

**Portfolio:
 Justice and Constitutional Development**

**October 2016**

PC

PFMA audit outcomes of the 2015-16 financial year

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1. **Introduction**

**1.1 Reputation promise of the Auditor-General of South Africa**

The Auditor-General has a constitutional mandate and, as the Supreme Audit Institution (SAI) 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.

**1.2 Purpose of document**

The purpose of this briefing document is for the Auditor-General of South Africa (AGSA) to provide an overview of the audit outcomes and other findings in respect of department of Justice and Constitutional Development and its entities for the 2015-16 financial year

**1.3 Role of the AGSA in the BRRR process**

* Our role as the AGSA is to reflect on the audit work performed to assist the portfolio committee in its oversight role in assessing the performance of the entities taking into consideration the objective of the committee to produce a BRRR.
* To provide the portfolio committee with applicable information and guidance on the Justice and Constitutional Development portfolio’s 2015-16 audit outcomes so that they, the committee, can ensure effective oversight.
* To enable oversight to focus on areas that will lead to good governance.

**1.4 Funding**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Department of Cooperative Governance** | **Budget****R ‘000** | **Actual Expenditure****R ‘000** | **Over / underspending****R ‘000** | **Variance****%** |
| Programme 1: Administration | 1 832 581 |  1 819 166 | 13 415 |  0,7% |
| Programme 2: Court Services | 5 667 254 |  5 667 254 |  0 |  0% |
| Programme 3: State Legal Services  |  1 018 338 |  1 002 173 |  16 165 |  1,6% |
| Programme 4: National Prosecuting Authority  | 3 374 346 | 3 374 346 | 0 |  0% |
| Programme 5: Auxiliary and Associated Services |  3 118 254 |  3 108 841 | 9 413 |  0,3% |
| Statutory Appropriation  | 1 830 769 | 1 721 789 | 108 980 | 6% |
| **Total** | **16 841 542** | **16 693 569** | **147 973** | **0,9%** |

Regardless of which programme it related to, the following areas of main expenditure were noted:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Main areas of expenditure** | **BudgetR ‘000** | **Actual ExpenditureR ‘000** | **Over / underspendingR ‘000** | **Variance****%** |
| Compensation of employees |  9 330 535 | 9 250 210 |  80 325 |  0,9% |
| Goods and services | 4 044 396 | 4 021 644 | 22 752 | 0,6% |
| Transfers and subsidies | 2 382 888 | 2 338 067 | 44 821 | 1,9% |

1. **Overall audit outcome history – Linked to three key audit areas for portfolio**



**Third Party Funds (TPF)**

The audit outcomes of the portfolio has improved over the period with respect to the Third Party Funds (TPF) moving from a disclaimer of audit opinion to a qualified audit opinion and the SA Human Rights Commission (SAHRC) improved from an unqualified with findings to unqualified with no findings.

The TPF historically did not have adequate information systems and proper record keeping processes and reconciliations to support the financial results presented in its financial statements. To address these challenges, which led to the disclaimer of audit opinion in the previous years, management undertook an exercise to separately disclose balances which could not be supported. The unverifiable balances due to an absence of supporting documentation resulted in a qualified audit opinion in 2015-16. The challenge therefore remains with management to investigate these unsubstantiated amounts and to rectify them either through the provision of supporting documentation or through the engagement of the National Treasury to determine an appropriate accounting treatment for these amounts.

Recommendations to address the root causes resulting in the qualified audit opinion:

* Upgrading of current information systems to enable both administrative management of funds held in trust as well as to generate reliable and timeous financial reports
* Improved records management at court level to ensure that all amounts disclosed in the financial statements including the year end balances are supported by credible audit evidence
* Discipline of daily and monthly reconciliations of cash, bank and beneficiary accounts to ensure validity and completeness of all transactions in the accounting records.
	1. **Financial management**

