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Submissions by Corruption Watch: Draft Public Audit Amendment Bill, 2017

Introduction

1. Corruption Watch is a non-profit civil society organisation. It is independent, and it has no political or business alignment. Corruption Watch intends to ensure that custodians of public resources act responsibly to advance the interests of the public. Its ultimate objectives include fighting the rising tide of corruption, the abuse of public funds in South Africa, and promoting transparency and accountability to protect the beneficiaries of public goods and services.
2. Corruption Watch has a vision of a corruption free South Africa, one in which educated and informed citizens are able to recognise and report corruption without fear, in which incidents of corruption and maladministration are addressed without favour or prejudice and importantly where public and private individuals are held accountable for the abuse of public power and resources.
3. As an accredited Transparency International Chapter in South Africa, core to our mandate is the promotion of transparency and accountability within private sector and state institutions, aimed at ensuring that corruption is addressed and reduced through the promotion and protection of democracy, rule of law and good governance.
4. Corruption Watch welcomes the opportunity to make submissions on the Draft Public Audit Amendment Bill, 2017 [the “**Bill**”]

Submissions

5. We are making submissions on two aspects of the Bill which we regard as being the most important amendments for purposes of increasing and clarifying the powers of the Auditor-

General (“AG”). These relate to referral and oversight powers and those amendments relating to the recovery of losses both of which are dealt with under the headings below.

Referrals

6. Section 5(1A) deals with referrals by the AG of undesirable audit outcomes to appropriate bodies for investigation with the requirement that the relevant body must keep the AG informed of progress and the final outcome of the investigation.
7. Firstly, it is unclear as to whether all the affected investigative bodies have been consulted in relation to this new provision and whether this referral and accountability system is practically feasible. The criminal justice system consists of a wide array of entities which have as their aim the investigation of corruption and maladministration. The Anti-Corruption Task Team which is supported by various departments and anti-corruption agencies constitute a co-operative structure which aims to address corrupt activity involving large amounts of money and it is unclear how this new referral process will fit into and support this co-operative structure.
8. The criminal justice system is plagued by a number of difficulties and the introduction of this new referral process should not be seen as a silver bullet or ultimate solution in addressing the lack of investigation of undesirable audit outcomes. The relevant and affected stakeholders all need to engage extensively on how to co-operate with each other in order to ensure that investigations are timely and effective.

We suggest further that clear guidelines be developed in the form of regulations or policy directives in order to ensure that the working arrangements and responsibilities of various stakeholders are clearly set out. In this regard, we suggest that the regulations be made available as soon as possible in order to ensure thorough and meaningful consultation among all affected stakeholders around the important issues of co-operation and enforcement.

9. The interaction between this new referral system and other pieces of legislation is incredibly important and it does not appear that sufficient attention has been paid to the impact of these provisions on other legislative requirements for investigation and reporting.

10. Finally, society organisations can play a major role in ensuring that legislative and regulatory amendments do in fact result in practical change and a key question which arises is whether or not civil society will be included as a key stakeholder and be provided with information relating to the referral of undesirable audit outcomes and the progress of investigations in order to maintain transparency, accountability and oversight.

Recovery of losses

11. Section 5(1B) authorises the AG to recover from responsible accounting officers or accounting authorities, any losses resulting from unauthorised, irregular, fruitless and wasteful expenditure. In order to recover such losses, the AG issues a certificate specifying the amount due and the reason for the recovery which results in the debt then being due to the state. The debtor then has 180 days to either pay the debt or institute an application to review the AG's decision to recover the debt.
12. Firstly, we note that the issue of *audi alteram partem* and the need to consult with accounting officers and authorities are addressed by the inclusion of extensive consultation processes prior to the issuance of a certificate of debt.
13. We are however, again concerned about the interaction between this new civil recovery system and existing avenues for civil recovery. It does not appear that sufficient attention has been paid to the impact of this new provision on other legislative rules and requirements on civil recovery. In this regard, we understand that a new unit will be established within the AG to conduct this civil recovery and it is unclear as to what role the state attorney's office would or should play in regard to such recovery and whether the establishment of a new unit would amount to a duplication of functions.
14. It is clear that accounting authorities or officers would be liable in their personal capacity for losses in terms of a certificate of debt and we understand that this section, which provides for exceptionally harsh penalties, to be designed towards achieving more robust deterrence measures. We are however concerned about the legal wrangles in which the AG's office would become mired in as a result of accounting officers and authorities reviewing the decision of the AG to issue a certificate of debt. Would the state bear the legal costs for both the AG's office and the accounting authority and officers and would this result in increased

litigation costs being incurred by the state. We urge the committee to consider this issue very carefully.

15. We are also concerned about the role of the private sector in contributing to the losses referred to section 5(1B) and submit that perhaps the AG be empowered to address the role of such private actors in addition to the role of accounting officers and authorities. Should it be the responsibility for of the accounting officer / authority to recover any losses from the private sector or should the Bill provide for mechanisms of recovery from the private sector?

Conclusion

16. We appreciate the opportunity to make comments on the Bill and hope that they will be useful in the deliberation of these amendments. We confirm that we will be available to participate in any oral hearings on the Bill and elaborate on our views contained in these brief submissions.

**Submitted by Corruption Watch
David Lewis and Leanne Govindsamy**