



AUDITOR - GENERAL  
SOUTH AFRICA



## STANDING COMMITTEE ON THE AUDITOR-GENERAL

# Dispute resolution mechanism and MFMA general report readiness

26 May 2023

# MISSION AND VISION



## VISION

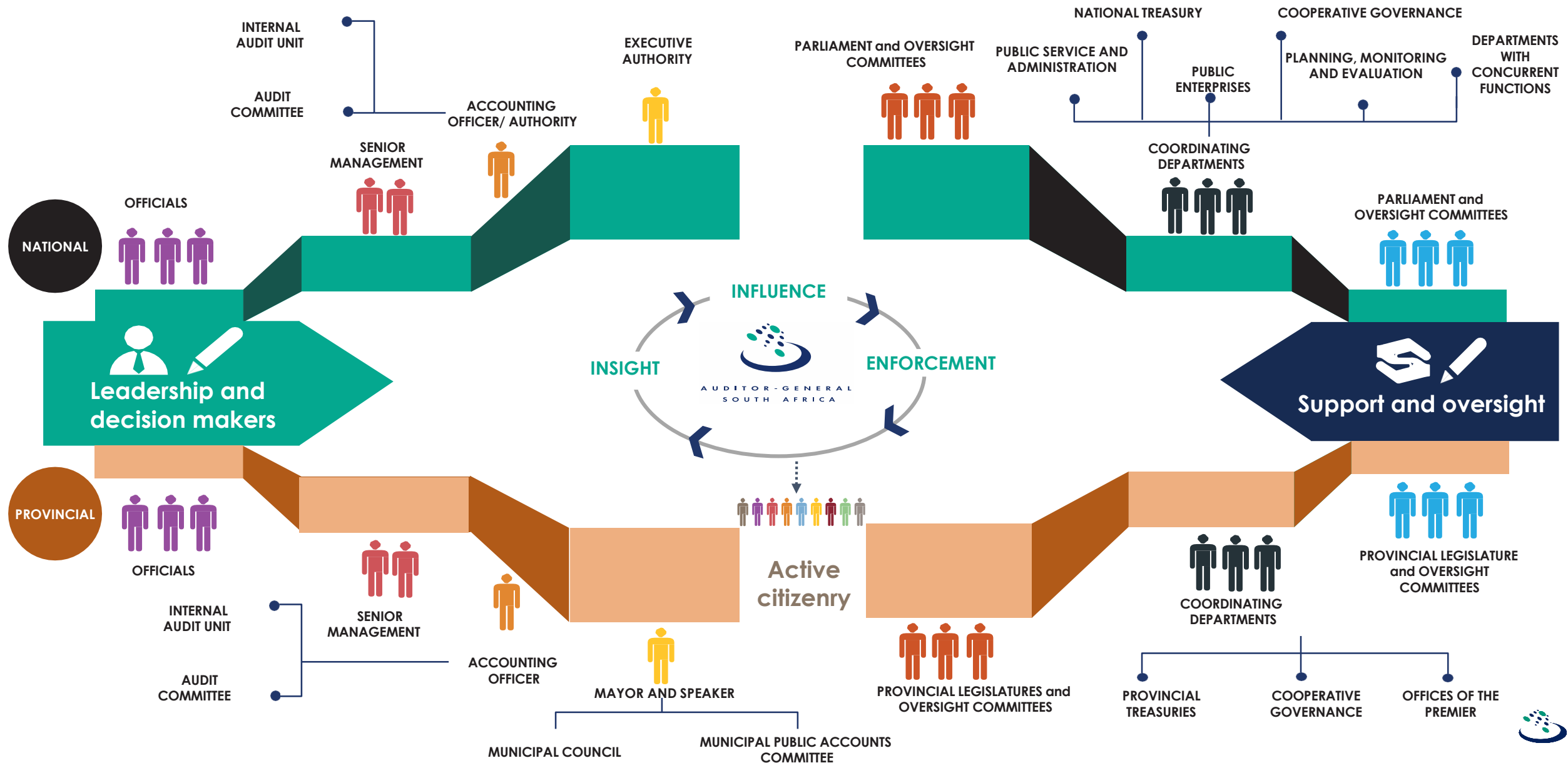
To be recognised by all our stakeholders as a relevant supreme audit institution that enhances public sector accountability

## MISSION

The Auditor-General of South Africa has a constitutional mandate and, as the supreme audit institution 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



