national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

REPORT ON WRITTEN PUBLIC COMMENTS SUBMITTED TO SELECT COMMITTEE ON FINANCE OF NATIONAL COUNCIL OF PROVINCES: PUBLIC PROCUREMENT BILL [B 18B-2023] – 14 MARCH 2024 + corrections 18 MARCH 2024

1. BACKGROUND

The public procurement regime in South Africa is currently fragmented as there are a number of laws which regulate procurement across the public administration. This fragmentation results in confusion as different procurement rules apply. Some of these laws pre-date the constitutional order brought about in 1994.

It is important and necessary, considering the history of South Africa and the developments since the coming into operation of the Constitution, to have legislation which creates a single framework regulating procurement, in line with all applicable stipulations of the Constitution and which contributes to address the economic and social challenges of South Africa.

The Bill aims to create a single regulatory framework for public procurement and eliminate fragmentation in laws which deal with procurement in the public sector and, among others, provide for (1) the establishment of a Public Procurement Office within the National (NT) Treasury and its functions; (2) the functions of provincial treasuries and procuring institutions; (4) measures pertaining to the integrity of the procurement process; (5) a preferential procurement framework; (6) general procurement requirements; (7) enabling regulations on a procurement system including different methods of procurement and different regulations for different types of procurement; (8) the use of information and communication technology in procurement; (9) dispute resolution mechanisms; and (10) the repeal and amendment of certain laws.

2. THE PROCESS FOLLOWED TO DATE AND ENVISAGED ACTIVITIES GOING FORWARD

The following table summarises the activities undertaken and the outcomes of the activities relating to public comments submitted on the Public Procurement Bill (PPB) to the Select Committee on Finance and the respective provincial legislatures:

BRIEFINGS TO SECOF AND RELEVANT COMMITTEES OF PROVINCIAL LEGISLATURES

DATE	SELECT COMMITTEE / COMMITTEES OF THE PROVINCIAL LEGISLATURES	PHYSICAL / VIRTUAL
06 February 2024	Briefing by National Treasury on the Public Procurement Bill (PPB) [B18B – 2023] to the Select Committee on Finance (SeCOF)	Virtual
9 February 2024	Briefing of the Free State Legislature	Virtual
13 February 2024	Briefing of the Mpumalanga Legislature	Virtual
20 February 2024	Briefing of the Eastern Cape Legislature	Virtual
21 February 2024	Briefing of the Western Cape Legislature	Virtual
22 February 2024	Briefing of the North West Legislature	Virtual
27 February 2024	Briefing of the Northern Cape Legislature	Virtual
29 February 2024	Briefing of the Gauteng Legislature	Physical
08 March 2024	Briefing of the Limpopo Legislature	Physical

PROVINCIAL PUBLIC HEARINGS / PUBLIC PARTICIPATION SESSIONS

PROVINCE	DATE	VENUE	PHYSICAL/ VIRTUAL
SeCOF	23 February 2024	National public hearing	Virtual
Free State	15 February 2024	Ngwathe Local Municipality	Physical
	21 February 2024	Virginia / Welkom	Physical
	22 February 2024	Smithfield	Physical
Mpumalanga	22 February 2024	Mbombela	Physical
	29 February 2024	Enkangala	Physical
	06 March 2024	Balfour	Physical
Eastern Cape		**Group 1**	
	27 February	Bizana	Physical
	28 March 2024	Mount Frere	Physical
	29 March 2024	Lusikisiki	Physical
	01 March 2024	Mthatha	Physical
		Group 2	
	27 February 2024	Nqanqarhu	Physical
	28 February 2024	Sterkspruit	Physical

	29 February 2024	Ngcobo	Physical
	01 March 2024	Komani	Physical
		Group 3	
	27 February 2024	Butterworth	Physical
	28 February 2024	Alice	Physical
	29 February 2024	Mdantsane	Physical
	01 March 2024	Cambridge hall	Physical
		Group 4	
	27 February 2024	Jeffrey's bay	Physical
	28 February 2024	Uitenhage	Physical
	29 February 2024	Gqeberha	Physical
	01 March 2024	Makhanda	Physical
Gauteng	29 February 2024	Provincial Legislature	Physical
Western Cape	04 March 2024	George	Physical
	05 March 2024	Cape Town	Physical
	06 March 2024	Saldanha Bay	Physical

3. PUBLIC COMMENTS ON THE PUBLIC PROCUREMENT BILL [B18B-2023]

National Treasury received a total of 27 written comments on the Bill. In addition, the relevant committees of Gauteng and Western Cape Legislatures submitted additional comments to which National Treasury team were requested to respond. National Treasury responded to the committee of Gauteng Legislature comments on 08 March 2024. National Treasury is yet to respond to the Western Cape Legislature comments due to overlaps of provincial engagements including attendance of physical public participation sessions. National Treasury responses are contained in the Comment Matrix attached as "**Annexure A**".

