

Review of the Public Audit Amendment Bill

[Bill 13-2018]

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Content of Presentation

1. Background of Bill
 - Powers and functions of the AG
 - What is the mischief that we are seeking to address
2. Clause by Clause Summary

STARTING POINT

Constitutional Powers of the AG

S 188 of the Constitution provides as follows:

Functions of Auditor-General

(1) The Auditor-General must audit and report on the accounts, financial statements and financial management of—

- (a) all national and provincial state departments and administrations;
- (b) all municipalities; and
- (c) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.

(2) In addition to the duties prescribed in subsection (1), and subject to any legislation, the Auditor-General may audit and report on the accounts, financial statements and financial management of—

- (a) any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or
- (b) any institution that is authorised in terms of any law to receive money for a public purpose.

(3) The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.

(4) **The Auditor-General has the additional powers and functions prescribed by national legislation. “**

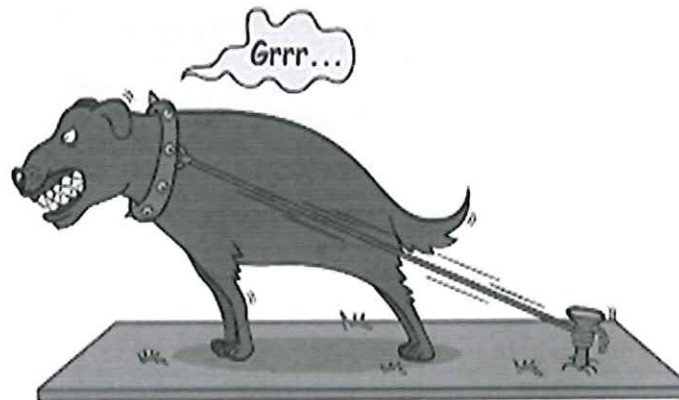
Powers and Functions of the AG in the Public Audit Act, 2004

Nuts and bolts of S188

- appointment and conditions of employment of the AG
- establishment of the administration of the AG
- manner in which audits must be conducted (standards, general auditing powers, disclosure and content of audit reports)
- related matters

Mischief??

- Glaring lack of compliance with financial management laws
- Disregard of audit recommendations
- Continuing rise of unauthorised, irregular, fruitless and wasteful expenditure
- Need to restore the integrity of the financial and performance management systems of government so as to ultimately ensure that government delivers on its constitutional obligations.



WHO DO WE HOLD ACCOUNTABLE AND HOW?????



Officials



The Accounting Officer
or Accounting Authority



The Executive Authority

Overview of proposed amendments

Clause in Bill	Section in Public Audit Act	Action	Comment
1	1	Inserting new definitions <ul style="list-style-type: none"> • Accounting Authority • Accounting Officer • Executive Authority • Material Irregularity • Other new definitions include "Constitution", "prescribed" "remuneration committee and "this act" 	<p>Refers to the Board (members jointly and severally liable for payment of debt)</p> <p>As per PFMA, MFMA or any other applicable legislation</p> <p>The executive authority as provided for in any legislation applicable to an auditee</p> <p>Defined for purpose of indicating which matters can be referred for further investigation and in terms of which matters the AG may make recommendations that can leads to remedial action. Means any non-compliance with or contravention of legislation, fraud, theft or breach of a fiduciary duty that resulted or is likely to result in a material financial loss, the misuse or loss of a material public resource or substantial harm to a public sector institution or the general public</p> <p>Technical amendments</p>

Overview of proposed amendments

Clause in Bill	Section in Public Audit Act	Action	Comment
2	4 (3)	<p>Inserting new subsection (3A) to allow the AG to prescribe criteria in relation to conducting discretionary audits</p>	<p>S 3 of the PAA empowers the AG to conduct discretionary audits on request of public entities/ entities funded by the State.</p> <p>Amendment empowers AG to prescribe criteria for conducting such audits. E.g Rejecting requests where cost of audit exceeds the annual turn-over of the entity.</p>
	4(4)	<p>Amending subsection 4 to extend the supremacy of this section irrespective of conflicting legislation</p>	<p>Notwithstanding that legislation governing an institution which is listed as a public entity or is funded by the government directs that the relevant institution be audited by a private or other auditor, the AG retains the right to also audit that entity. Previously section referred only to legislation in force at the time of the PAA taking effect.</p>