| **Department/Entity** | **Finding** | **Root cause** | **Recommendation** |
| --- | --- | --- | --- |
| Department of Justice and Constitutional Development | The financial statements submitted for auditing were not prepared in accordance with the prescribed financial reporting framework as required by section 40(1) (b) of the Public Finance Management Act (PFMA). Material misstatements of disclosure items identified by the auditors in the submitted financial statements were subsequently corrected, resulting in the financial statements receiving an unqualified audit opinion. | Inadequate review of financial statements and supporting documents by management, those charged with governance and internal audit. Vacancies in key finance positions at the SIU and PPSA also a contributory factor to this finding. | * Management should implement systems to ensure that in-year financial statements are accurate and complete through review by management
* The financial statements should be reviewed by the governance structures i.e. management, internal audit and audit committee prior to submission for auditing.
* The financial statements prepared should be adequately supported by substantiating evidence to corroborate validity, accuracy and completeness thereof.
* Financial statements which are submitted must be the final set approved by the leadership and supported as referred to above.
 |
| Special Investigating Unit | The financial statements submitted for auditing were not prepared in accordance with the prescribed financial reporting framework as required by section 55(1) (b) of the PFMA. Material misstatements of disclosrue items identified by the auditors in the submitted financial statements were subsequently corrected, resulting in the financial statements receiving an unqualified audit opinion. |
| Public Protector South Africa | The financial statements submitted for auditing were not prepared in accordance with the prescribed financial reporting framework as required by section 40(1) (b) of the PFMA. Material misstatements of non-current assets, liabilities, expenditure and disclosure items identified by the auditors in the submitted financial statements were subsequently corrected, resulting in the financial statements receiving an unqualified audit opinion. |
| Third Party Funds | No matters reported. However, audit opinion was a qualification. |

* 1. **Performance management**

| **Department/Entity** | **Finding** | **Root cause** | **Recommendation** |
| --- | --- | --- | --- |
| Department of Justice and Constitutional Development | We identified a material misstatement in the annual performance report submitted for auditing. This material misstatement was on the reported performance information of the National Prosecuting Authority. As management subsequently corrected the misstatement, we did not raise any material findings on the usefulness and reliability of the reported performance information. | Management did not ensure that a uniform understanding was obtained in all regions on what cases are included as recoveries relating to corruption where the amount benefited is more than R5 million. The policies and procedures were not properly established and communicated to ensure that the indicator is correctly reported.  | * Management should re-establish the requirements of which recoveries are to be reported in the indicator as communicated
* Management should embark on training sessions to ensure that all the employees are aware of the reporting requirements of the performance indicator
* Management should also ensure that the registers are regularly reviewed to ensure the data extracted is valid, accurate and complete.
 |
| Public Protector South Africa | We identified material misstatements in the annual performance report submitted for auditing. These material misstatements were on the reported performance information of programme 2: investigations and programme 3: outreach. As management subsequently corrected the misstatement, we did not raise any material findings on the usefulness and reliability of the reported performance information. | The annual performance report was not properly reviewed for accuracy of reported performance  | Management should ensure that adequete reviews are done on annual performance roports and the related evidence prior to submision for audit. |

* 1. **Compliance with legislation (including supply chain management)**

| **Department/Entity** | **Finding**  | **Root cause** | **Recommendation** |
| --- | --- | --- | --- |
| Department of Justice and Constitutional Development | * Contractual obligations and money owed by the department were not always settled within 30 days or an agreed period, as required by section 38(1)(f) of the PFMA and Treasury Regulation (TR) 8.2.3.
* Effective steps were not taken to prevent irregular expenditure, as required by section 38(1)(c)(ii) of the PFMA and TR 9.1.
* Thresholds for local content on designated sectors procurement were not properly applied in accordance with the requirements of preferential procurement regulation 9 of the Preferential Procurement Policy Framework Act of South Africa, 2000 (Act No. 5 of 2000).
* Contracts and quotations were awarded to bidders who did not submit a declaration on whether they were employed by the state or connected to any person employed by the state, which is prescribed to comply with TR 16A8.3.
 | Inadequate monitoring of compliance with legislation by management.  | * Management should ensure compliance with all applicable legislation by implementing the policies, procedures, circulars and checklists in place at the department.
* Tracking registers should be introduced to track processing of invoices from date of receipt until date of payment in order to understand and investigate reasons for delays in payment.
* Consequence management should be implemented against repeat transgressors with respect to incurrence of irregular expenditure, specifically in the area of procurement (compliance with supply chain management prescripts).
 |

