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**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION
CONCERNING ITS RELEASE OF DISCUSSION PAPER 150 ON PROJECT 142:
INVESTIGATION INTO LEGAL FEES, INCLUDING ACCESS TO JUSTICE AND
OTHER INTERVENTIONS**

The South African Law Reform Commission (SALRC) was established by the South African Law Reform Commission Act 19 of 1973. It is an advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

The investigation into legal fees and tariffs payable to legal practitioners, including access to justice and other interventions, is prescribed by sections 35(4) and (5) of the Legal Practice Act, No.28 of 2014, which came into operation on 1 November 2018.

The discussion paper is the second document published by the SALRC during the course of this investigation. First, the discussion paper considers a number of factors and circumstances giving rise to legal fees that are unattainable for most people. It makes preliminary recommendations on legislative and other interventions that could be implemented in order to improve access to justice by members of the public. The preliminary legislative proposals for law reform are contained in the accompanying Justice Laws General Amendment Bill.

Second, the discussion paper contains preliminary recommendations on the desirability of establishing a mechanism that will be responsible for determining fees and tariffs payable to legal practitioners, the composition of the mechanism and the process it should follow in determining fees and tariffs. The mechanism for party-and-party costs and attorney-and-client fees is discussed and appropriate preliminary recommendations

made. Three options are proposed in respect of attorney-and-client fees for public comment. The options are premised on the division of users of legal services into three socio-economic bands, namely: the lower income, middle income, and upper income bands. This three-tier distinction is based largely upon the submissions received and public consultations and workshops held in response to Issue Paper 36, which clearly points out that users of legal services who fall within the lower to middle income bands have problems with access to justice and the cost of legal services is a prohibitory factor to them.

Third, the discussion paper considers the desirability of giving users of legal services the option to pay legal fees less or in excess of any amount that may be set by the mechanism, taking into account the need for the proposed mechanism to recognise and protect contractual freedom, independence of the legal profession and the right to choose trade, occupation or profession freely. Two options in respect of the choice to opt-out of the fee determined by the mechanism are proposed for public comment.

Fourth, the discussion paper considers the obligation by a legal practitioner to conclude a mandatory fee arrangement with a client when that client secures that legal practitioner's services.

Fifth, the discussion paper considers the effectiveness and desirability of retaining, with or without amendment, the current scheme of permissible contingency fees agreements in terms of the Contingency Fees Act, No.66 of 1997.

Last, but not least, the discussion paper contains questions for public comment. The SALRC specifically requests input and comment on the discussion paper as a whole, including the questions which are posed in it.

The SALRC would appreciate receiving comment and input from stakeholders and members of the public on or before 30 November 2020 at the following address:

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Discussion Paper 150 is available on the Internet at the following site:
<http://www.justice.gov.za/salrc/dpapers.htm>.

The discussion paper is also obtainable free of charge from the SALRC upon request (the contact person is Mr Jacob Kabini at (012) 622 6349).

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