



---

---

# Briefing to Portfolio Committee on Department of Justice and Constitutional Development Portfolio

17 November 2020

**PFMA**  
2019-20



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 2019-20 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.

**Audit outcomes are indicated as follows:**



Unqualified  
with no findings



Unqualified  
with findings



Qualified  
with findings



Adverse  
with findings



Disclaimed  
with findings



Outstanding  
audits

**Movement over the previous year is depicted as follows:**



Improved



Unchanged



Regressed

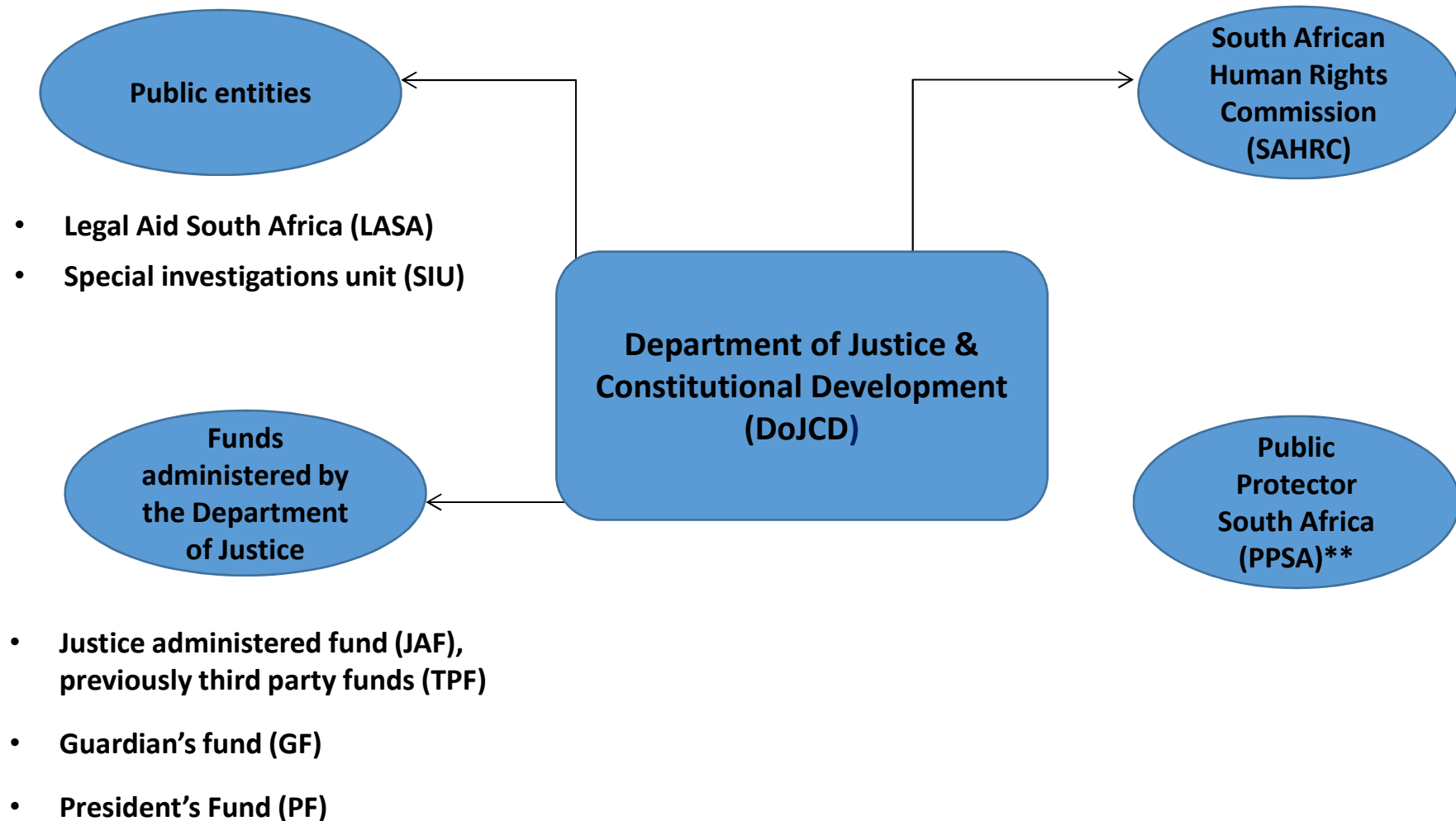


# ACCOUNTABILITY = PLAN + DO + CHECK + ACT





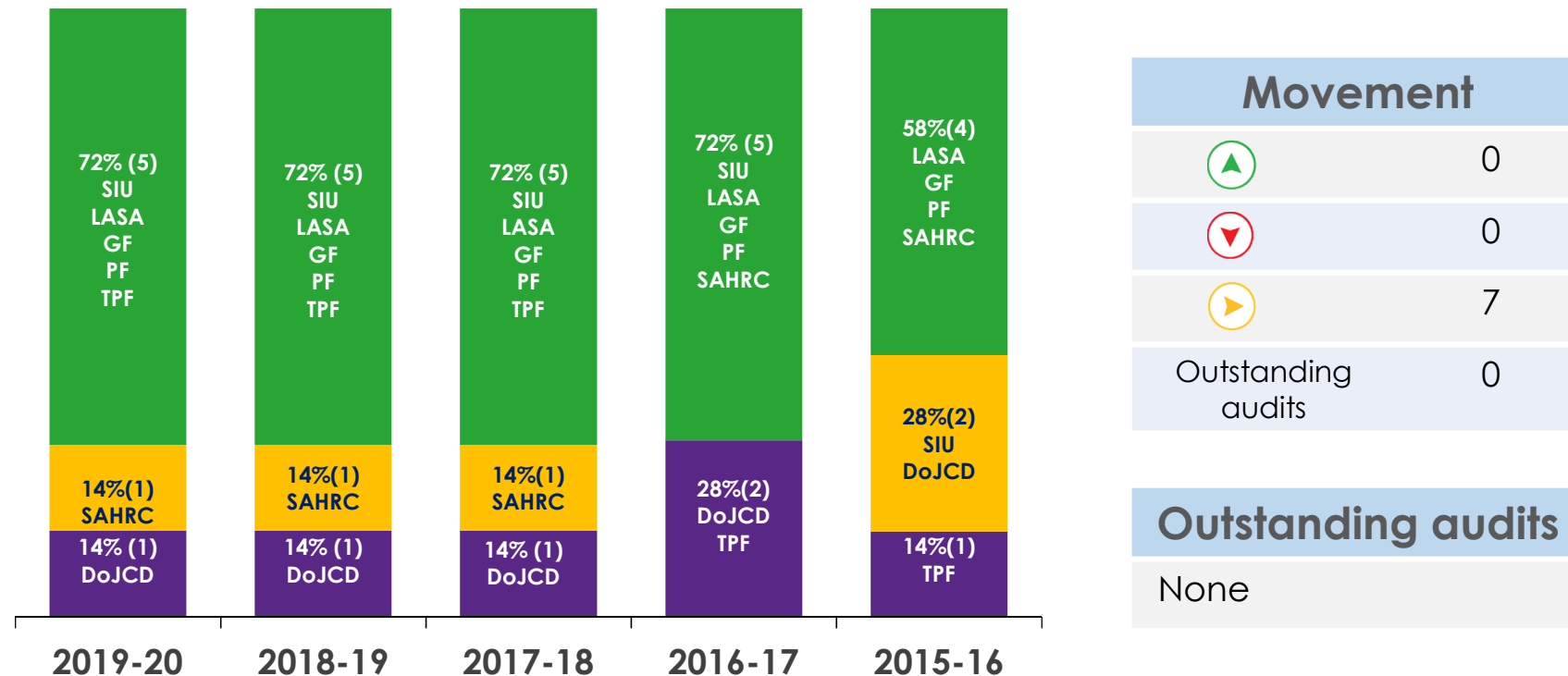
# Justice Portfolio



\*\* 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.

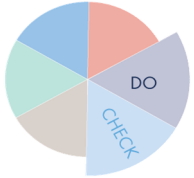


# Audit outcomes of portfolio over five years



- We commend the SIU, LASA, GF, PF and JAF for retaining their clean audit outcomes. Best practices which have resulted in desirable audit outcomes include the timeous and diligent implementation of actions to address identified risks and concerns emanating from internal and external audits.
- The stagnation in the audit outcomes of the DoJCD are as a result of inadequate implementation and review of the initiatives contained in the department's post audit action plan. Some improvements were however noted across all the audit focus areas.
- Whilst the quality of submitted financial statements of the SAHRC's has been maintained the challenges within the supply chain management environment and performance information reporting remain.





