**Report of the Standing Committee on Finance on the Oversight Visit to the Financial and Fiscal Commission (FFC) dated 01 June 2022**

1. **INTRODUCTION**
   1. The Standing Committee on Finance (the Committee) undertook an oversight visit to the Financial and Fiscal Commission (FFC) on the 22 April 2022 in Gauteng.
   2. The main purpose of the visit to the FFC was to get a briefing on their annual performance plan, audit findings and action plan and to meet staff/union representatives to discuss labour related issues.

1. **DELEGATION**

*Parliamentary Delegation*

* 1. The Committee delegation comprised of the following members: Mr MJ Maswanganyi (Chairperson of the Committee, ANC), Ms P Abraham (ANC), Ms D Mabiletsa (ANC), Ms Z Nkomo (ANC), Mr IK Morolong (ANC), and Dr D George (DA). The delegation was accompanied by the following parliamentary officials: Mr A Wicomb (Committee Secretary), Mr T Bottoman (Committee Assistant) and Dr Z Hlophe (Content Advisor).

*FFC Delegation*

* 1. The FFC delegation comprised of: Dr P Mbava (Chairperson of the Board), Ms A Dowra (Head: Office of Commission Chairperson), Mr C Tseng (Acting CEO & Head: Research), Mr H Eksteen (Parliamentary Liaison), Prof L Erasmus (Part-Time Commissioner) and Prof A Mokadi (Commissioner), Mr K Mviko (CFO), Ms R Mokebe (Head: Corporate Services) and Mr T Mankga (Financial Analyst: National Treasury)

1. **OVERVIEW OF THE FFC**
   1. The FFC received an unqualified audit opinion with findings and continued to struggle on compliance with legislation. The prevalent instances are in areas of supply chain management and consequence management. These challenges are similar to those reported in the prior year and may be indicative of ineffective audit action plans and inadequate consequence management.
   2. Furthermore, the FFC had material non-compliance findings on expenditure management, which was primarily driven by irregular expenditure incurred from non-compliance with procurement prescripts. In most instances, the FFC was able to detect non-compliance with procurement prescripts and the related irregular expenditure and the preventive controls that have been implemented by management.
   3. Effective consequence management processes remained a challenge at the FFC, as material non-compliance findings were raised relating to lack of investigations or of evidence to support such investigations.
2. **FFC ANNUAL PERFORMANCE PLAN**
   1. The FFC is established by section 220 of the Constitution and the FFC Act to make recommendations to Parliament, provincial legislatures and any other authorities determined by national legislation. Its mandate is to make recommendations as sourced from the following provisions in the Constitution: equitable share and allocations of revenue (s214(2)); government guarantees (s 218(2)); provincial taxes (s 228(2)(b)); municipal fiscal powers and functions (s 229(5)); provincial loans (s 230(2)); and municipal loans (s 230A(2)). All legislation referred in the above sections “may be enacted only after” an “recommendations of the Financial and Fiscal Commission have been considered”.
   2. FFC annual performance plan is comprised of two programmes, namely the administration programme and the research programme. The proportion of the FFC’s total budget taken up by the research programme has decreased from 36.7% in 2018/19 to 16.2% in 2020/21 in the audited outcomes. Over the medium term, on average, 67.5% of the total expenditure is concentrated on the administration programme, which consists of Office of the Chairperson, Commissioners, CEO’s office, Finance and Corporate Services.
   3. Of the total staff complement of 37, there are 7 full-time researchers including the Head of Research, and 11 research interns. Slower spending during the financial year has accumulated to an underspending of R11.5 million in the budget or accumulated surplus of R12.4 million for the financial year. The cash balance at the end of the year amounted to R16.2 million. This is in spite of the return of prior year surplus to the fiscus of R19.7 million made during that year.
3. **FFC AUDIT OUTCOMES FOR THE PREVIOUS YEAR AND AUDIT ACTION PLAN** 
   1. The FFC struggles repeatedly on compliance with legislation. The prevalent instances are in areas of supply chain managementdue toineffective audit action plans and inadequate consequence management. Some examples are the mis-identification of root causes on the accountability chain (e.g. programme, roles and responsibilities etc.), and the mis-interpretation of risks and audit opinions.
   2. Material non-compliance findings on expenditure management, which was primarily driven by irregular expenditureincurred from non-compliance with procurement prescripts. This can be described as: fruitless and wasteful expenditure; poor contract vs payment management, especially of multi-year contracts; ignored early warning signals in conjunction with weak internal controls: process and procedure in collating evidence; inconsistent policies and policy applications, and misinterpretation and misapplication of the procurement prescripts and preventive controls.
   3. Below is an in-depth analysis on investigations of reported irregular expenditure and, where appropriate, disciplinary actions against those found to be responsible for such expenditure.