* 1. **Human resource management and consequence management**

| **Department/Entity** | **Finding** | **Root cause** | **Recommendation** |
| --- | --- | --- | --- |
| Public Protector South Africa/ Special Investigating Unit | No specific matters of concern. However, there were however challenges at the PPSA with respect to changes in senior levels of management, namely the accounting officer and chief financial officer levels. The SIU also had challenges in filling vacancies within management and the finance unit. |  |  |

* 1. **Financial Health**

|  |  |  |  |
| --- | --- | --- | --- |
| **Department/Entity** | **Finding**  | **Root cause** | **Recommendation** |
| Department of Justice and Constitutional Development | The department’s bank account was in overdraft at year-end. | Effect of late payments to creditors year on year has an effect on cash resources for subsequent years. This in effect weakens the cash reserves position and also the statement of financial position. Non-recovery of interdepartmental claims for services rendered by the state attorney to other state institutions. | Management should initiate more rigorous cash flow management in pursuing state institutions to settle claims that the department has against the respective state institutions. A detailed assessment should be undertaken into the department’s creditors’ ageing analysis in order to determine its cash flow needs. The needs should take into account operational expenditure, capital projects, budgeted acquisition of assets, etc. in order to plan the timing of its spending and acquistion needs and management of cash flow more prudently. |
| Special Investigating Unit | Debt collection period is significantly long. | Challenges in recovering money from other state institutions. | Management should continue in their efforts to pursue recovery of monies owed to the entity. |

* 1. **Information technology (control environment)**

| **Department/Entity** | **Finding**  | **Root cause** | **Recommendation** |
| --- | --- | --- | --- |
| Public Protector South Africa | * Management had failed to document procedures for Patch management that will serve as guidance for deployment of security patches.
* Inadequate disaster recovery plan and controls over backup which could provide challenges in the entity’s ability to recover information quickly in the event of a disaster.
* The IT security deficiencies identified were as a result of the organisation’s IT department not having adequate skills and expertise to develop and manage firewalls procedures.
 | Policies and procedures were not sufficient in addressing the needs of the entity. | * The Chief Information Officer should update the security policy to be in line with the practices and needs within the entity.
* The policies should be updated and approved in this regard in order to avoid loss of data in the event of a disaster and to be able to resume normal operations with minimal downtime should such an event arise.
 |
| South African Human Rights Commission | An IT governance framework which sets out the roles and responsibiities for IT processes has not yet been approved. | Slow response by leadership and management in addressing IT risks and in formalising policies and procedures to ensure all IT matters are being adequately managed. | Management should develop a comprehensive IT strategic plan that incorporates all of the aspects identified. The plan should be approved by the senior leadership, tested, implemented and monitored effectively in order to ensure effective IT controls and protection of the integrity of the entity’s data. |
| Special Investigating Unit | Challenges in the documentation and implementation of IT controls around governance, service continuity, security management and user access management | Slow response by leadership and management in addressing IT risks and in formalising policies and procedures to ensure all IT matters are being adequately managed. | Management should develop a comprehensive IT strategic plan that incorporates all of the aspects identified. The plan should be approved by the senior leadership, tested, implemented and monitored effectively in order to ensure effective IT controls and protection of the integrity of the entity’s data. |

1. **Unauthorised, Irregular and Fruitless and Wasteful expenditure (UIFW)**



* 1. ***Unauthorised expenditure: Expenditure not in accordance with the budget vote***

|  |  |
| --- | --- |
| **Department/ Entity** | **Unauthorised expenditure** |
| **Movement** | **AmountR2015/16** | **AmountR2014/15** | **Root cause** | **Recommendation** |
| 1 | Justice portfolio | None | - | - | N/A | N/A |

* 1. ***Irregular expenditure: Expenditure incurred in contravention of key legislation***

| **Department/ Entity** | **Irregular expenditure** |
| --- | --- |
| **Movement** | **AmountR2015/16** | **AmountR2014/15** | **Root cause** | **Recommendation** |
| 1 | Department of Justice and Constitutional Development |  |  13 991 488 |  45 344 673 | Management and staff are not monitoring compliance with supply chain management prescripts. | Consequence management to be implemented specifically for repeat transgressions in order to prevent irregular expenditure. |
| 2 | Special investigating Unit |  |  2 507 247 |  5 500 409 |
| 3 | Legal aid South Africa |  |  3 319 779 |  2 774 196 |
| 4 | Public Protector South Africa |  |  5 506 752 |  635 379 |
| 5 | South African Human Rights Commission |  | 0 |  79 000 |