Overview of proposed amendments

Clause in Bill	Section in Public Audit Act	Action	Comment
3	5(1)	Inserting new subsection 5 (1B) empowering the AG to take any appropriate remedial action and to issue a certificate of debt, as prescribed, where an accounting officer or accounting authority has failed to comply with remedial action	General empowering provision to take any appropriate remedial action. May differ case by case. But where remedial action is linked to the recovery of monies relating to a material irregularity and there has been failure to comply then a certificate of debt must be issued.
3	5(2)	Inserting new subsection 5 (bA) providing for establishment of remuneration committee	<p>Sets out composition of committee, requirements of membership and appointment of chairperson.</p> <p>Mandates committee to make recommendations on salary/benefits of the AG to the Independent Commission and of staff to the AG.</p>

Overview of proposed amendments

Clause in Bill	Section in Public Audit Act	Action	Comment
4	Chapter 2 after Part 1	Inserting new Part 1 A into Chapter 2 providing for remedial action	<p>The AG must, within a reasonable time after the issuing of an audit report follow up on whether the auditee has implemented the recommendations relating to any material irregularity ,within the time frame stipulated in the audit report.</p> <p>If the responsible accounting officer/authority has failed to implement the recommendations contained in the audit report, the AG must take appropriate remedial action to address the failure to implement the recommendations.</p> <p>Where a material irregularity resulted in a financial loss to the State and the Accounting Officer/Authority has failed to recover such loss or take sufficient steps to recover such loss from the responsible person as required in terms of any applicable legislation, the AG must issue a certificate of debt, in the prescribed form, to the accounting officer/authority.</p> <p>The AG must submit a copy of the certificate to the responsible Executive Authority (EA) to collect the amount specified in terms of the debt recovery process applicable to the EA. The EA must keep the AG informed of progress made to recover debt.</p> <p>In determining whether to issue a certificate the AG must consider, the written representations, as prescribed, of the and may have due regard to the progress or outcome of an investigation conducted by the AG or any other relevant factor.</p> <p>If the AG after consideration of the written representations still intends to issue the certificate the AG must afford the AO/AA an opportunity to make an oral submission to an advisory structure, established for this purpose in terms of section 5 (2) (b), and must consider the recommendations of that committee before issuing the certificate.</p> <p>A copy of the certificate must be sent to the NA for tabling and to the relevant oversight committee for consideration.</p>

Overview of proposed amendments

Clause in Bill	Section in Public Audit Act	Action	Comment
5	7	Inserting a new subsection (1A) which provides that the Independent Commission must consult with and consider the recommendations of the remuneration committee when determining the salary and benefits of the AG	Refers to the Commission set up in terms of the "Independent Commission for the Remuneration of Public Office Bearers Act, Act 92 of 1997"
6	10	Inserting new paragraph (b), (e), (f) and (g) in subsection 1	The AG reports annually to Parliament. The amendments seek to extend the reporting requirements to cover the additional powers of the AG and ensure that Parliament is fully appraised of all work conducted by the AG. Reports must include reports on performance audits, international audits, matters referred for investigation and on any remedial action taken.
7	12 (3) (b)	Substitutes term "prescribing" with the term "setting out"	Technical Amendment

