



BUDGETARY REVIEW AND  
RECOMMENDATIONS REPORT | PFMA  
2018-19

Briefing to Portfolio Committee on Justice and  
Constitutional Development portfolio



AUDITOR-GENERAL  
SOUTH AFRICA

## Reputation promise

The Auditor-General of South Africa (AGSA) has a constitutional mandate and, as the supreme audit institution (SAI) of South Africa, exists to strengthen our country's democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence.



## Role of the AGSA in the reporting process

Our role as the AGSA is to reflect on the audit work performed to assist the portfolio committee in its oversight role of assessing the performance of the entities taking into consideration the objective of the committee to produce a *Budgetary Review and Recommendations Report (BRRR)*.



# The 2018-19 audit outcomes



# Our annual audit examines three areas

THE AG'S  
ANNUAL  
AUDITS  
EXAMINE

# 3

AREAS:



**1** FAIR PRESENTATION AND  
ABSENCE OF SIGNIFICANT  
MISSTATEMENTS IN  
FINANCIAL STATEMENTS

**2** RELIABLE AND CREDIBLE  
PERFORMANCE  
INFORMATION FOR  
PREDETERMINED OBJECTIVES

**3** COMPLIANCE WITH ALL  
LAWS AND REGULATIONS  
GOVERNING FINANCIAL  
MATTERS

# The AGSA expresses the following different audit opinions

## Unqualified opinion with no findings (clean audit)



Auditee:

- produced credible and reliable financial statements that are free of material misstatements
- reported in a useful and reliable manner on performance as measured against predetermined objectives in the annual performance plan (APP)
- complied with key legislation in conducting their day-to-day operations to achieve their mandate

## Financially unqualified opinion with findings



Auditee produced financial statements without material misstatements or could correct the material misstatements, but struggled in one or more area to:

- align performance reports to the predetermined objectives they committed to in APPs
- set clear performance indicators and targets to measure their performance against their predetermined objectives
- report reliably on whether they achieved their performance targets
- determine the legislation that they should comply with and implement the required policies, procedures and controls to ensure compliance

## Qualified opinion



Auditee:

- had the same challenges as those with unqualified opinions with findings but, in addition, they could not produce credible and reliable financial statements
- had material misstatements on specific areas in their financial statements, which could not be corrected before the financial statements were published.

## Adverse opinion



Auditee:

- had the same challenges as those with qualified opinions but, in addition, they had so many material misstatements in their financial statements that we disagreed with almost all the amounts and disclosures in the financial statements

## Disclaimed opinion



Auditee:

- had the same challenges as those with qualified opinions but, in addition, they could not provide us with evidence for most of the amounts and disclosures reported in the financial statements, and we were unable to conclude or express an opinion on the credibility of their financial statements

# Important to note

The percentages in this presentation are calculated based on the **completed audits of seven auditees**, unless indicated otherwise. There were no outstanding audits in the portfolio as at 31 July 2019

## Audit outcomes are indicated as follows:

 Unqualified with no findings	 Unqualified with findings	 Qualified with findings	 Adverse with findings	 Disclaimed with findings	 Outstanding audits
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## Movement over the previous year is depicted as follows:

 Improved	 Unchanged	 Regressed
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# ACCOUNTABILITY = PLAN + DO + CHECK + ACT



Constitution requires from public administration:

- High standard of **professional ethics**
- Promotion of **efficient, economic and effective use of resources**
- **Accountability**
- Fostering of **transparency**



**Act now on accountability**

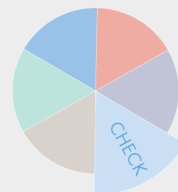
PFMA prescribes obligations of accounting officers and authorities to:



- **Plan and budget** for delivery
- Use resources in **effective, efficient and transparent** manner



- Establish and implement **internal controls to prevent and detect** irregularities, losses and financial misconduct **and effectively deal with any breaches**

