

**Submission to the Parliamentary Portfolio Committee
on the Draft PAIA Amendment Bill of 2019.**

by

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Mr. Chair and Honourable Members,

The Preamble

The views and concerns are personal impressions and interpretations of the Act.

The PAIA amendment bill of 2019 published in Government Gazette 42604 does little to deal with the disclosure of party funding post 1994 (nor prior to 1994) which is a period of great interest and of significance to the South African public.

Sadly, the South African public have not been afforded the dignity of a referendum to decide on these important amendments to the Bill, the Bill is therefore little more than a white wash of an entire period in South Africa's history.

The following observations apply,

52A

"accounting officer" (a) & (b)

No qualifying skills, educational qualifications nor membership of a recognised certifying organization are stipulated.

Despite the accounting officer appointing an auditor to exercise oversight it is apparent that the auditing profession is a corrupt industry having been implicated in a number of prominent cases involving corporate corruption. Unless the accounting officer can be held to a higher standard, the receipt of illicit donations is likely to continue unchecked.

"political party" (a)

The clause can be interpreted to imply that an entity with political motives can accept donations if their principle objective does not oppose or support any registered political party or their candidates. Ergo, an entity that has political motives may accept donor funds for other reasons such as to ensure their silence or non-participation in which event there isn't a requirement to disclose the donations.

52B (1) (a) (i)

The clause fails to address the case of smaller denominations of R99k or less that might be donated by a donor using fronting.

For example, Donor A wants to donate R1m, the donor disperses 10 tranches of R100k to 10 unrelated agents, each accept R1 for their trouble. The political party receives 10 donations of R99,999.

Other forms of donation equivalent to or amounting to a figure greater than R100k such as accepting services, gifts, and using donor assets etc. are not adequately addressed by the Bill.

52B (3)

The time for corruption to take root and for corruption to be detected is sufficient motivation for stringent record keeping and the long term retention of accounting records. For example, EOH was founded in 1997 yet problems were only reported in 2018; Steinhoff is another established company rocked by scandal.

A system can be devised whereby the parties produce a set of records for as long as they are active, when a political party is no longer active, the party accounting officer shall keep the records for a minimum of 5 years. While active the party must ensure that the appropriate records are periodically submitted to the State for archiving. The State archives are to hold the records in perpetuity. The political party upon ceasing to exist and having transferred their records to the state must then retain their records for a minimum of five years.

With technological innovation there is little reason not to retain records in a non-volatile format.

Finally, much of the harm done to South Africa appears to have occurred post 1994 to date. The Bill in its present form serves as a mechanism to mollify the public into a state of complacency, the Bill allows political parties to hide their past misdeeds (if any) and to continue receiving donations including internationally which serve to advance undue influence over public opinion or serves to threaten the sovereignty of the Country.

A note on corporatocracy:

It would appear that PAIA is a manifestation of the corporation.

“As from 6th December 2000, in terms of the proclaimed Section 12 Notice establishing a Category A municipality in the Province (in terms of the Municipal Structures Act of 1998), the Cape Metropolitan Council no longer exists. Its staff and functions now form part of the new City of Cape Town. As from 6th December 2000, in terms of the proclaimed Section 12 Notice establishing a Category A municipality in the Province (in terms of the Municipal Structures Act of 1998), the Cape Metropolitan Council no longer exists. Its staff and functions now form part of the new City of Cape Town.” (<http://cab94.tripod.com/capetown.htm>)

The statutory reporting obligations of a corporation exist to ensure a degree of confidentiality which in turn fails to achieve the objective of complete transparency expected of civil society. It seems that the PAI Act is an extension of the corporate system which controls how information is accessed, what information may be accessed and is a mechanism through which the respondent can decline and frustrate public access to information.

The “new City of Cape Town”, a corporation, is less transparent and consequently less accountable to civil society. When a request for information is ignored the public have recourse to PAIA, when a PAIA request is ignored or when there is unsatisfactory compliance the applicant has recourse to a Court of Law, the applicant may also elect to lodge an appeal to a higher office. The process is unnecessarily technical for the general

public, an application may fail on a technicality; the process is potentially intimidating; an application can fail altogether if the applicant does not have the means to bring effect to the application in a Court of Law.

There is a real risk that PAIA will no longer serve the public interest.

Conclusion

If these amendments are ascended into law the illusion will be established that this is an Act that appears to be addressing a problem but in practice accomplishes little or nothing at all. For the political parties it means business as usual, the difference being that PAIA affords the parties a set of rules that serve to legitimize the donations they receive by virtue of the requirement for the mandatory disclosure of some of their donations.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'James Tunbridge', written over a horizontal line.

James Tunbridge

Government elected by the people for the people.

Addendum

The Parliamentary Committee convened on 17 September 2019 at which session these comments on the Draft PAIA Amendment Bill were presented.

18 September 2019

NOTES

In response to the question seeking to establish the sort of activity that would require the retention of records of account for all donations received by a party.

Donations from foreign donors are of significant concern when these donations influence the outcomes or formation of domestic policy or aim to interfere in the affairs of the Country. Such donation undermine the sovereignty and security of the Nation as well as the true political will of the people.

The problems affecting EOH and Steinhoff are examples of Companies whose post-1994 operational activities have recently come under scrutiny. Contributions to political parties or their membership cannot be overlooked.

In response to the administrative burden incurred when having to account for smaller donations less than R100k.

The parties might consider limiting the smaller donations to electronic fund transfers (EFT) which may help to alleviate the accounting burden and big data requirements.