# Credible financial reporting



## Financial statements

Submission of financial statements by legislated date

Financial statements submitted without errors (**PF, GF, LASA, SIU, SAHRC & JAF**)

Quality of final submission after audit (**PF, GF, LASA, SIU, SAHRC & JAF**)

### Movement

2019-20

2018-19



7

7



6

6



6

6

**(DoJCD)** received one qualification paragraph opinion only because they corrected some misstatements identified during the audit

❑ The significant deficiencies in the accounting for contingent liabilities has resulted in a qualification in each of the past three financial periods. While action plans have previously been compiled to address the matter, these plans have not been implemented and monitored with the necessary care. Addressing the qualification requires collaboration from the State Attorney, Legal Services, NPA and the finance unit and this has not always been the case.

**DoJCD**

❑ Significant deficiencies in the asset management environment were brought to the attention of management in the prior year and while a repeat qualification was avoided, there remains concerns in this area as reflected by the R181 million worth of assets that were not verified during the year end asset counts. Investigations into these assets are ongoing.





# Credible performance reporting



## Performance report

	Movement	2019-20	2018-19
Performance report submitted without errors ( <b>LASA and SIU</b> )	▲	2	1
Quality of final submission after audit ( <b>LASA and SIU</b> )	▶	2	2
<b>SIU and LASA had no material findings and no material misstatements</b>			
Reliable reporting of achievements ( <b>DoJCD and SAHRC</b> )	▶	2	2
Usefulness of performance indicators and targets ( <b>None</b> )	▶	0	0

### DoJCD

- ❑ The information supporting the reported achievements of two targets in the state attorney environments contained errors when compared to the supporting evidence provided, additionally for these two reported achievements some evidence could not be provided for audit

### SAHRC

- ❑ Sufficient evidence could not be provided to support the achievements of two targets in the enhance advocacy, visibility and awareness programme.

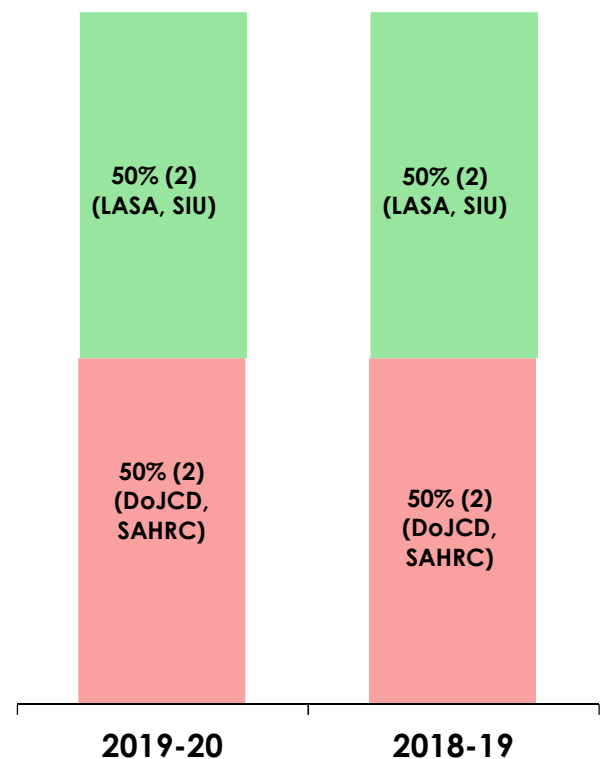
JAF, GF and PF are not required to report on performance information as this is incorporated in DoJCD's reporting. As a result only 4 auditees are assessed above i.e. DoJ, SIU, LASA and SAHRC.





## Disregard for compliance with legislation

### Findings on compliance with key legislation



With no findings    With findings

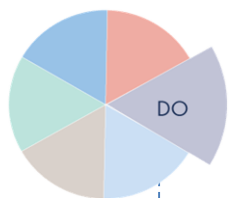
### Top five non-compliance areas

- Quality of financial statements (**DoJCD**)
- Procurement and contract Management (**DoJCD and SAHRC**)
- Prevention of irregular, fruitless and wasteful expenditure (**DoJCD and SAHRC**)
- Consequence Management – Investigations into instances of irregular expenditure (**SAHRC**)
- Expenditure management – timeous payment of service providers (**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.







