



South African Revenue Service

PRESENTATION TO PARLIAMENT

PROGRESS UPDATE ON THE *NUGENT RECOMMENDATIONS*



South African Revenue Service

COMMISSIONER EDWARD CHR KIESWETTER
17 SEPTEMBER 2019

PRESENTATION OUTLINE

- 1. Recap Nugent Commission Findings**
- 2. Procurement Processes**
- 3. Organisational Design and Staffing**
- 4. Operational Matters**
- 5. Reputational Damage**
- 6. Rebuilding of SARS**
- 7. Way Forward**

1.RECAP NUGENT COMMISSION FINDINGS

The “Nugent” Commission reported that since 2014, SARS experienced:

- A MASSIVE FAILURE IN GOVERNANCE & INTEGRITY
- THE “BAIN OPERATING MODEL REVIEW” DELIBERATELY SOUGHT TO RENDER THE ORGANIZATION INCAPABLE OF FULLY SERVING ITS MANDATE BY:
 - Dismantling trusted functional capacity such as the large business centre, compliance unit, high court litigation unit, and the capacity to deal with the illicit economy
 - Impede the SARS modernization programme
 - Disintermediate and marginalized senior employees and executives
 - Trigger an exodus of capable and experienced staff
- A DECLINE OF EMPLOYEE MORALE & CONFIDENCE
- A DECLINE IN HARD WON PUBLIC CONFIDENCE IN SARS

2. PROCUREMENT PROCESSES

Nugent Final Report Chapters 3; 5 & 16

PROCUREMENT – CORE FINDINGS

Reviewing of Policies and Procedures - National Treasury:

- Possible abuse of process
- Multi-phased project contracts (Practice Note 3)
- Premediated intentions
- Pre-determined outcomes
- Standard Operating Procedures

Review of the Debt contract and IT contract by SARS to determine:

- Validity of contracts (including disclosures)
- Value for money

Referrals as per COI recommendation:

- Referral to the DPCI and NDPP for possible prosecution in relation to the awarding of the contract to Bain and Co. as well as other identified contracts.

PROCUREMENT – ACTIONS

Reviewing of Policies and Procedures - National Treasury and SARS:

- SARS and National Treasury reviewed Practice Note 3 and found that it was sufficient.
- SARS reviewed its procurement policies and aligned it to the above directive – October 2018.

Reviewing Contract for Value for Money and validity of contracts:

- The IT contracts were reviewed and no action was required to set the contracts aside as it has already lapsed.
- SARS engaged the Legal teams of the IT company to address specific questions such as the lack of value for money and make certain disclosures, emanating from the Nugent Commission of Inquiry
- Debt contracts were reviewed and no action was required to set the contracts aside as it has already lapsed.

Referrals as per COI recommendation:

- Bain Contract has been referred to the Directorate of Priority Crimes in April 2019.
- Due to an impasse reached between SARS and Gartner , the contract was referred to the Directorate of Priority Crimes in April 2019.

PROCUREMENT – NEXT STEPS

Reviewing of Policies and Procedures:

- Engaged with CPO at NT to conduct an overall procurement governance review at SARS (initiated in June 2019 and ongoing)
- Bain and Gartner matters to be tabled at our governance committees to be included in the restricted suppliers list recommendation to National Treasury.

Reviewing Contract for Value for Money:

- SARS is executing a review of current contracts in terms Value for Money.

Referrals as per COI recommendation:

- Awaiting feedback from the DPCI.