4. KEY ISSUES RAISED IN WRITTEN SUBMISSIONS

4.1 CONSTITUTIONAL CONCERNS

Stakeholders raised concerns that the Bill has several constitutional shortcomings. Whilst the spirit in which these potential issues were raised is appreciated, the National Treasury respectfully advises that none of the concerns mentioned are of such a nature as to let the Bill fail constitutional muster, however, we have made certain proposals for amendments to limit the risks of potential constitutional challenges. These issues have been grouped together under the following headings:

a. Preferential procurement (Chapter 4)

Stakeholders had concerns with, amongst others, the alignment of Chapter 4 with the rest of the Bill. Some also commented on preferential procurement as it concerns clarification of pre-qualification, set asides and sub-contracting.

The Bill, in Chapter 4, which is the preferential procurement framework, should be understood within the context of the procurement system envisaged in section 217(1) of the Constitution. Chapter 4 is also linked to Chapter 5, which provides for the framework for the system mentioned in section 217(1) to be prescribed by the Minister within which procuring institutions must implement their policies and take into account the different nuances within the sectors and industries within which the respective procuring institutions operate. It is within this context that the trade-off between these competing objectives and principles is maximised and balanced. In the Constitutional Court matter between Afribusiness (Sakeliga) and the Minister of Finance, Justice Mhlantla stated that: "*The stand-alone reading of section 217(1), which ignores section 217(2), is not only a disservice to statutory interpretation, but also ignores the founding values of the Constitution*."

This statement confirmed the view that any drafting of the national legislation that must provide a framework to give effect to section 217(2) of the Constitution must take into account the founding values of the Constitution and the need to deliberately redress past discriminatory practices and provide for measures for preference that will make a meaningful difference to the lives of South Africans who have suffered under the yoke of oppression.

The manner in which section 217(2) and (3) of the Constitution was drafted is that Parliament is entitled and required to enact legislation laying down a "framework" for preferential procurement policy. Section 217(3) of the Constitution states that national legislation must prescribe the framework within which the policy referred to in section 217(2) must be implemented. Therefore, the question of how tight or loose that framework is – that is, how much discretion it affords to organs of state to develop their own policies or depart from the national policy – is for Parliament to determine. The reliance on the 80/20 and 90/10 preference point system since the first iteration of the Preferential Procurement Regulations in 2001 clearly did not provide for a "leveling of the playing field" over 20 years later. Furthermore, the chapter 4 version of the Bill that was passed in the National Assembly in December 2023 is the result of the comments by the public and deliberations at SCOF.

Whilst provisions relating to prequalification for preferential procurement and subcontracting as a condition of contract are included in the Bill, these are not included in a "copy and paste" format, rather in a manner that aligned with the aims of section 217(2) and 217(3) of the Constitution, especially considering the majority judgment in the matter between *Afribusiness (Sakeliga) and the Minister of Finance* in paragraph 116 of the ConCourt judgement:

"*Happily, both the first judgment and this judgment and, indeed, the Minister understand the impugned regulations to do what is envisaged in section 217(2) of the Constitution*."

These impugned provisions included those relating to prequalification for preferential procurement and subcontracting as a condition of bid.

In the same judgment, in paragraph 60, the court held that section 217(2) and (3) were drafted into the Constitution in acknowledgement of South Africa's unfortunate history, which amongst other things, "excluded Black people from access to productive economic assets". These subsections, and the legislation envisaged under section 217(3), aim to redress that history of economic exclusion. Section 217(2), therefore, permits preferential procurement, notwithstanding the principles in section 217(1). *It must be emphasised that the scheme of section 217 of the Constitution is that the section authorises the state to, in certain circumstances, exclude from the award of contracts persons who did not suffer unfair discrimination under apartheid, in favour of those who were discriminated against. This exclusion constitutes an effective tool in the hands of the state to redress the injustices of the past regime and to heal the hurt and suffering visited by that order on the Black majority in this country*.

In light of the above, and the intention of section 217, it is not correct that set-asides are unconstitutional. Section 217(2) provides for preference in the allocation of contracts and for protection and advancement of persons or categories of persons previously disadvantaged by unfair discrimination. The reason that set-asides were regarded as not being valid was that the founding legislation, the PPPFA, did not provide for set-asides *per se*, but for preferential procurement to only occur within the context of a preference point system. So, the framework that national legislation provided in the form of the PPPFA only provided for preference in the allocation of contracts (the focus was on section 217(2)(a)), but did not provide for protection and advancement of persons or categories of persons disadvantaged by unfair discrimination in a meaningful way. Chapter 4, the way in which it is currently drafted, provides for a menu of preference measures to provide for meaningful redress of the imbalances of the past. In paragraph 69 of the same constitutional judgment, the court went on to state: "*What is worse, the scoring method in section 2 restricts the purposes of preference, protection, and advancement envisaged in section 217(2) to only 20% of the scoring criteria in each tender. Logically, this means that those who benefitted under apartheid still enjoy an advantage of 80% of the scoring system for tenders, despite the intended objectives of protecting the previously disadvantaged. This constitutes no protection at all, and, in fact, it is an interpretation that is contrary to the Constitution*".