# All have role to play in accountability ecosystem





## Dispute resolution mechanism

## Why disputes arise and what we set out to enhance

### What drives disputes/complaints:

- Differing legal interpretations
- Differing a of accounting standards
- Auditees' desire for a clean audit

Need for procedural fairness – auditees may challenge the mechanism's resolutions in court

### What we sought to enhance in the dispute process:

- **Lengthy process** that **negatively affects** the accountability cycle
- **Overreliance** on external parties (e.g. National Treasury)
- Inadequate **leadership involvement**
- To have one process for disputes and category 2 complaints



## Scope:



## Enhancements:

- Formalised process
- **One process** for category 2 complaints and disputes
- Decreased process duration
- Full control over process by the AG (will obtain assistance from strategic stakeholders, but the **AGSA will make final decision**)
- **Greater leadership** visibility
- Improved **understanding** of the process by all roleplayers.
- **Expected to reduce litigation**





## Development phase

1. Our legal unit established the policy principles
2. We obtained an external legal opinion on these policy principles
3. We undertook benchmarking exercises with SAI India, SAI NZ and SAI UK
4. We engaged National Treasury and the Accounting Standards Board
5. Draft policy was developed and consulted on internally with our business unit leaders, heads of portfolio and heads of audit
6. Draft policy sent to policy committee for input and recommendation to exco for approval
7. Exco approved the policy subject to Scoag consultation in line with our management approval framework (MAF)
8. Draft policy consulted on with Scoag for input on 27 October 2022
9. Policy approved by the AG in line with our MAF and effective on 1 November 2023



## Implementation phase – Where we are now:

1. Launched awareness and training material internally which has been rolled out to AGSA audit staff
2. Letters issued to MFMA accounting offices/authorities to inform them of the new policy during the ongoing cycle at the time
3. Engagements with stakeholders such as National Treasury and Accounting Standards Board in December 2022 as well as auditees, provincial treasuries and others where requested
4. Letters issued to PFMA accounting offices/authorities for the upcoming audit cycle
5. Current and new disputes being dealt with in terms of the new policy