Leadership

# Status of internal control

Financial and performance management

Governance

Effective leadership

PF, GF, SIU, LASA & JAF (5)

DoJCD and SAHRC (2)



Proper record keeping

PF, GF, SIU, LASA & JAF (5)

SAHRC (1) DoJCD (1)



Daily and monthly controls

PF, SIU & LASA (3)

SAHRC & GF (2)

DoJCD & JAF (2)



Review and monitor compliance

PF, GF, SIU & JAF (4)

LASA (1)

DoJCD and SAHRC (2)



Risk management

PF, GF, SIU, LASA & JAF (5)

DoJCD & SAHRC (2)



Good



Of concern



Intervention required

14

PFMA  
2019-20



# Assurance provided

Assurance						
First level	Senior management	LASA & PF (2)	GF,SIU, JAF & SAHRC(4)		DoJCD(1)	▶
	Accounting officer/authority	PF, GF, SIU, LASA & JAF (5)			DoJCD & SAHRC (2)	▶
	Executive authority	DoJCD & SAHRC(2)				▲
Second level	Internal audit unit	PF, GF, SIU, LASA & JAF (5)			DoJCD & SAHRC (2)	▼
	Audit committee	PF, GF, SIU, LASA , JAF & DoJCD (6)			SAHRC (1)	▼

Provides assurance

Provides some assurance

Provides limited/ no assurance

Not established

# Financial health and financial management



# Financial health

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

## Revenue management

- Collection of debt (DoJCD) – the department has not been able to collect legal fees monies due from client departments. The outstanding amount increased by R400 million from 2018-19 to R2,4 billion as at 31 March 2020.
- SIU collection period is at a concerning rate of 72 days. This is for services rendered to departments, entities and municipalities with an amount outstanding of **R421** million as at 31 March 2020.
- LASA collection period is at a concerning rate of 587 days. This is for services rendered to departments, entities and municipalities with an amount outstanding of **R16** million as at 31 March 2020.

## Cash management

- Negative cash balance (DoJCD) – is primarily driven by the bank overdraft as a result of non-payment by client departments of the state attorney. This is not expected to impact negatively in settling of future obligations



Of concern



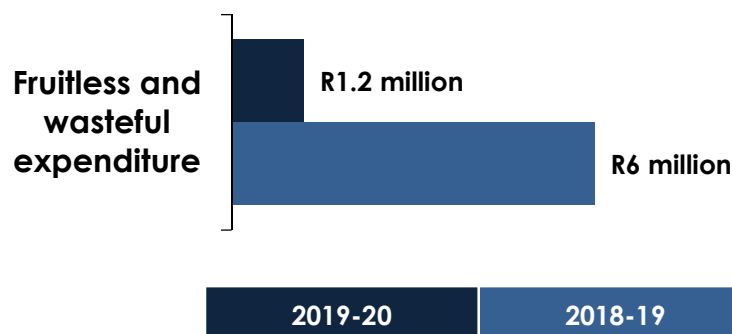
Intervention required

# Fruitless and wasteful expenditure decreased over 2 years

## Definition

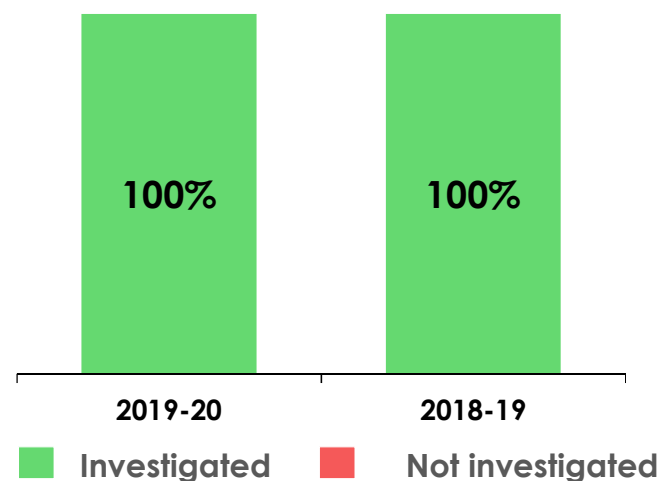
*Expenditure incurred in vain and could have been avoided if reasonable steps had been taken. No value for money!*

## Fruitless and wasteful expenditure incurred by entities in portfolio



- R1,1 million represents non-compliance in 2019-20
- R64 0000 is expenditure relating to prior year.