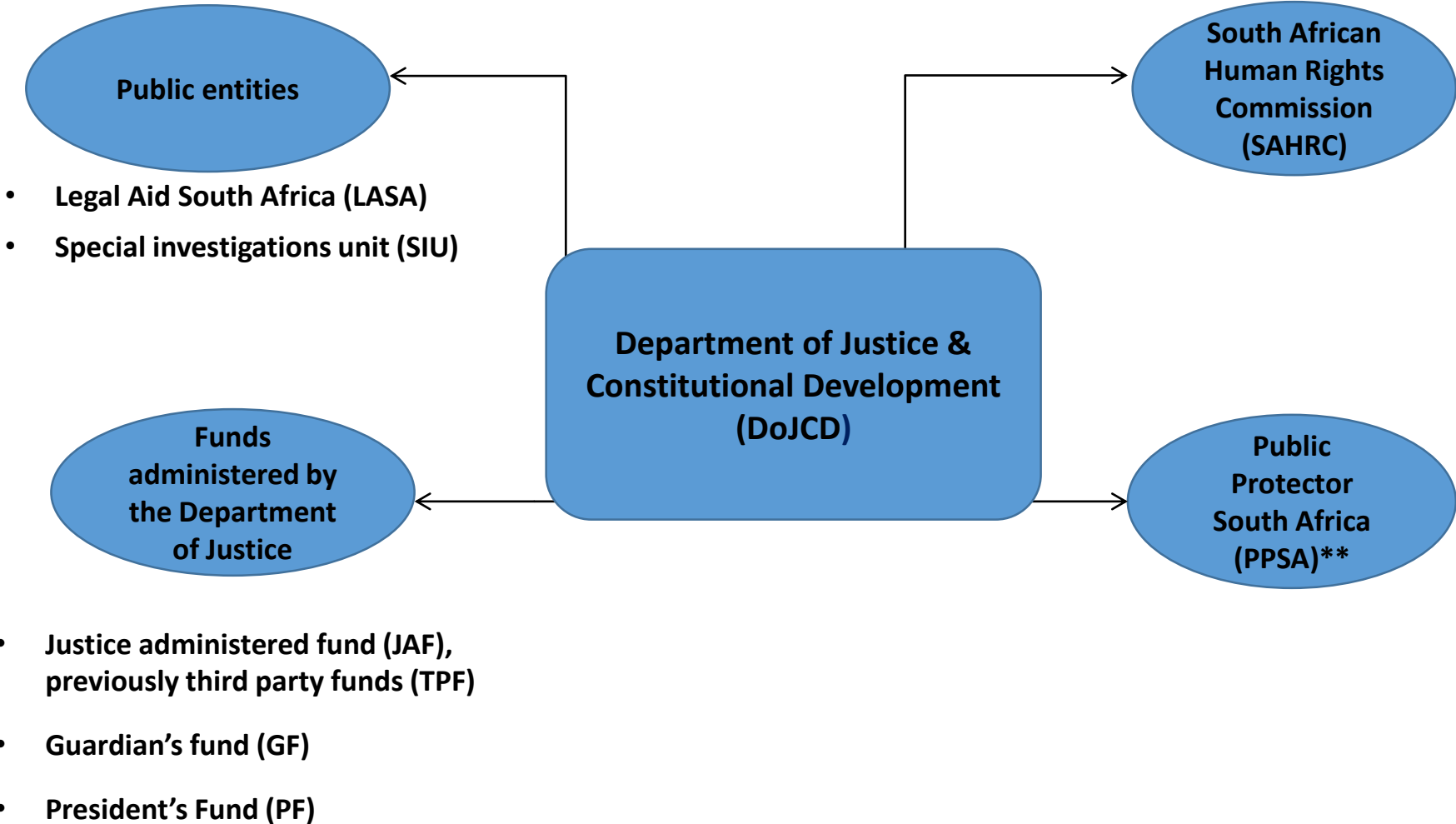


- **Report and account** on regular basis





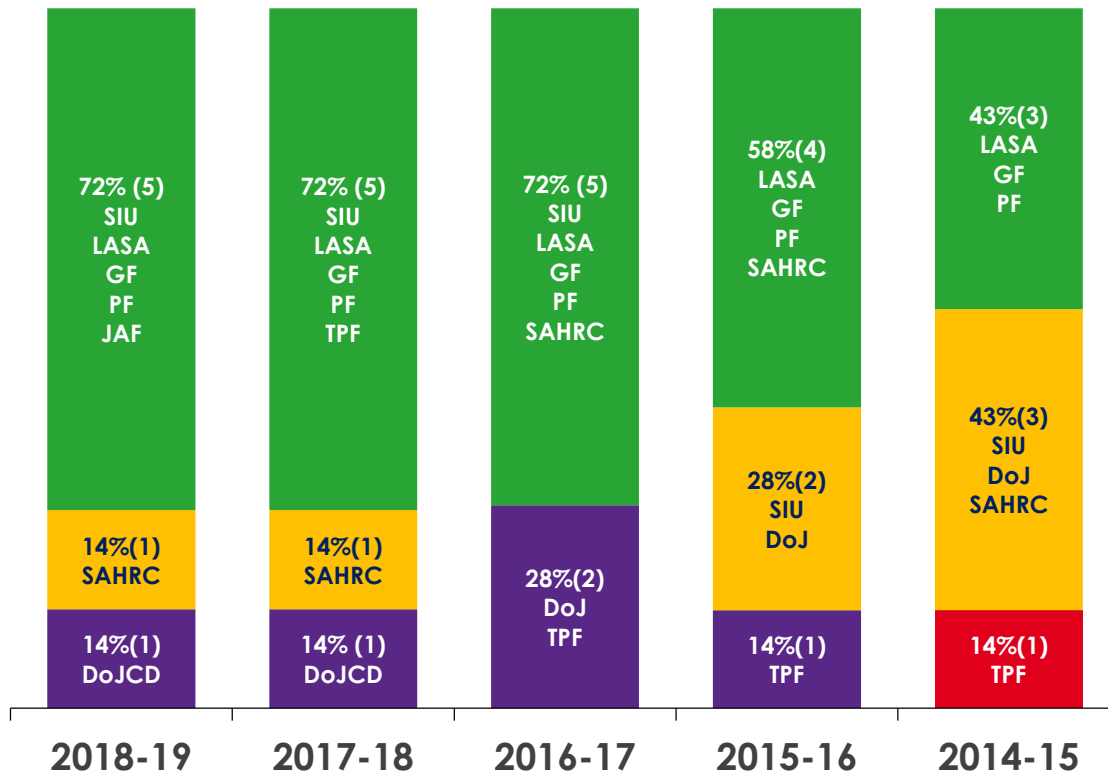
# Justice portfolio



\*\* Public Protector of South Africa's outcomes have not been included as part of the portfolio's performance in this document; it has been assessed individually.



# Audit outcomes of portfolio over five years



Movement	
▲	0
▼	0
▶	7
Outstanding audits	0

- SIU, LASA, GF, PF and JAF have sustained effective internal control environments with the requisite monitoring and oversight over the five-year period. Best practices which have resulted in desirable audit outcomes over the term reflected should be shared with the rest of the portfolio.
- Inadequate implementation and review of the initiatives contained in the department's post audit action plan resulted in the outcome of DoJCD stagnating. Some improvements were however noted across all the audit focus areas.
- Whilst the quality of submitted financial statements of the SAHRC's has improved the challenges within the supply chain management environment remain.



# Key concerns on the audit outcomes of the portfolio over five years

- ❑ Significant deficiencies in the asset management environment were brought to the attention of management in the prior year and the potential for material misstatements highlighted in the status of records review. The deficiencies were also raised by internal audit throughout the period under review and the actions taken by management were not fully effective in addressing the weaknesses identified.
- ❑ The non compliance by the state attorney with supply chain prescripts results in a system that is not fair, equitable, transparent and cost effective. Having examined the payment data of the state attorney over the past three financial periods, it is evident in most of the state attorney offices that there are preferred suppliers. The absence of a procurement system based on the above mentioned principles creates an environment that may be susceptible to collusion and could ultimately result in inflated and fictitious settlements for the state.

DoJCD

- ❑ Similar to the prior year, instances of deviations from supply chain prescripts without the necessary approval were identified. The instances are primarily as a result of management's incorrect interpretation of the applicable legislation.