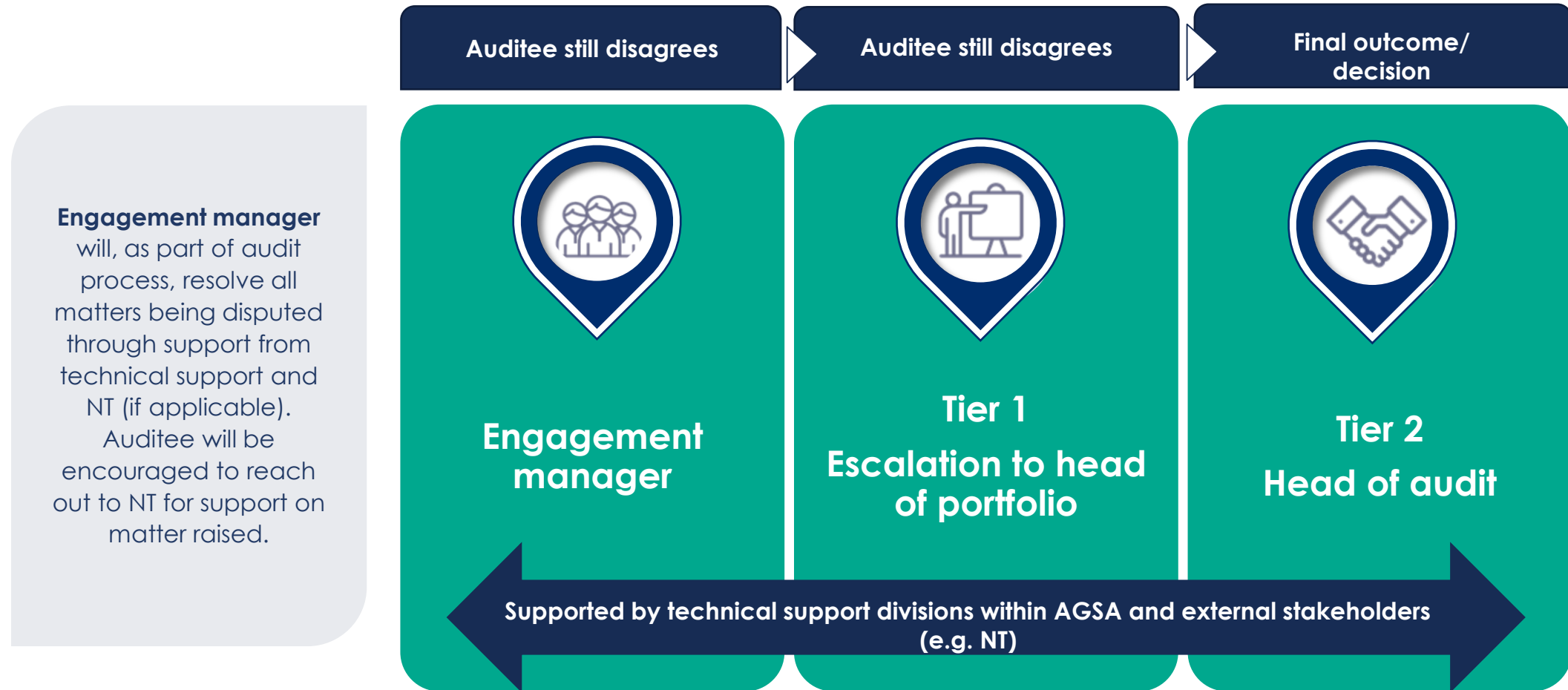
## Key principles

- Safeguard **independence** of the AGSA
- Eliminate referral of audit disputes to **external structures** for resolution or decision-making
- Include **multiple opportunities** for an auditee to be heard
- Ensure that resolution is always done in a **professional manner**
- Cement role of engagement manager
- Classify as dispute if it cannot be resolved by engagement manager
- Enhance focus and **attention to timely resolution**
- Applicable to audit and audit-related services – **irrespective of whether report is signed**
- Dispute resolution is the responsibility and accountability of those with direct knowledge of an auditee





## Overview of the enhanced dispute resolution process





## The Auditor-General's involvement in the dispute resolution process

- Auditor-general has **delegated this accountability** and decision-making to heads of audit
- Auditor-general may also get involved in matter before it goes for judicial review
- Auditor-general will otherwise be involved when cited as a respondent in court proceedings





## **Nine (four PFMA and five MFMA) disputes have been logged since the implementation of the policy** **Seven are audit disagreements and two arose from complaints**

- There is a willingness of our auditees to engage on disputes. On some of the cases the AGSA leadership supported by the technical business unit and the Office of the Accountant General engage the auditee further to hear their views on the matters. This gives the auditee an opportunity to be heard.
- There is close leadership involvement when the disputes arise and are escalated enabling us to respond effectively
- The process is clearly defined in a policy and procedure which assists in helping stakeholders to consistently understand the process
- External stakeholders such as National Treasury contribute to the process but the AGSA leadership assesses all technical views to make a decision on the audits thereby cementing our independence
- Ability to avoid litigation: two matters initially filed for legal review, one has been suspended to follow the dispute process; for the other one the auditee has also expressed their willingness to do so.
- We are also exploring this avenue for other pending cases as litigation should remain a last resort.

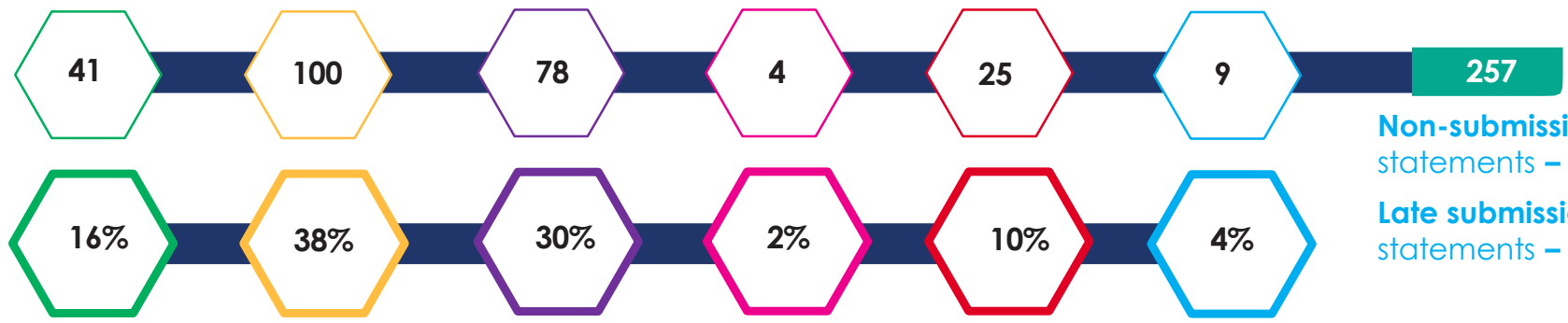




## **MFMA general report readiness**



2020-21  
(Tabled)