Overview of proposed amendments

Clause in Bill	Section in Public Audit Act	Action	Comment
8	13 (1) (b)	<p>Inserting a new provision in subsection (1) (b) which provides that the AG, in consultation with the Oversight Committee, can determine the frequency of audits</p>	<p>Audits generally happen once a year but this may not always be necessary or feasible. This provision allows for audits to be conducted at longer time intervals if necessary.</p>
8	13	<p>Inserting a new subsection (1A) which provides that the AG must consult National Treasury annually on the nature, frequency and scope of audits</p>	<p>The purpose is to assist with the determination of audit fees as provided for in section 23</p>

Overview of proposed amendments

Clause in Bill	Section in Public Audit Act	Action	Comment
9	20(2)	Amend 20 (2) by revising the requirements in relation to the content of an audit report	The purpose of the amendment is to allow for limited assurance and review engagements as opposed to reasonable assurance engagements, irrespective of the size and risk profile of an auditee. The intention was further to allow for the cyclical audits of certain auditees that stretch over more than one financial year.
9	20	Insert new subsection (4) to provide that an audit report may contain recommendations	The recovery of losses from an AO/AA is linked to their failure to comply with remedial action stemming from a recommendation in an audit report. Purpose of this is to close the loop and ensure that the AG is empowered to make recommendations.

Overview of proposed amendments

Clause in Bill	Section in Public Audit Act	Action	Comment
10	23	<p>Amend section 23 (6) by providing for the defraying of certain excess audit fees as a direct charge against the National Revenue Fund.</p> <p>Insert a new subsection (7) to provide for a process to determine the estimate of funds required annually</p>	<p>The purpose of the amendments are to allow for certain audit fees to be defrayed from the National Revenue Fund and to provide for a mechanism to determine when fees can be defrayed. In the absence of agreement between the AG and the National Treasury on the matter, the Oversight Mechanism will determine the matter.</p>

Overview of proposed amendments

Clause in Bill	Section in Public Audit Act	Action	Comment
11	27	<p>Amend section 27 by substituting the term "Public Accountants' and Auditors' Act" with the term, "Auditing Profession Act"</p>	<p>This is to cater for the repeal of the Public Accountants' and Auditors' Act.</p>
12	34	<p>Amend section 34 to provide that the AG, in determining the remuneration and benefits of employees, must consider the recommendations of the remuneration committee</p>	<p>Purpose is to ensure that the now established remuneration committee has an advisory role in the determination of salaries and benefits.</p>

Overview of proposed amendments

Clause in Bill	Section in Public Audit Act	Action	Comment
13	40(1)	Amend section 40 (1) by deleting the term “deputy”	The purpose is to empower the Auditor-General, rather than the deputy AG, with the power to appoint members of the audit committee.
14	41(2)	Amend section 41(2) by providing that the financial statements of the AG must be in accordance with international best practice.	Section previously also referred to Generally Accepted Accounting Practice. This practice no longer exists. The oversight-mechanism further felt that it was not necessary that their approval be sought when determining which accounting standard to be applied by the AG.
15	52	Amend section 52 by providing a list of regulations that must be promulgated within 90 days	The AG must regulate on the criteria to be considered when determining whether to perform a discretionary audit, the nature and category of matters in which an investigation or special audit may be carried out, the criteria for the referral of suspected material irregularities, the process and time-frames for written and oral representations when intending to issue a certificate of debt and the form and content of the certificate.

Overview of proposed amendments

Clause in Bill	Section in Public Audit Act	Action	Comment
16	Various	Amendment of certain expressions throughout the Act	<p>“Public Accountants’ and Auditors’ Act” with the term, “ Auditing Profession Act”</p> <p>“executive authority within the meaning of the Public Finance Management Act” with the expression “executive authority”</p>
17	Arrangement of sections	To provide for new Part 1A: Remedial Action	Technical amendment
18	-	Short title and commencement	Allows for commencement in parts as is necessary. Section 5 will only come into operation when the Determination of Remuneration of Office-Bearers of Independent Constitutional Institutions Laws Amendment Act, 2014 comes into operation and section 10 which deals with audit fees will only come into operation when the necessary appropriation act is passed.

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