SAHRC





# Credible financial reporting



## Financial statements

Submission of financial statements by legislated date (all auditees)

Annual financial statements

Quality of final submission after audit

### Movement



### 2018-19

### 2017-18

100%

100%

86%

71%

86%

86%

**14% (DoJCD) received fewer qualification paragraphs opinions only because they corrected some misstatements identified during the audit**

## Top qualification areas

- Movable tangible assets(DoJCD)
- Contingent liabilities (DoJCD)



## Qualification areas (2018-19 over 2017-18)

Financial statements area	2018/19 R '000	2018/19 Opinion	2017/18 Opinion	Comment
<b>Department of Justice and Constitutional Development</b>				
Moveable tangible assets	R2 734 448	Qualified	Unqualified	The department did not have sound controls over assets results in a number of assets not being located during the audit process. Additionally numerous assets that are old and not being used by the department remains on the asset register resulting in this balance being overstated.
Contingent liabilities	R2 355 819	Qualified	Qualified	The information contained in register of claims against the department is not complete and timeously updated with the latest events of the particular case, thereby misstating the contingent liabilities. Regular assessments of the likely outcomes of the cases are not performed.
Intangible assets	R279 340	Unqualified	Qualified	The department's action plans were properly implemented to identify and record intangible assets and thereby address the prior year qualification.
Leave Entitlement Magistrates	R747 379	Unqualified	Qualified	The processes for capturing leave relating to magistrates are still not effective in ensuring that leave is captured timeously. However the auditors were able to rely on internal leave audits performed at year end. These were not available in the prior year.





# Credible performance reporting



## Performance report

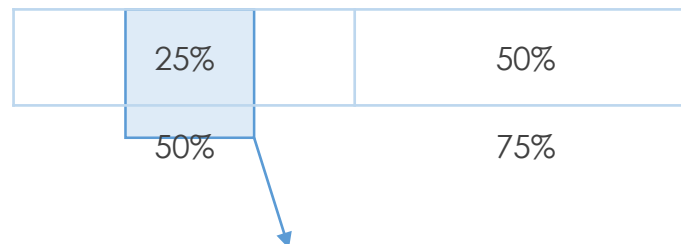
Annual performance report submitted without errors

### Movement



2018-19

2017-18



Quality of final submission after audit



**25% (SIU)** had no material findings only because they corrected all misstatements identified during the audit

Reliable reporting of achievements (DoJ, SAHRC)

50%

25%

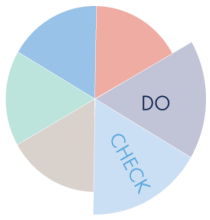
Usefulness of performance indicators and targets (None)

0%

0%

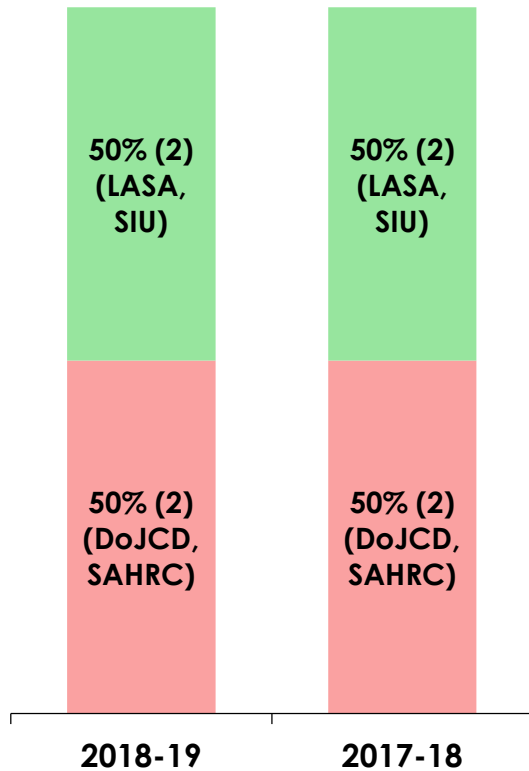
JAF, GF and PF are not required to report on performance information as this is incorporated in DoJCD's reporting. As a result only 4 auditees are assessed above i.e. DoJ, SIU, LASA and SAHRC.