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| **Type** | **Issue under consideration/Affected class of transactions / account balance / disclosure** | **Undertaken by/other party** | **Commenced** | **Expected completion** | **Potential Liability** |
| Investigations: Procurement Irregularity | Omission of bidder’s submission | Consulted State Attorney for action | Yes | 31 March 2023 | R46 057.50 |
| Claims: Labour Litigation matter | Inconsistencies in the Commission policies regarding long-term service award | Instructed State Attorney to appoint Counsel | Yes | 31 March 2023 | R137 871.94 |
| Claims: Letter of Demand escalating to a court summon | Irregular extensions without notice of termination. | Head: Corporate Services meeting with lawyers to confirm amount in dispute | No | 31 March 2023 | R172 202.30 |
| Investigations: Irregular, as well as wasteful and fruitless expenditures for the 2020/21 financial year | Various issues as per the 2020/21 Annual Report | CFO: Procurement of a standing forensic service underway to commence investigation | No | 31 March 2023 | R12 753 328 irregular expenditure; R2 909 038 fruitless and wasteful expenditure. Alternatively, 23.5% of the R66.6 million budget |
| Investigations: Disciplinary Hearing of the CEO | Wasteful and fruitless expenditure on the Data Warehouse project | The Commission | Yes | 31 July 2022 | Misconduct, Data Warehouse project:  R1 891 750.00  (Project budget:  R2 525 100.00) |

* 1. In February 2022, upon juxtaposing the terms and conditions of the contracts against the payments, management discovered some concerning inconsistencies. Management is reviewing and investigating a company’s (Company A) contract as a matter of caution as the payments to date are out of sync with the remaining contract period (payments made are more than the time period already elapsed) and at the rate of expenditure, the contract amount will be fully expanded long before the lapse of the contract period.
  2. All known irregular contracts have been terminated, with the exception of two that could not be terminated until the outcome of the investigations. One relates to a contract worth R9 299 837.19signed into effect over three years ending in 30 November 2023, and the second a contract expiring in 30 June 2022. Forensic investigation services were appointed on 7 April 2022
  3. The FFC’s audit improvement plan is derived from the audit outcomes and each control deficiency is assessed for the root cause as well as the control deficiency. A plan of action is then developed to ensure that they improve the control environment (process improvement) which will eliminate the root cause.
  4. The FFC commits to timeous, consistent compliance to enable an easier implementation of the process improvements.

1. **FFC STAFF, UNION AND LABOUR ISSUES**
   1. The FFC sits with a vacancy rate of 20.8%. There currently is a recruitment plan to fill all vacancies, with special focus on the research division. Executive management turnover is of particular concern, as the stability of the FFC has been affected by consistent movement.
   2. The FFC does not have a recognition agreement with any union, although correspondence has been received from the National Public Service Workers Union in September 2018, and October and November 2021. An application for recognition must be compliant with the provisions of section 21 of the Labour Relations Act 1995 (as amended) and the union was advised in all instances to remedy the deficiency, which they have failed to do. The FFC is not opposed to recognition of unions, however, it must be in line with legislation.
2. **COMMITTEE OBSERVATIONS AND RECOMMENDATIONS**
   1. The FFC plays a particularly important constitutional role which includes advising government, Parliament and provincial legislature on fiscal issues. Its mandate is to make recommendations on equitable share and allocations of revenue (s214(2) Constitution); government guarantees (s 218(2)); provincial taxes (s 228(2)(b)); municipal fiscal powers and functions (s 229(5)); provincial loans (s 230(2)); and municipal loans (s 230A(2)). According to section 220, which established the FFC, all legislation referred in the above sections “may be enacted only after” any “recommendations of the Financial and Fiscal Commission have been considered”.
   2. The Committee is therefore very concerned that recommendations made by the FFC during the Budget Processes are sometimes reportedly not considered or ignored. The Committee believes that there should be more cooperation particularly between the FFC and NT. This may involve also relooking at the manner in which the FFC receives its budgetary allocation in order to ensure its independence.
   3. The Committee notes that there has been high leadership instability at the FFC. This is exacerbated by the fact that the current CEO is suspended and that there has been high turnover of CFOs. In the past 7 years there has been more that 7 CFOs and 4 CEO, including in acting capacities. The Committee believes that there should be leadership stability in order for the FFC to improve its governance.
   4. Over the past few years the FFC has received concerning audit outcomes which the AGSA has said are caused by leadership instability, failure of management to monitor compliance with the PFMA and Treasury Regulations, inadequate implementation of the audit action plans, and failure to implement proper controls in order to ensure that annual financial statements were accurate. There has also been issues with irregular and fruitless and wasteful expenditure. The Committee will be monitoring progress in the implementation of the audit action plans presented to it in February and during the oversight visit in April.

**Report to be considered**

The DA reserved its position.