## Previous year fruitless and wasteful expenditure reported for investigation



## Nature of the fruitless and wasteful expenditure

- The majority of the disclosed fruitless and wasteful expenditure for the current year was caused by curator fees expenditure relating to NPA. (R1 million)
- The remaining R170 000 at DoJCD relates to interest on late payments and no shows for travel



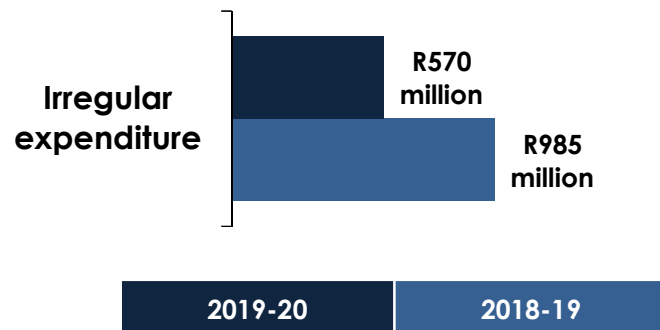


# Irregular expenditure decreased over 2 years

## Definition

Expenditure incurred in contravention of key legislation; goods may have been delivered but prescribed processes not followed

## Irregular expenditure incurred by entities in portfolio



## Irregular expenditure under assessment (DoJCD)

**A further R867 million of potential irregular expenditure is yet to be confirmed**

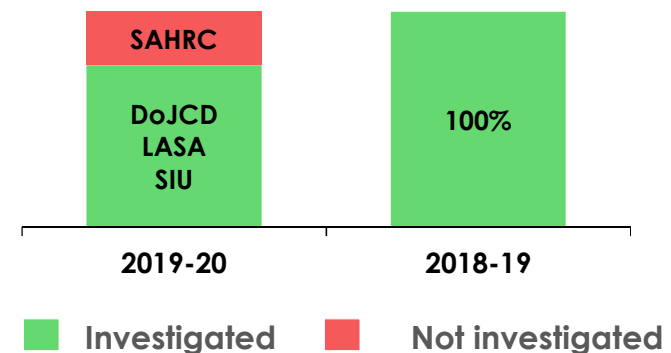
- R197 million relating to procurement of legal services by the state attorney
- R561 million relating to allegations of fraudulent documents submitted by suppliers
- The remaining transaction primarily relate to instances where NT approval for extensions/deviations was not obtained

## Nature of the irregular expenditure (DoJCD)

**Department of Justice (R563 million was identified in the current year of which R223 million relates to prior year)**

- R256 million represents non-compliance relating to security contracts at the courts where a supplier did not meet mandatory requirements per the bid
- R281 million is as a result of services rendered without prior approval for extensions having been obtained from NT
- R20 million as a result of only obtaining one quote.

## Previous year irregular expenditure reported for investigation



# Irregular expenditure

## Definition

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

Irregular expenditure incurred by entities in portfolio

## Other entities

- *SIU irregular expenditure was as a result of payment of salaries at scales above the notch. **(R253 000)***
- *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. **(R 3940 000)***
- *The SAHRC irregular emanates from non-compliance with National Treasury Note 8 of 2007 and Treasury Regulation 16A 9.1 (d) and 16A 6.3 (b.) Irregular expenditure incurred is mainly due to the non-adherence to policies and procedures. **(R2 639 000)***