# Compliance with legislation

## Findings on compliance with key legislation



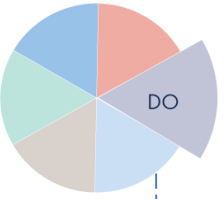
■ With no findings    
 ■ With findings

## Top non-compliance areas

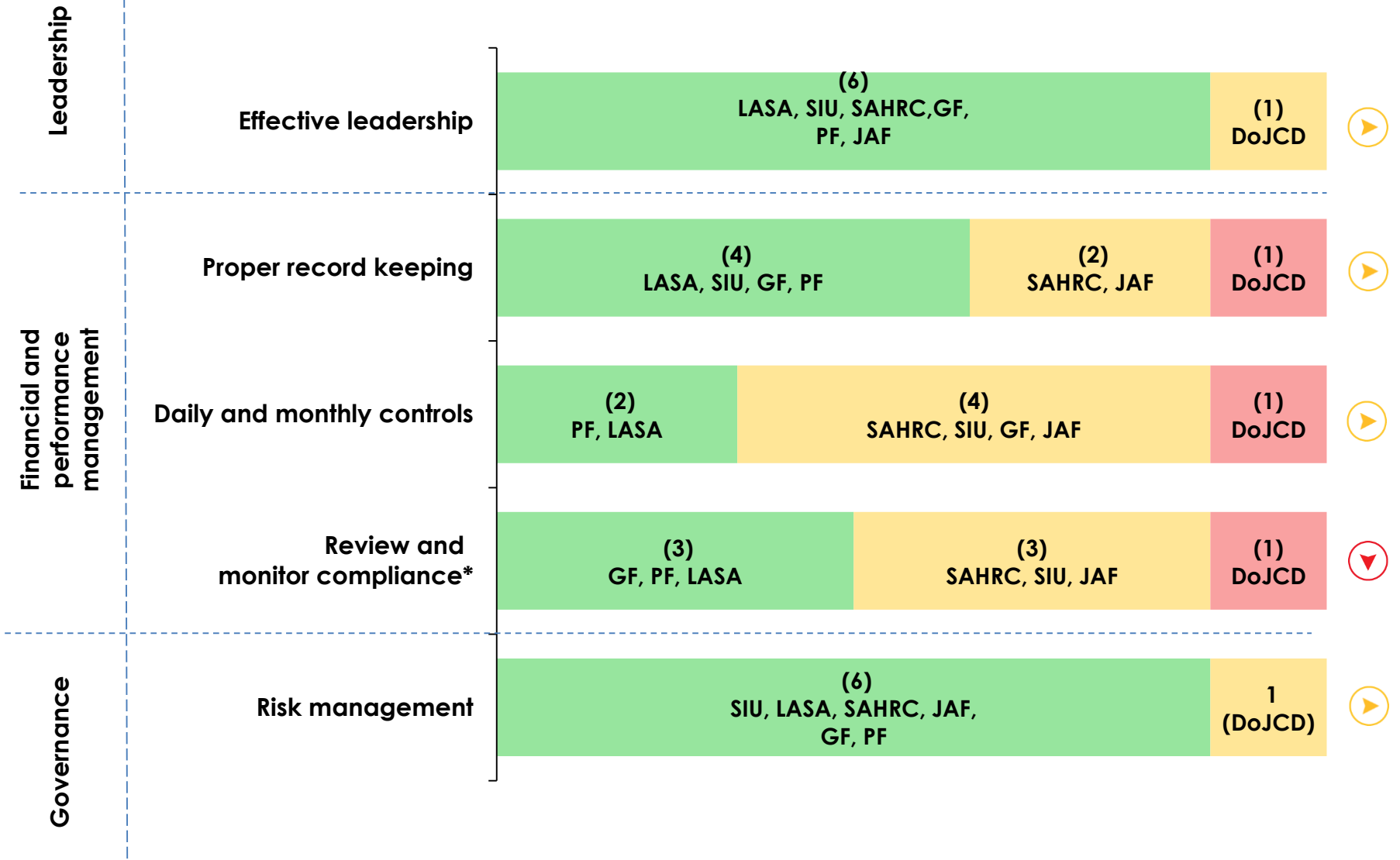
- Procurement and contract management (DoJCD, SAHRC)
- Quality of financial statements (DoJCD, SAHRC)
- Prevention of unauthorised, irregular and fruitless and wasteful expenditure (DoJCD)
- Revenue management (DoJCD)

JAF, GF and PF are incorporated in DoJCD's reporting. As a result only 4 auditees are assessed above i.e. DoJCD, SIU, LASA and SAHRC.



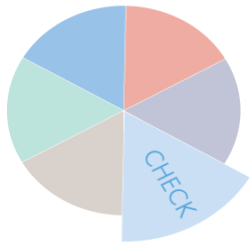


# Status of internal control



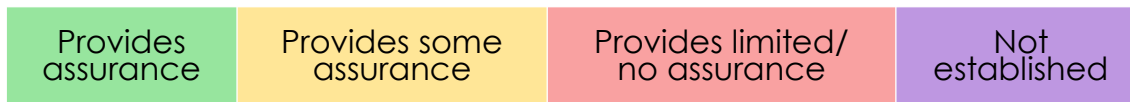
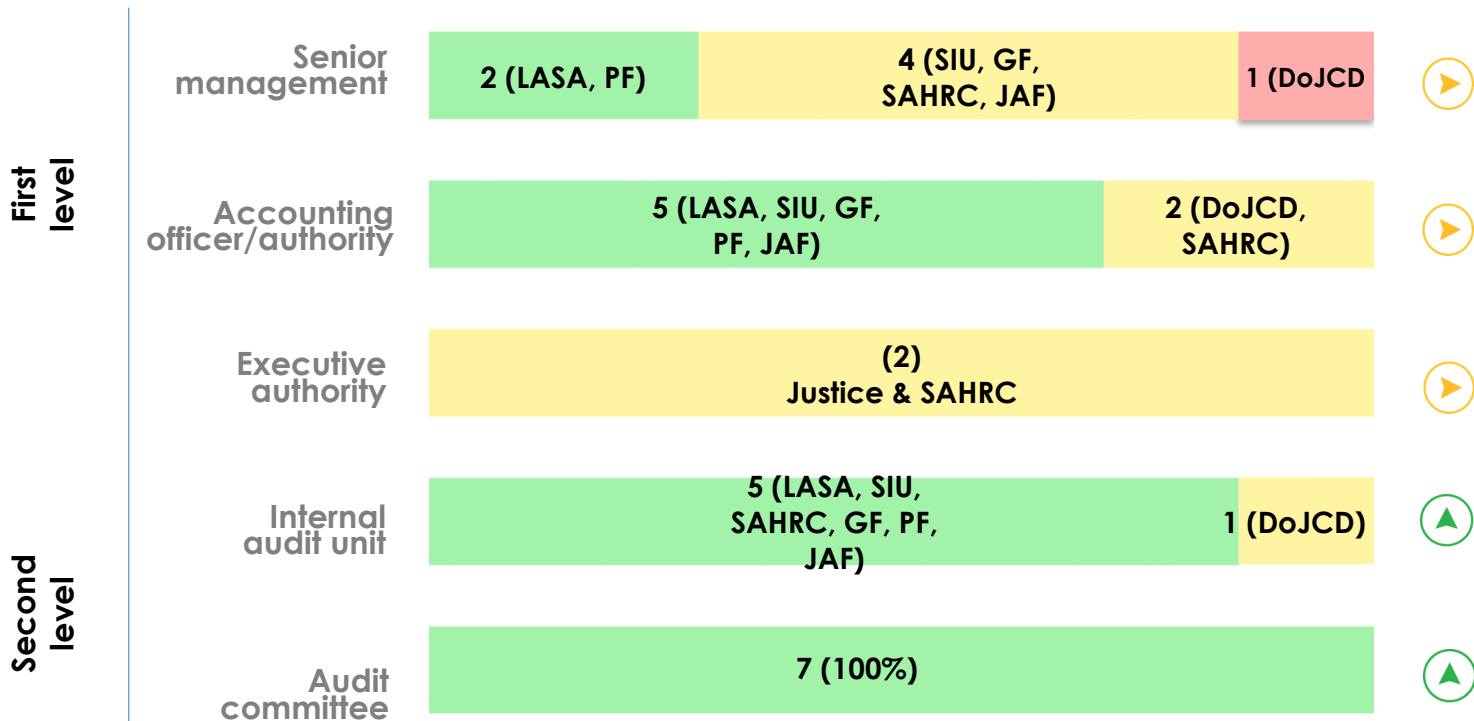
■ Good     
 ■ Of concern     
 ■ Intervention required





