit and audit committees test progress and validity of processes supporting claims value chain (from source to payments).
- Insist on appropriate budget provision.

WHY THIS MATTERS

Each roleplayer must fulfil its responsibilities and demonstrate progress by following through on commitments. Oversight must enhance its effectiveness in monitoring progress of the sector to improve health care delivery and sustainably address recurring systemic control failures.

Illuminating Insights
For a Better South Africa.

THANK YOU

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