# Supply chain management

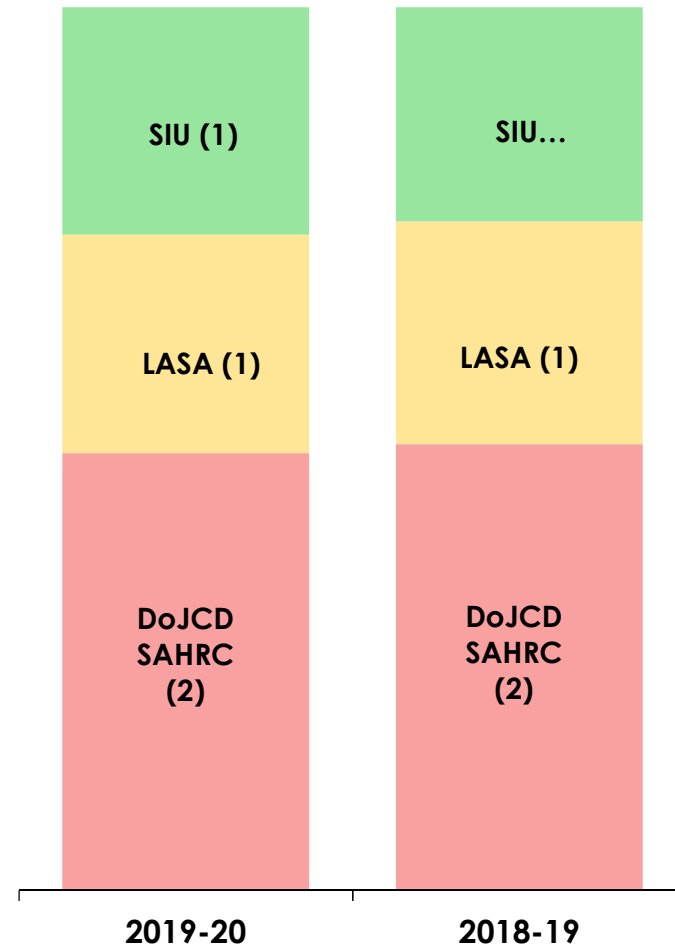


## Stagnation in SCM compliance (2019-20: 25% with no findings)

All SCM findings should be investigated

### Most common findings on supply chain management

- Contract extensions greater than 15% concluded without NT approval at **3 auditees (DoJCD, SAHRC & LASA)**
- Three quotations not obtained at **2 auditees (DoJCD & SAHRC)**
- Competitive bidding process not followed at **1 auditee (DoJCD & SAHRC)**
- Declaration of interest not obtained **2 auditees (DoJCD & SAHRC)**
- Procurement from suppliers not on Central Supplier Database **2 auditees (DoJCD & SAHRC)**



Only DoJCD, SIU, LASA and SAHRC are required to report on compliance with laws and regulations. The procurement of the funds fall under the DoJCD.



With no findings



With findings



With material findings 21

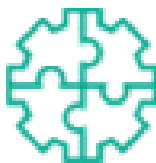
# Portfolio snapshot (2018-19)



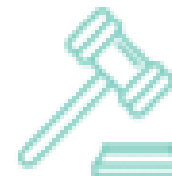
**Clean audits: 5**  
(2018-19: 5)



**Financially  
unqualified financial  
statements: 6**  
(2018-19: 6)



**No findings on performance  
reports: 2**  
(2018-19: 2)



**No findings on compliance  
with legislation: 2**  
(2018-19: 2)



**Irregular expenditure:  
R570m**  
(2018-19: R985m)

## Root causes





# Recommendations

## To department and its entities

- There should be the required urgency by management in responding to our messages about addressing risks identified and improving internal controls.
- The internal audit of the department and entities 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 – investigations into instances of irregular expenditure should be completed with the necessary urgency so that corrective action can be implemented.

## To the portfolio committee

- The PC should request accounting officers/authorities and the Minister to provide feedback on the implementation and progress of action plans to ensure improvement in the audit outcomes of the portfolio.
- Governance challenges between the department and the NPA remain a stumbling block in achieving clean administration.



## Overall message

- We commend LASA, SIU, PF, GF and JAF on obtaining and sustaining clean audits.
- DoJCD's audit outcomes have been stagnant over the past 3 financial years with a qualification on contingent liabilities. This status will not change until the different role players work together to ensure that information relating to ongoing litigation is regularly updated and reviewed.
- The number of material adjustments required to the submitted financial statements and performance reports for DoJCD has reduced but further enhancements are required particularly in the state attorney environment.
- Non-compliance with key legislation remains a challenge especially in SCM, which has led to irregular expenditure and fruitless and wasteful expenditure being incurred. The instability in the leadership of this unit has been a major contributor to the non compliances identified



# Thank you



## Stay in touch with the AGSA



[www.agsa.co.za](http://www.agsa.co.za)



@AuditorGen\_SA



Auditor-General of South Africa



Auditor-General of South Africa