# Assurance provided

## Assurance

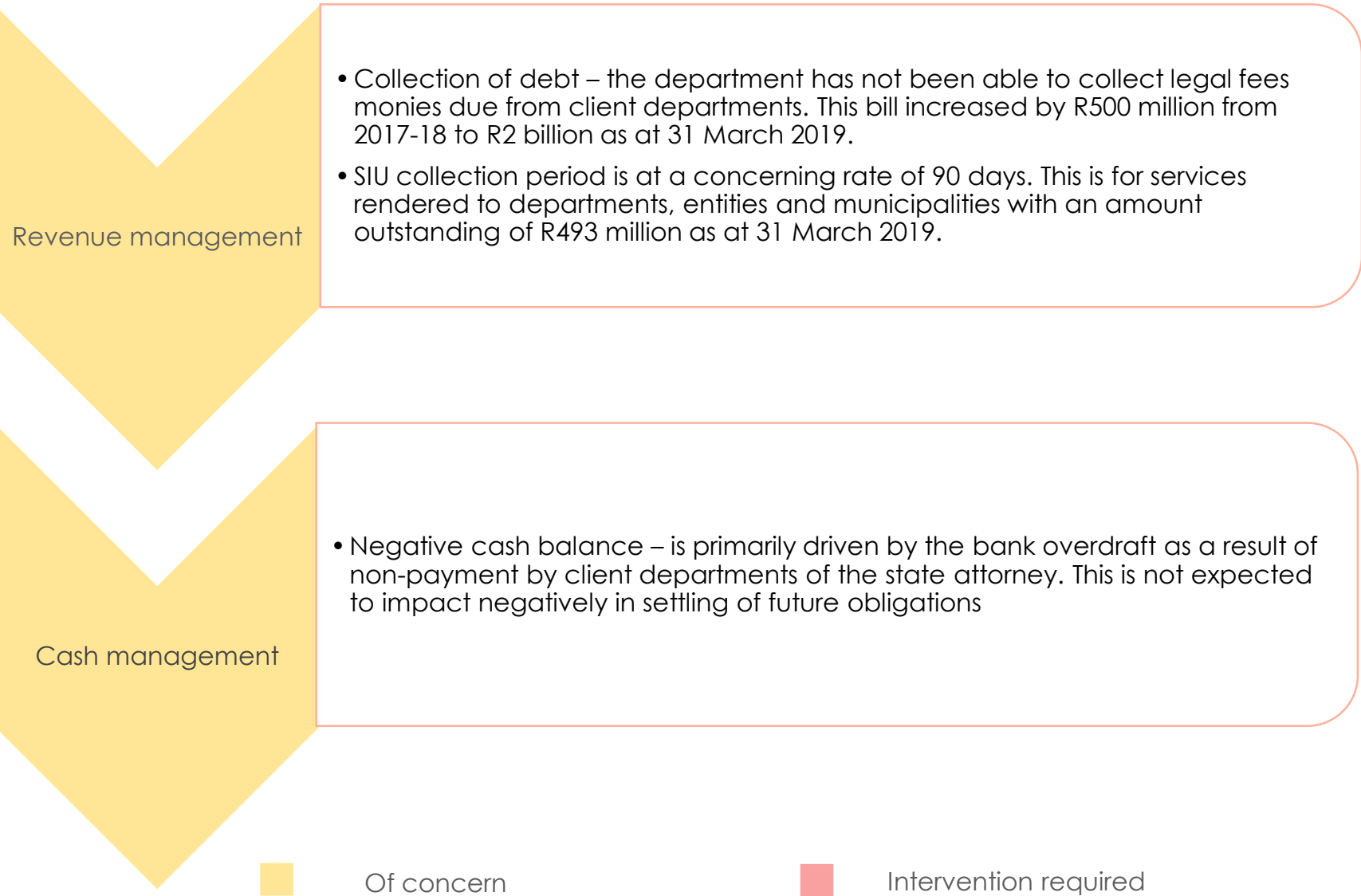


# Financial health and financial management



# Financial health

**No** Material uncertainty exists whether the auditees can continue to operate in future

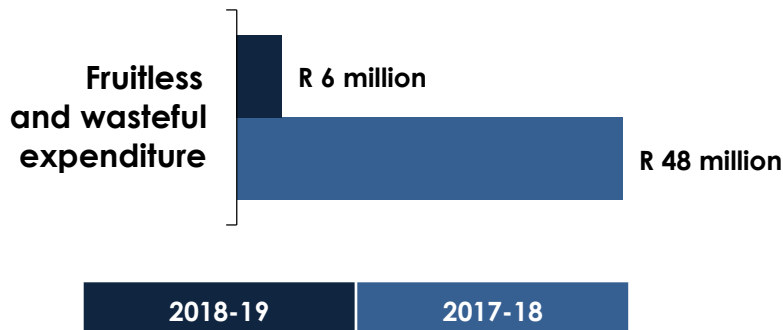


# Fruitless and wasteful expenditure decrease over 2 years

## Definition

*Expenditure incurred in vain and could have been avoided if reasonable steps had been taken. No value for money!*

## Fruitless and wasteful expenditure incurred by entities in portfolio

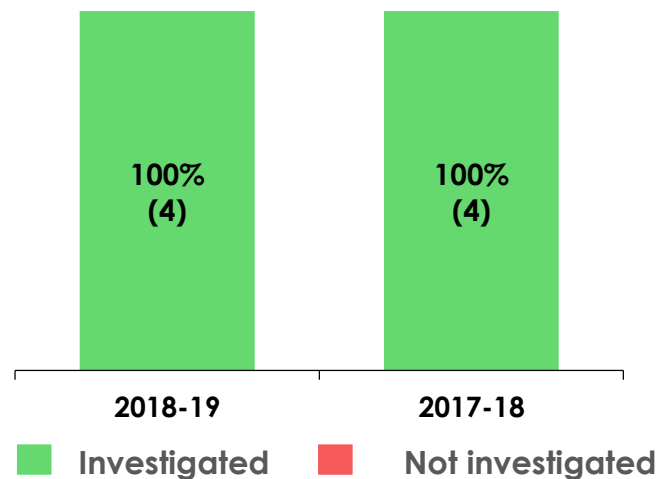


- R4,02 million is curator fees expenditure for 2018-19

## Nature of the fruitless and wasteful expenditure

- The majority of the disclosed fruitless and wasteful expenditure for the current year and prior year was caused by curator fees expenditure relating to NPA.