Non-submission of financial statements – 4  
Late submission of financial statements – 5

2020-21  
(As at 17 February 2023)



Submission of financial statements by legislated date improved from 81% to **91%**



In the prior year MFMA GR, we drew attention to the state of local government characterised by **accountability and service delivery failures, poor governance, weak institutional capacity, and instability.**

## Overall key messages

- **No improvement in audit outcomes** over administration term, including municipalities with disclaimers
- **Little value from investment in financial reporting** and **ineffective use of consultants**
- Municipalities' ability to operate and provide services impacted should **financial health concerns remain**
- **Poor performance planning and reporting** and **poor state of municipal infrastructure** negatively impacted service delivery

## Our call to action for all accountability roleplayers

- Newly formed councils, to speakers, mayors and MPACs – To support **swift resolution of material irregularities**, and timeous investigation of UIFW and disciplinary processes
- Larger accountability ecosystem - To **support and capacitate councils** and administrations to implement recommendations and intervene more successfully.
- Communities and community organisations – To **participate in public processes and ward committees, and report abuse**, mismanagement and service delivery failures

## Focus areas for the new administration

01

Enable and insist on **credible financial and performance reports** for in-year monitoring and decision-making as well as transparency and accountability on the finances and performance of the municipality

02

**Stabilise and capacitate the administration** – recruit, retain and continually develop appropriately skilled and experienced officials in key positions

03

Maintain a robust **financial management culture** which includes ensuring effective revenue collection, prudent spending, and prevention and speedy recovery of financial loss and wastage

04

**Lead by example** and ensure that **consequences for accountability failures** are effected swiftly, bravely and consistently



## Finance capacity, skills and governance

### Finance unit cost and capacity

- Salary cost = R10,31 billion
- Average vacancy rate = 20%
- Adequate skills = 130 (56%)
- CFO average months in position = 45

### Financial statements also reviewed by:

- Internal audit units = 200 (93%)
- Audit committees = 205 (96%)



## Financial reporting consultants

### Total cost = R1,28 billion

- Paid by 206 municipalities = R1,25 billion
- Paid by province = R0,03 billion

Consultant cost constitutes 11% of total financial reporting cost of R11,58 billion

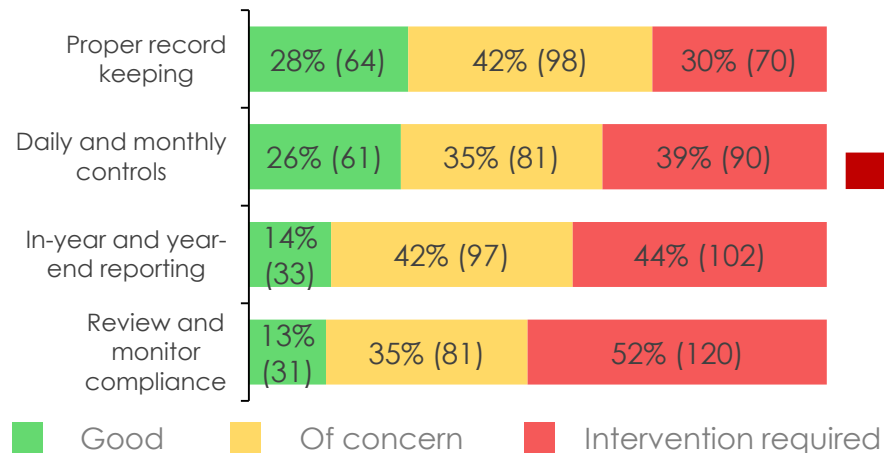


## National and provincial support

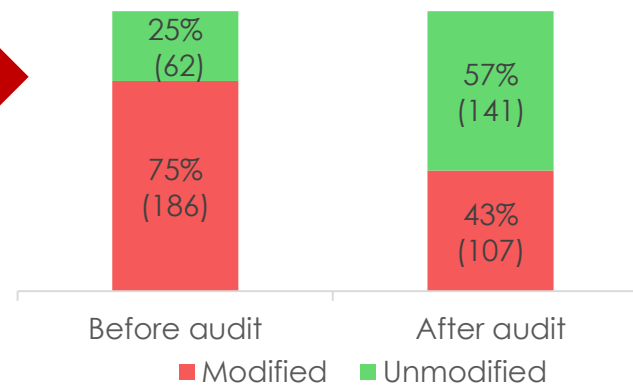
### Includes for some municipalities – at high level:

- Reviewing of AFS
- Review of action plans
- Deploying specialist advisors to support finance units
- Assisting with AFS readiness checklists
- Assessing AFS readiness via engagements
- Appointing consultants to help prepare AFS

## But financial management controls remain weak



## Resulting in poor-quality financial statements submitted for auditing and corrected based on audit findings



## Impact

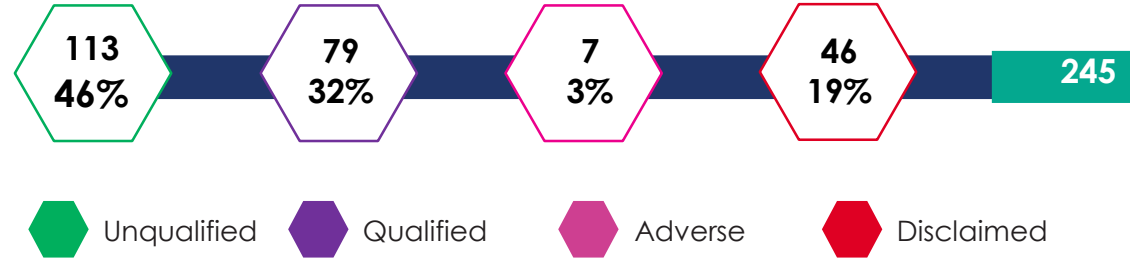
- In-year financial reporting and monitoring not credible
- Increased audit fees
- Continued dependence on consultants → no skills transfer → high total financial reporting cost
- No return on investment for costly national/provincial interventions (incl. municipalities under administration), especially where finance units are fully resourced
- Increased risk of financial loss
- Deteriorating financial health → service delivery delays

# 2020-21 performance planning and reporting message

A performance report accounts for essential service delivery promises made by a municipality in its integrated development plan (IDP)

## Our opinion on performance reports

*Khai-Ma (NC), Ubuntu (NC), Renosterberg (NC) and Tswaing (NW) did not submit performance reports for 2020-21*



## MOVEMENT OVER ADMINISTRATION



## Observations: Planning for service delivery

- Community needs not prioritised in IDP or removed from annual plan (SDBIP)
- Easy to achieve indicators chosen – not inclusive of all communities and focused on input - not output/ outcome
- Poorly defined indicators
- Quality of service delivered is not measured
- Unreliable data used for decision-making
- Targets reduced significantly every year
- 'Of the books' performance management to avoid audit findings
- Benefits of Metro common indicators (circular 88) not realized – continued inconsistencies

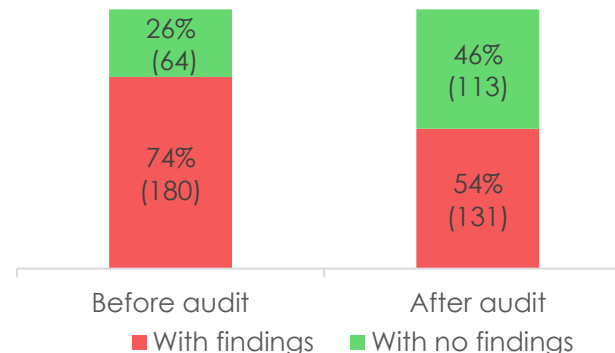
## Observations: Reporting

- Poor quality performance reports submitted for audit
- Reported delivery achievements is unreliable (incorrect or no evidence to support)
- Manual (error-prone) processes for data collection