* 1. ***Fruitless and wasteful expenmditure: Expenditure that should not have been incurred (incurred in vain that could have been avoided and no value for money received)***

| **Department/ Entity** | **Fruitless and wasteful expenditure** |
| --- | --- |
| **Movement** | **AmountR2015/16** | **AmountR2014/15** | **Root cause** | **Recommendation** |
| 1 | Department of Justice and Constitutional Development |  | R 2 219 000 | R 1 263 000 | Management did not comply with controls implemented by entities to ensure that fruitless and wasteful expenditure is not incurred and that disciplinary action is immediately taken against transgressors in this regard. Focus has been on detection rather than prevention | Management should implement:* Review controls to ensure that all transactions are adequately reviewed before being approved and recorded.
* Controls to timely follow up on such expenditure.
* Proper investigations should be undertaken to identify who should be held responsible when fruitless and wasteful expenditure has been incurred and to drive a message of serious consequence management.

  |
| 2 | Special investigating Unit |  | R 8 780 | R 6 881 |
| 3 | Legal aid South Africa |  | R 4 816 | R 64 836 |
| 4 | Public Protector South Africa |  | R 2 132 | R 28 832 |
| 5 | South African Human Rights Commission |  | R 10 621 | 0 |

1. **Assurance providers**



**Senior management**

Supervision and review was not adequate to ensure complete and accurate financial statements and compliance with legislation (repeat findings).

**Accounting officer/authority**

Supervision and review was not adequate to ensure complete and accurate financial statements and compliance with legislation (repeat findings).

**Executive authority**

Assessment resulting from repeat fndings, although improvement has been noted with respect to overall audit outcomes.

**Internal audit**

Ineffective functioning of internal audit units at SIU and the PPSA. Internal audit function only in place for portion of the year.

**Audit committee**

The audit committee adequately fulfilled their responsibilities for the current audit cycle.

**Porfolio committee**

Basis for PC evaluation:

* Oversight role in terms of robust budget vote process, and review of the annual plans;
* Follow up on progress made by the entities to address poor audit outcomes;
* Follow up on key matters reported in the committee’s prior year BRRR report.
1. **Drivers of internal controls**



1. **Other AGSA reports**

None

1. **Minister commitments and progress on these commitments**

The following includes prior year commitments and new commitments made:

| **Focus area** | **Commitment** | **Due date** | **Status** |
| --- | --- | --- | --- |
| Information Technology | Ageing and redundant GFS (Guardian’s Fund) IT system to be prioritised for upgrading 0061nd/or replacement in order to ensure proper financial reporting and preparation of credible financial statements. | Ongoing | Not implemented |
| Performance Information | The performance information management system will be utilised effectively to facilitate collation and consolidation of information from the various line functions and regions.  | Ongoing | Not implemented |
| Compliance to Legislation | The chief financial officer of the department to take control of supply chain and asset management reporting functions and report on progress to the accounting officer on a monthly basis for investigation and corrective action. | Ongoing | In progress |
| Human Resources Management | Support to be provided to the department to fill vacancies as soon as they arise, especially at senior management level. | Ongoing | In Progress  |
| Information Technology | IT system with respect to Third Party Funds to be prioritised for replacement in order to ensure proper financial reporting and preparation of credible financial statements | 31 March 2017 | In progress |

|  |
| --- |
| **STATUS LEGEND** |
|   | Commitment has been implemented |
|  | Commitment in progress |
|  | Commitment has not been implemented |
|  | New commitment made in current year  |

1. **Commitments from the Portfolio committee**

The following recommended commitments to be actioned by the committee:

* Obtaining confirmations from entities that in-year financial reporting and financial statements are adequately reviewed by management.
* Obtaining confirmations from entities that financial statements have been reviewed by chief financial officers, accounting officers/accounting authorities and audit committees prior to submission for auditing.
* Tracking progress on implementation of action plans by auditees to ensure resolution of audit findings with particular focus on compliance with legislation and supply chain management.