## Previous year fruitless and wasteful expenditure reported for investigation



# Irregular expenditure increase over 2 years

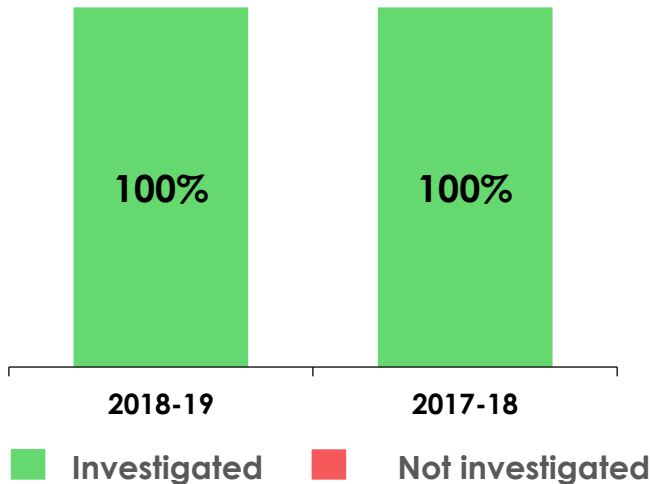
## Definition

*Expenditure incurred in contravention of key legislation; goods delivered but prescribed processes not followed*

## Irregular expenditure incurred by entities in portfolio



## Previous year irregular expenditure reported for investigation



## Nature of irregular expenditure

### Department of Justice (R771 million was identified in the current year relating to the prior year)

- R394 million represents non-compliance relating to extensions of security management contracts at courts
- R170 million relates to appointment of legal service providers without any procurement process being followed
- R366 million is as a result of variation orders implemented on IDT projects without the National Treasury's approval

### Other entities

- SIU irregular expenditure was as a result of payment of salaries at scales above the notch.
- LASA irregular expenditure was a combination of extensions of contracts above 15% not approved by the NT and office rental payments made where there were no signed contracts in place.
- The SAHRC extended a contract without approval and awarded contracts without following tender processes also without the required approval.



# Supply chain management

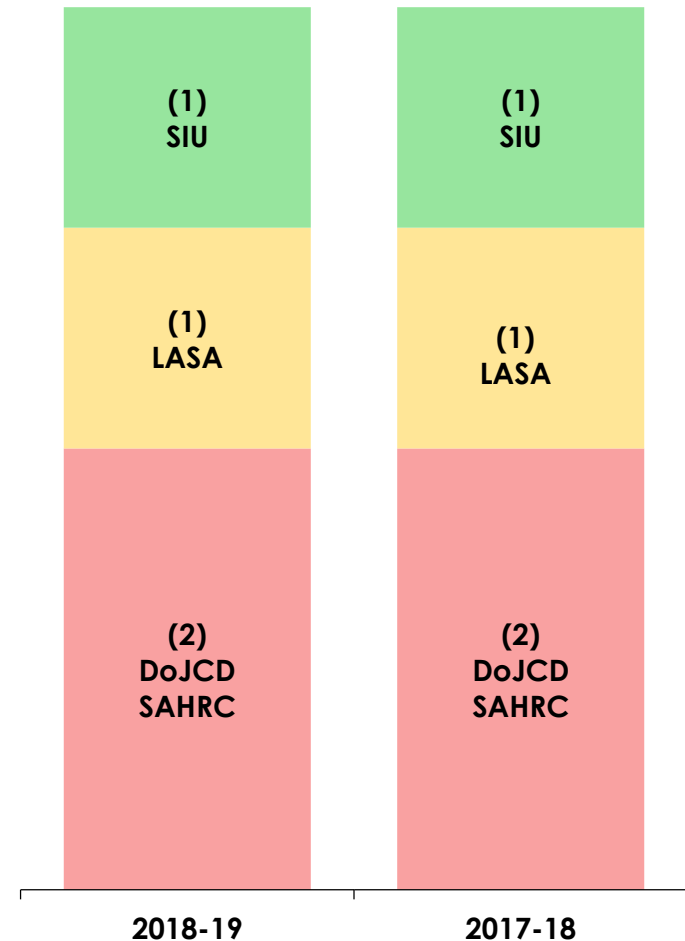


**Stagnation in SCM compliance**  
(2018-19: 25% with no findings)

All SCM findings should be investigated

## Most common findings on supply chain management

- Contract extensions greater than 15% concluded without NT approval at **75% of auditees**
- **Uncompetitive and unfair procurement** processes at **50% of auditees**
- **False declarations** of interest made by **25 suppliers**



Only DoJ, SIU, LASA and SAHRC are required to report on compliance with laws and regulations.