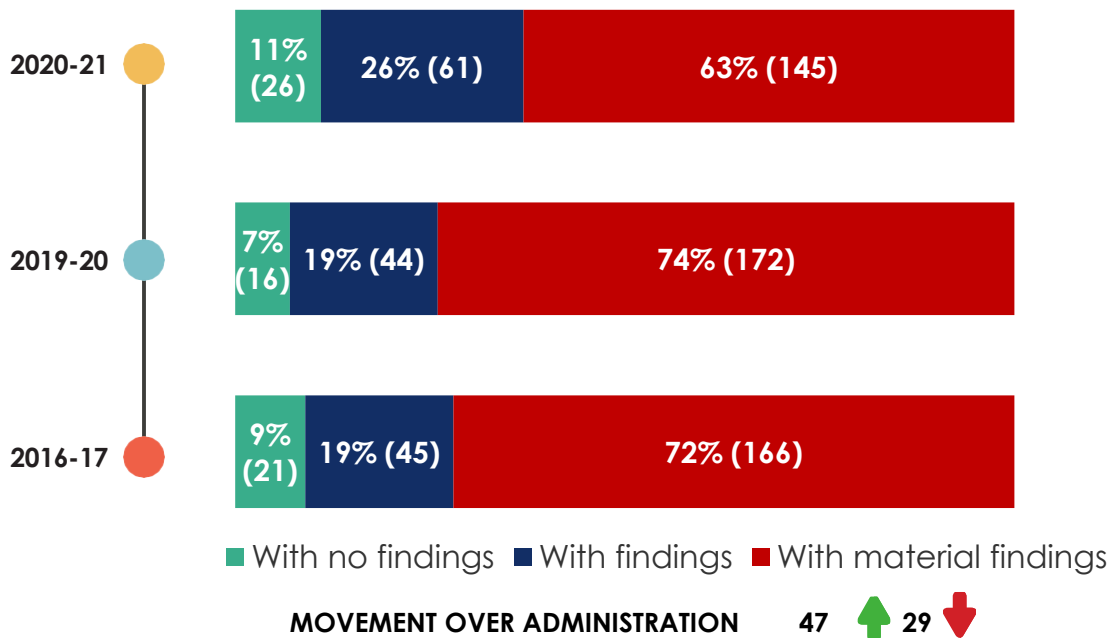
## Impact

- In-year reporting for delivery management and monitoring (by council) is not reliable
- Performance reports that are not useful or reliable as accountability tool
- Service delivery achievements reported is not experience of communities
- Inability to compare or report on metro achievements
- Quality services not delivered (what is not measured is not done)





## Status of compliance with SCM legislation



## Payment for goods and services not received or of poor quality

- Overpayment of suppliers
- Payments to incorrect suppliers or beneficiaries
- Contractor payments for incomplete / non-existent construction
- Extension of construction contracts, resulting in higher costs
- Payments for services not rendered

**Impact** is financial losses which reduces funds for service delivery

2020-21 KEY FINDINGS	
Uncompetitive and unfair procurement processes	184 municipalities (79%)
Prohibited awards to employees and councillors	R27 million
Prohibited awards to other state officials	R254 million
Limitation on audit of awards selected for testing	R1,22 billion
Irregular expenditure related to SCM (includes outstanding audits)	R21,10 billion



### What is driving the irregular expenditure?

- Procurement without competitive bidding or quotation process – R3,92 billion (19%) – 130 municipalities
- Non-compliance with procurement process requirements – R13,65 billion (64%) – 204 municipalities
- Non-compliance with legislation on contracts – R3,53 billion (17%) – 82 municipalities

Non-compliance with **procurement process requirements** mainly relates to:

- Non-compliance with preferential procurement legislation (e.g. local content, preference point system) and construction requirements
- Tax matters of supplier not in order
- Non-compliance with legislated requirements for procurement through contracts secured by other organs of state





9

2018-19

6

MIs

auditees



57

2019-20

96

MIs

auditees



94

2020-21

185

MIs

auditees

## FROM INACTION TO ACTION

Identified **non-compliance and fraud** resulting in:

- material **financial loss** (estimated R3,9 billion) **145**
- substantial **harm to municipalities** **31**
- substantial **harm to the general public** **9**

**No actions** were being taken to address 81% of these matters until we issued notifications



### Actions taken by municipalities – financial loss MIs

- ✓ Incorrect billing addressed – **increase in revenue**
- ✓ **Prevented financial losses** from taking place (some even before MI raised)
- ✓ Improved systems, controls, safeguarding of assets and payment arrangements to **prevent any further losses**
- ✓ **Stopped supplier contracts** where money is being lost
- ✓ **Fraud / criminal investigations** instituted
- ✓ Responsible officials identified and **disciplinary process** completed or in process



### Actions taken – repeated disclaimers causing harm to municipality

- ✓ **Investigations** performed or in process to determine root cause for lack of records, registers and reconciliations
- ✓ **Action plans** developed or being developed to address root causes
- ✓ **Financial recovery plans** receiving attention from municipality as well as national and provincial government
- ✓ **Implementation** of plans commenced and improved audit results at some municipalities