3. ORGANISATIONAL DESIGN AND STAFFING

Nugent Final Report Chapters 4; 5; 6; 7 & 13

CONTENTS

1. Organisational Design:

- Large Business Unit *[Chapter 4 – Recommendation 2.1]*
- Compliance Unit *[Chapter 4 – Recommendation 2.2]*
- High Court Litigation Unit *[Chapter 4 – Recommendation 2.2]*
- High Level Integrity Unit *[Chapter 4 – Recommendation 2.2]*

2. Staffing:

- Recruit Suitably Qualified IT Team *[Chapter 5 – Recommendation 3.1]*
- Resignations *[Chapter 6 – Recommendation 4]*
- Misplaced Senior Staff members *[Chapter 6 – Recommendation 4]*
- The New EXCO *[Chapter 7 – Recommendation 5.1 & 5.2]*
- Bonuses *[Chapter 13 – Recommendation 10]*

ORGANISATIONAL DESIGN

LARGE BUSINESS UNIT

Core Finding:

- Formerly the Large Business Centre had an end-to-end service value chain.
- For each of the various industries there was a relationship manager that interacted with the Large Businesses' concerns in that sector.
- The new operating model fragmented the overall end-to-end service offering of the Large Business Centre as well as misplacing key skilled employees, such as Audit, Transfer Pricing, Legal Consultant.

Actions:

- A multi-disciplinary Project Team was appointed to manage all aspects of the process towards the re-establishment of the LBC.
- An interim management committee was appointed from various SARS divisions to oversee operations and these include the divisional risk management and revenue management committees.

Next Steps:

- There are on-going engagements with large businesses and high net-worth individuals aimed at rebuilding the relationship geared towards building a culture of voluntary compliance and fiscal citizenry.
- Structure to be finalized and,
- Leadership appointments concluded.

COMPLIANCE UNIT

Core Finding:

- The mandate of this unit was to monitor compliance levels across tax types; across regions and across industries. This capability was dismantled, which left SARS extremely vulnerable as they were unable to assess the compliance levels through a specific scientific methodology.
- When the new operating model was announced, the unit no longer existed and the skilled staff were misplaced across the organisation and the functions that they performed re-distributed without an enterprise-wide focus.

Actions:

- The Compliance Unit has been re-established with a mandate to facilitate the development, implementation monitoring and reporting of the compliance policy and risk strategy.
- Development of the SARS Compliance Programme 2019/20 – 2022/23 is underway, amongst others areas of previously decommissioned work streams.

Next Steps:

- Publishing the SARS Compliance Programme 2019/20 – 2022/23.
- Expanding the unit's resources and capabilities.

HIGH COURT LITIGATION UNIT

Core Finding:

- Before the restructuring, SARS had a High Court Litigation Unit, the mandate of which was to promptly deal with significant High Court revenue litigation.
- It worked closely with the Large Business Centre and Enforcement.
- As an example – approvals for legal action would be granted within 24-48 hours allowing for speedy reaction time; after the restructuring it take months to react.
- The new operating model splintered the unit up into regional structures that became dysfunctional.

Actions:

- A decision was taken in May 2019, to re-constitute the unit.
- Research, based on international bench-marks as well as a feasibility study was done to re-constitute the unit.

Next Steps:

- Unit to be rolled out by October 2019.

HIGH-LEVEL INTEGRITY UNIT

Core Finding:

- The Commission of Inquiry recommended that the High-Level Integrity Unit should be re-established.

Actions:

- The Commissioner has embarked on an intensive effort to set the tone from the top and reinforce the desired organisation culture envisaged in the SARS Code of Conduct.
- The unit currently exist as part of the Human Resources division, but this will become a standalone unit reporting into the Office of the Commissioner.
- Preparatory work is under way to re-establish the capability to drive and cascade the integrity function throughout the organisation.

Next Steps:

- Unit to be rolled out by November 2019.

STAFFING

RECRUIT SUITABLY QUALIFIED IT PERSONNEL

Core Finding:

- Lack of Information Technology – strategy and vision.
- Lack of technical capability – difficult to retain and recruit skilled staff.
- Lack of appropriately qualified Information Technology Leadership.

Actions:

- The DIST division has been stabilised by temporarily filling key positions with experienced IT professionals.

Next Steps:

- As part of the 2024 vision and strategic direction, the technology strategy is a key component that is currently being formulated. This will be finalised by October 2019.
- Resourcing of the required critically skilled resources for the DIST division will begin later this year.