With no findings



With findings



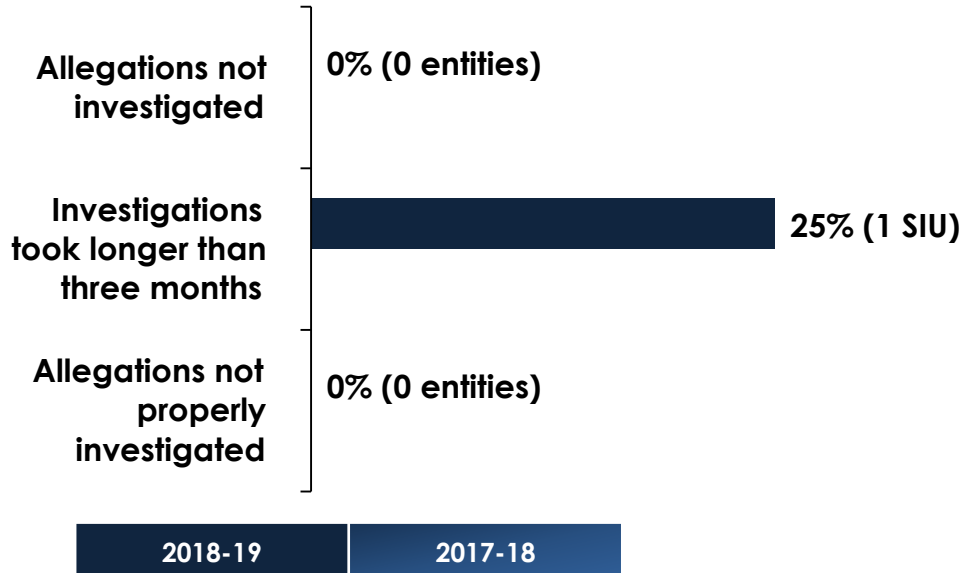
With material findings





# Allegations and lack of consequences

## Allegations of financial and/or fraud and SCM misconduct (4 auditees)



- *SIU - The majority of the investigations were on allegations of improper conduct in supply chain which have been ongoing. These took even longer than 12 months to investigate.*



# AGSA Status of records review - Engaging accounting officers in conversations that are insightful, relevant and have an impact



## Objectives

Identify key areas of concern that may derail progress in the preparation of financial and performance reports and compliance with relevant legislation, and consequential regression in audit outcome

Provide our assessment of the status of key focus areas that we reviewed

Assess progress made in implementing action plans / follow-through with commitments made in previous engagements

Identify matters that add value in putting measures and action plans in place well in advance to mitigate risks

## Reflections

The SRR conducted covered the period 1 April 2018 to 31 December 2018. While we commend the department for addressing matters relating to intangible assets and leave management the following critical matters highlighted were either not addressed or there was minimal progress made in addressing:

- Inadequate internal controls over the estimation of settlement amounts for claims against the state;
- Vacancies in critical areas of the department including assets, SCM, finance, ISM;
- Daily processes to ensure consistent and timely follow up on outstanding debt relating to state legal fees is recovered;
- The procurement systems within the state attorney environment has made some improvements however much work is required to ensure a fair, equitable, transparent and cost effective process.
- Reporting of performance information is not always supported by sufficient, appropriate systems to collect the relevant information

## Way forward

Will continue with proactive and continuous engagement to enable safeguarding against vulnerable areas of risk





# Key expansion of our mandate



**Refer material irregularities** to relevant public bodies for further investigations



**Take binding remedial action** for failure to implement the AG's recommendations for material irregularities



**Issue a certificate of debt** for failure to implement the remedial action if financial loss was involved

# What is a material irregularity?

## Irregularity



any **non-compliance** with, or contravention of, legislation, **fraud, theft or a breach of a fiduciary duty**

Material  
irregularity

identified during an audit performed under this Act that **resulted in or is likely** to result in ...

## Impact



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.**

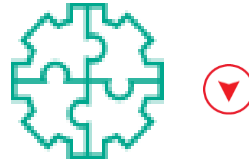
# Portfolio snapshot (2018-19)