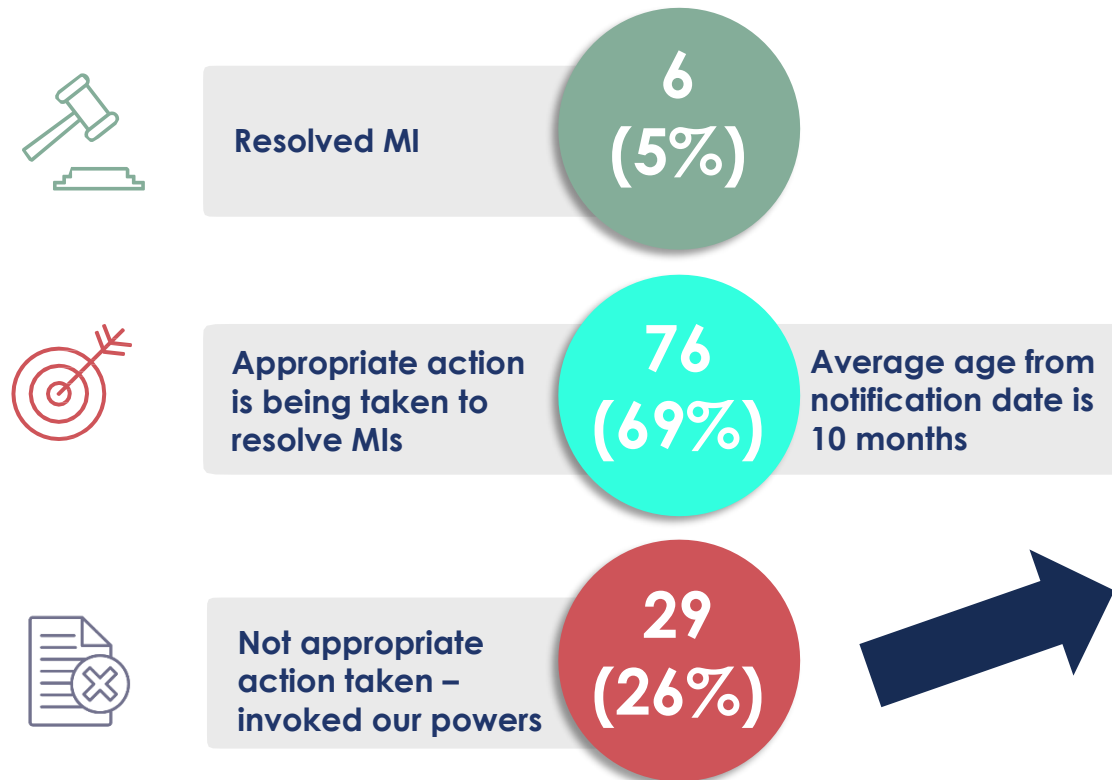
MI is resolved only when all possible steps have been taken to:

- ✓ **Prevent** any further losses and harm – also through improved internal controls
- ✓ **Recover** financial losses or remove/ address harm caused
- ✓ Effect **consequences** – for officials and third parties involved

Resolution of the MI is often delayed by:

- ✓ **Instability at MM level**
- ✓ **Delays with investigations and recoveries – internal (municipal and council) and external (investigating bodies and liquidators)**
- ✓ **Disciplinary process delays – also at council level**

The status of resolving 111 MIs are as follows:



Recommendations in audit report as AO/AA took little or no action to address MI

- Maluti-A-Phofung (FS)
- Masilonyana (FS)
- Tokologo (FS)
- City of Tshwane (GP) – 3
- Msunduzi (KZN)
- Govan Mbeki (MP)
- Kai !Garib (NC)
- Joe Morolong (NC)
- City of Matlosana (NW) – 2
- JB Marks (NW)
- Madibeng (NW)
- Ngaka Modiri Molema (NW) – 3
- Ditsobotla (NW)
- Dr. Ruth Segomotsi Mompati (NW)
- Kgetlengrivier (NW)
- Mahikeng (NW)
- Mamusa (NW)
- Ramotshere Moiloa (NW)
- Lekwa Teemane (NW)
- Naledi (NW)

Remedial action issued as our recommendations were not implemented

- Ngaka Modiri Molema (NW) – 3

Referred matter to public bodies for further investigation

- Matjhabeng (FS)

Our recommendations and remedial actions deals with **prevention, recovery and consequences**



## Clean audit means:

- The **financial statements and performance report give a transparent and credible account** of auditees' finances and its performance against service delivery targets. These accountability reports present a reliable picture of the auditee's performance – whether good or bad.
- **Auditee complied with the important legislation** that applies to it and, where transgressions did occur, they were rare or not material.