RESIGNATION AND MISPLACEMENT SENIOR EMPLOYEES

Core finding:

- Commissioner to evaluate the 60+ highly skilled senior staff members who were displaced and intentionally misplaced by the operating model.
- Develop a process to recruit former highly skilled employees that had left the organisation.
- SARS should look at reparation though not necessarily in pecuniary terms.

Actions:

- Commissioner met with all misplaced employees and re-assigned them to meaningful work.
- In some instances re-instating them to their original roles (which were still unfilled), while others were re-assigned to new meaningful roles.
- The recruitment policy has been revised to allow for the recruitment of staff who left the employment for various reasons, including section 189.

Next Steps:

- Implementation of revised recruitment policy.
- Continue with the work towards reparation though not necessarily in pecuniary terms.

THE NEW EXCO

Core Finding:

- It was found that some of the EXCO members had been appointed without all prescribed processes being complied with.
- Some of the Exco members were compliant in the decline of SARS.

Actions:

- The Commissioner is currently conducting performance reviews as required by the Nugent recommendations.
- The existing EXCO has been paused.

Next Steps:

- Awaiting the outcomes from the respective review processes underway.
- National Treasury is in the process of reviewing the SARS Act. Including section 18(3) per their action items emanating from the Nugent recommendations.
- Commissioner, in consultation with Minister will finalize new executive structure and give effect to it.

BONUSES

Core Finding:

- To avoid doubt as to the meaning of Section 18(3) of the SARS Act, it should be amended to clarify that the terms and conditions of employment of employees and senior management structures of SARS, include remuneration, bonuses and all other benefits of their employment as well as any alterations to those terms.

Actions:

National Treasury and SARS

- Amendment to the SARS Act – section 18(3): Per Chapter 7 – 5.2, all benefits of EXCO members are being submitted to the Minister for approval as per Section 18 (3) of the SARS Act.
- In the interim until clarity has been sought through the amendment, SARS interpreted section 18(3) of the SARS Act to mean Ministerial approval is required and as such, approval was sought for performance bonuses for Senior Management for the past financial year 2018/19.

Next Steps:

- National Treasury is in the process of review the SARS Act. per their action items emanating from the Nugent recommendations.

4. OPERATIONAL MATTERS

Nugent Final Report Chapters 8; 10; 11; 12 & 14

CONTENTS

1. Illicit Trade (Anti- Corruption & Security Unit...)

[Chapter 8 – Recommendation 6]

2. VAT Refunds

[Chapter 10 – Recommendation 7]

3. Litigation

[Chapter 11 – Recommendation 8]

4. Settlements

[Chapter 12 – Recommendation 9]

5. Case Selection (Taxpayer Affairs)

[Chapter 14 – Recommendation 11]

ILLICIT TRADE (TAX AND CUSTOMS)

Core Finding:

- The capability that had investigated Illicit Trade had been restructured into the newly formed Fraud Investigations capability that did not focus on actual illicit trade related work any longer.

Actions:

- This capability has been re-established in the Enforcement division early 2019.
- The primary focus would be on:
 - Organised Tax,
 - Customs and Excise evasion schemes inter-alia in the following industries
 - Tobacco;
 - Cash and Carry;
 - Textiles and Alcohol.
 - Furthermore, we will focus on the following abusive practises:
 - Illicit financial flows, such as advanced import payments and currency smuggling
 - Phoenixism - practice of conducting trade through successive entities declared insolvent
 - Abusive liquidation and business rescue practices.
- Lastly, syndicated refund fraud, organised VAT fraud such as carousel structures.

Next Steps:

- A total of 17 projects which includes 700 audit cases have been identified and actively being pursued.
- Collaboration with DTiC to improve integrity of border declarations and entire value chain.

VAT REFUNDS

Core Finding:

- The withholding of VAT refunds has serious consequences for the economy and in particular for the survival of small business.
- This is a matter calling for operational investigation and correction of systemic obstacles that are preventing timeous repayment of VAT that is due to taxpayers by SARS.