**Clean audits: 72%**  
(2017-18: 72%)



**Financially unqualified financial statements: 86%**  
(2017-18: 86%)



**No findings on performance reports: 50%**  
(2017-18: 75%)

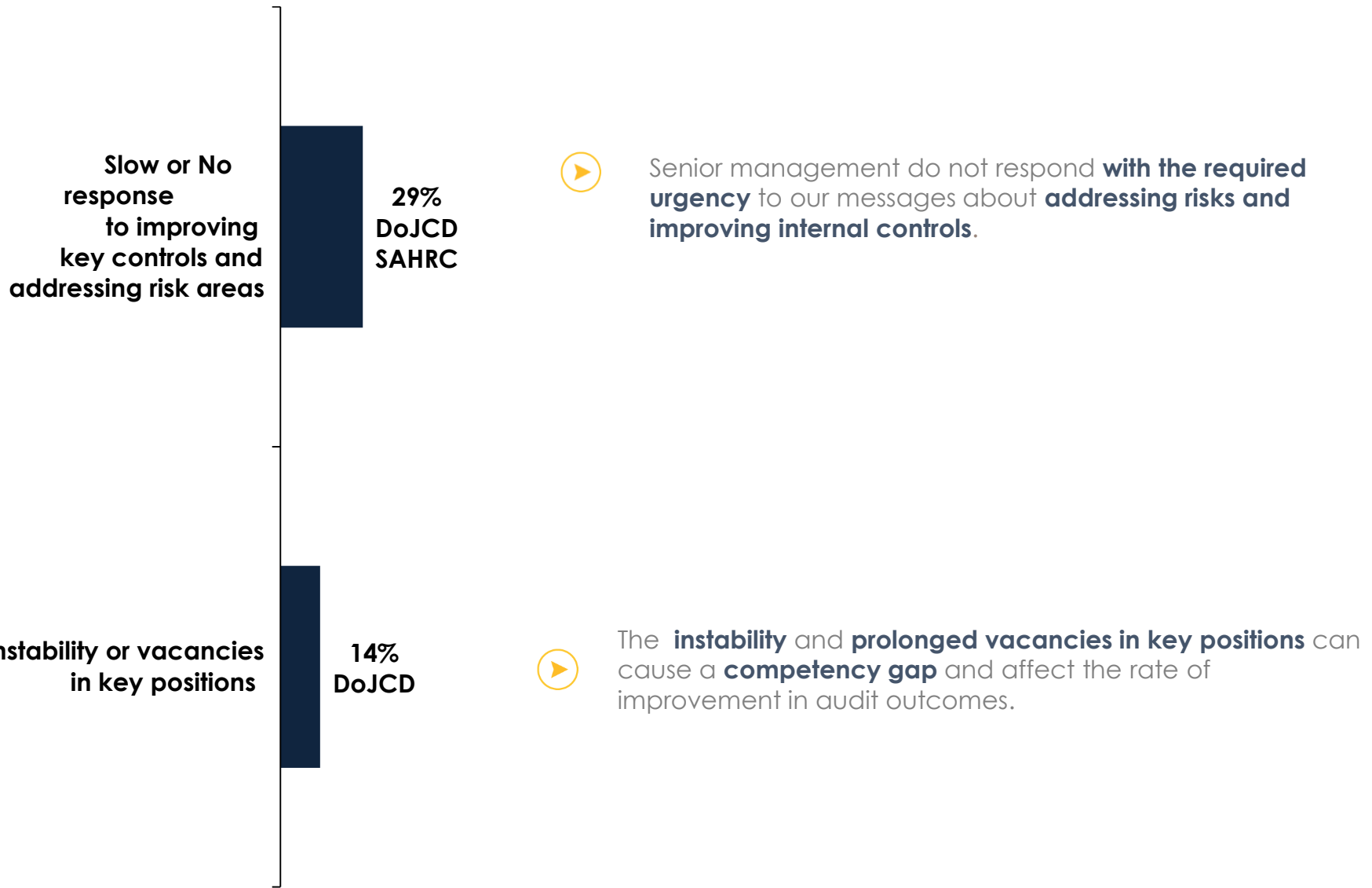


**No findings on compliance with legislation: 50%**  
(2017-18: 50%)



**Irregular expenditure: R985 million**  
(2017-18: R137 million)

# Root causes



# Recommendations

To department and its entities

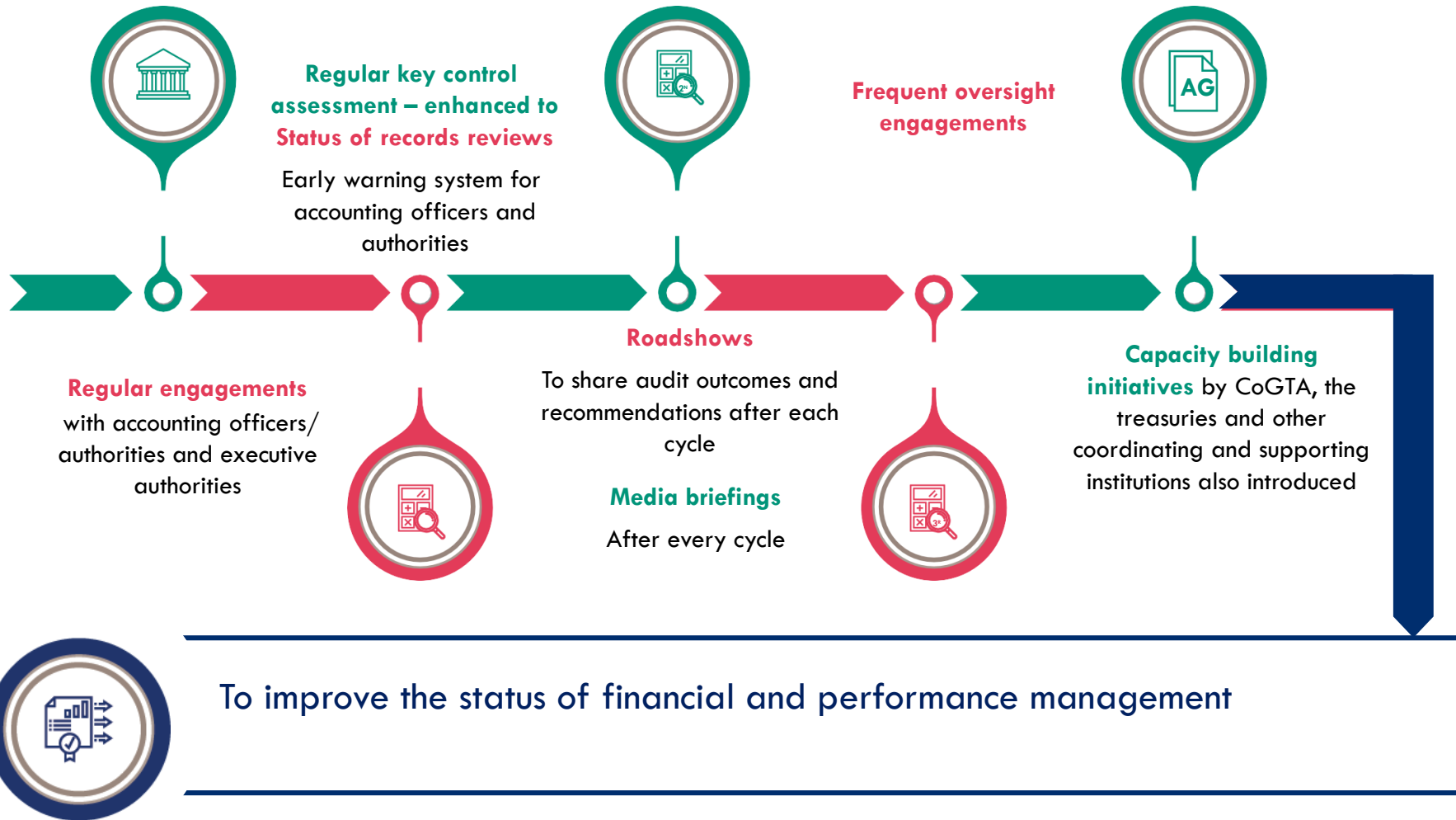
- The Accounting officer should prioritise the finalisation of the department's organisational structure and timely appointment of competent staff to fill the key vacancies within asset management and supply chain environments.
- The internal audit of the department should be assigned the responsibility for tracking and verifying the progress against the audit action plan.
- Continued stability and right tone at the top for the entities that have maintained clean audits is essential to sustaining these outcomes.
- The SAHRC – we recommend the implementation of controls over the review and monitoring of compliance with laws and regulations on SCM and controls over recordkeeping of evidence relating to predetermined objectives.

To the portfolio committee

- Governance challenges between the department and the NPA remain a stumbling block in achieving clean administration. The roles and responsibilities of the department's leadership in respect of the NPA should be clearly defined.
- The finalisation of an approved organisational structure and the identification and filling of key positions should be tracked by the committee through regular feedback from the management of the department.



# Additional efforts were introduced



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