## Material irregularity means:

**Any non-compliance with, or contravention of, legislation, fraud, theft or a breach of a fiduciary duty identified during an audit performed under the Public Audit Act** that resulted in, or is likely to result in, 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

## Irregular expenditure is:

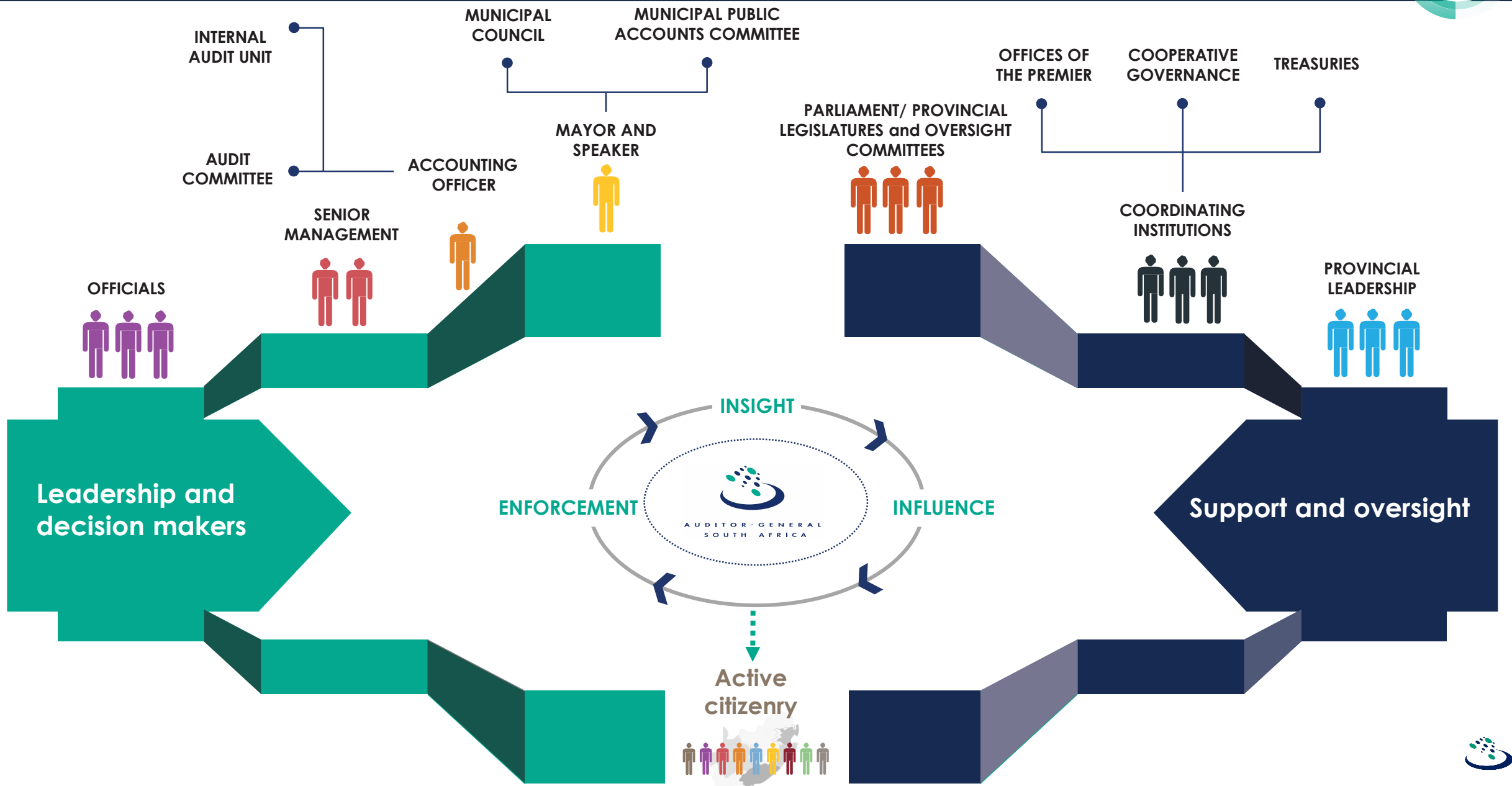
Expenditure that was not incurred in the manner prescribed by legislation; this does not necessarily mean that money was wasted or that fraud was committed

## Fruitless and wasteful expenditure is:

Expenditure that was made in vain and that could have been avoided if reasonable care had been taken



# All have a role to play in accountability ecosystem



# Process and key milestones towards tabling





**Questions?**



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