Actions:

- Effective 1 October 2018, SARS no longer applies a monthly refund target meaning when a VAT refund becomes payable, it is paid without considering the monthly refund target.
- SARS adjusted its risk parameters to minimise repeat audit on compliant vendors.
- This resulted in an average of 30% fewer audit cases are now created, which further contributes to legitimate refunds being paid timeously.

Next Steps:

- This matters is currently under observation.

LITIGATION

Core Finding:

- The litigation and other costs were incurred in the personal interests of the former Commissioner.

Actions:

- SARS engaged Legal Counsel with regards to the recovery of legal costs from the former Commissioner. There are various instances of recovery underway in this regard.

Next Steps:

- Awaiting the outcomes of the various recovery processes underway at current.

SETTLEMENTS

Core Finding:

A draft of the amended terms of reference that sought to place the authority to settle disputed over R100 million solely in the hands of the former Commissioner.

Actions:

- The amended version of the terms of reference granting the former Commissioner the delegation to address settlements over R 100 million dated March 2018 **had not been approved** for implementation by the previous acting Commissioner.
- The respective terms of reference in question has since been reviewed with the objective to get a holistic position on all settlements.

Next Steps:

- Await the outcome of the review process.
- Implement revised terms of reference.

CASE SELECTION

Core Finding:

- Investigative audits are carried out, but generally selected by the risk engine, and not human intervention.
- SARS needs to review its audit policies, and the KPI's associated with audits, to allow for greater vigilance in relation to persons of ostensible wealth.

Actions:

- The establishment of a Risk Committee would serve to enhance the current governance processes which determine which full scope cases are loaded for Investigative Audit.
- This would further enable enhanced standardisation and improved quality of cases being selected for an audit.

Next Steps:

- Training and upskilling is taking place.
- A change management process is unfolding to familiarise the Case Selection staff members with the new process.

5. REPUTATIONAL MATTERS

Nugent Final Report Chapters 17, 18 & 19

CONTENTS

1. Media Statements

[Chapter 17 – Recommendation 13.1 & 13.2]

2. SARS and other State Institutions

[Chapter 18 – Recommendation 14.1]

3. International Relations

[Chapter 19 – Recommendation 15]

MEDIA STATEMENTS

Core Finding:

Several denouncing media statements that had been issued and a publication that was published had brought the organisation into disrepute.

Actions:

- Certain processes are currently underway that address this issue.
- The authority for SARS Media representation has been restored to the respective functional unit and designated personnel responsible is currently reporting within the Office of the Commissioner.

Next Steps:

- Ongoing engagement with the media and the public to restore public confidence.

SARS AND STATE INSTITUTIONS

Core Finding:

Several relationships with various organs of state and other institutions had been eroded and broken down.

Actions:

- SARS, in the interest of Co-operative Governance, is engaging with various organs of state to improve working relationships, co-operation, and at various stages of completing MOU's.

Next Steps:

- Ongoing cooperation between various state institutions.

INTERNATIONAL RELATIONS

Core Finding:

SARS membership in international organisations position and relationships had become constrained over the recent years that resulted in some relations almost ceasing to exist.

Actions:

- Engagements and restoration of relationships are currently underway by the Commissioner with various OECD structures and representatives.

Next Steps:

- Late this September, there is a Bureau meeting at the OECD that Commissioner will be representing SARS.
- Relationship building is an ongoing exercise that will continue and extend to all bodies that SARS is a member to such as the OECD, WCO, ATAF, AU, SADC, SACU.

6. REBUILDING OF SARS

REBUILDING OF SARS

Due to the extent of the damage at SARS, the rebuilding will require time, effort and persistence:

- Values and Culture
- Capability & Capacity:
 - Leadership
 - Technical Work
 - Revenue Management
- Organizational Arrangements
- Strategy Development & Execution
- Rebuilding Public Confidence & Trust

6. DISCUSSION - WAY FORWARD