It should be noted that the process to develop regulations is more rigorous than before. The development of the regulations by the Minister does not mean that the public would not be afforded an opportunity to make comments. Regulations would be published for comments and subjected to Parliamentary scrutiny.

With regard to the specific clauses in Chapter 4, clause 17 recognizes that it may not always be possible to implement the set-aside provisions, and clause 17(6) states what should happen in such instances.

Furthermore, clause 18(7) is written in a manner that ensures that competition is not flouted when procuring institutions make use of the pre-qualification provisions. So, checks and balances have been built into the framework.

Although apartheid was dismantled a number of years ago, there is still a need to eradicate its socio-economic legacy and advance policies that build an inclusive economy and promote social unity.

It goes further than the PPPFA in that it does not merely provide for preference points systems, but other measures that will ensure meaningful empowerment of the previously disadvantaged.

The Bill, in Chapter 4, seeks to address these fundamental constitutional provisions in section 217(2) and (3), and also makes provisions for regulations to be drafted with the necessary conditions, thresholds, parameters to ensure that these preference measures are implemented in a responsible manner. This would also look at provisions that address negotiations with bidders, which is envisaged would include, amongst others, the negotiation of a fair market price to prevent government paying exorbitant prices for contracts awarded.

It should be noted that all subsections of 217 of the Constitution are designed to coexist within the procurement system envisaged in subsection 217(1). The Constitutional Court also confirmed that the five important principles in section 217(1) do not become a nullity when section 217(2) is in play. The tenders in question must still be evaluated in a manner that gives effect to the purposes of section 217(1) in respect of fairness, equity, transparency, competitiveness, and cost-effectiveness.

Section 217(1) of the Constitution already mentions the concept of “equitable” as one of the five principles that must be adhered to when conducting procurement. The term “equitable” has a two-pronged focus, namely distribution and redistribution:

i. distribution is about sharing the wealth, opportunities and resources of the country; and

ii. redistribution is about distributing something in a different way, typically to achieve socio economic equality.

When looking at the ordinary meaning of the term equitable, it means "*accounting for varied circumstances and allocating the resources and opportunities each person needs to receive an equal outcome*".

With regards to the statement that section 217(2) is not mandatory. Parliament is entitled and required to enact legislation laying down a “framework” for preferential procurement policy. Section 217(3) of the Constitution states that national legislation must prescribe a framework within which the policy referred in subsection (2) must be implemented. As stated above, the question of how tight or loose that framework is – that is, how much discretion it affords to organs of state to develop their own policies or depart from the national policy is for Parliament to determine via national legislation. Refer to the opinion of Adv Steven Budlender SC (par ’s 18.5 and 40-43) attached as **Annexure B**.

The Constitution in section 217(2)(a) provides for preferences in the allocation of contracts, which preferences may relate to several vulnerable categories, such as the local manufacturing base of the country. Before sectors or products are designated provided for

in clause 20, the proposed designation would be gazetted for public comments. Furthermore, clause 20(3) provides that in determining the threshold referred to subsection (1)(b), the responsible Minister must, in addition to considering the public comments and responses envisaged in subsection (2), consider—

(a) whether there are sufficient local manufacturers in the country who are capable to compete for the provision of goods designated for local production and content by determining—

(i) the number of existing manufacturers available in the country;

(ii) security of supply or capability to supply for the period that the designation is to be in effect;

(iii) the contribution of other role-players in the supply chain of the commodity or product including distributors and product agents; and

(iv) the effect of local production and content on employment; and

(b) the economic impact on imported goods.

It is believed that the necessary checks and balances have been written into the designation provisions.

Concerning clause 21, which stipulates that if sections 17, 18, 19 and 20, are not applicable, preferences must be allocated as prescribed, it is proposed that the regulation-making power be circumscribed in more detail to ensure that it is not too wide. Amendments to this clause will be proposed for consideration by SeCOF.

b. Five principles in section 217(1) of the Constitution

Various provisions in the Bill deal with the five principles in section 217(1) of the Constitution and will be augmented by the regulations. Encapsulating all these principles in the Bill through balancing them or choosing one over the other, is not feasible neither appropriate. Importantly, the principles in section 217(1) must also be adhered to together with other provisions of the Constitution, which includes section 217(2) and (3), and sections 195(1)(b) and 216. These provisions are referred to in the Preamble and the objects (clause 2). The Bill, read together with regulations, will direct procuring institutions on how to give effect to these principles in their procurement systems which includes their policies.

The comment regarding preferential procurement overriding the primary principles of sound public procurement as required in section 217(1) of the Constitution, argues from the premise that there is conflict between section 217(1) and section 217(2) and (3) of the Constitution. To reiterate, all subsections of 217 of the Constitution are anticipated to coexist within the procurement system envisaged in section 217(1).

c. Scope of the Bill

As to the Bill extending beyond the requirement of section 217(3) of the Constitution by also regulating the application of procuring institutions of section 217(1). National legislation, like the PFMA and MFMA, is within Parliament's legislative authority. Section 216(1) of the Constitution requires national legislation to prescribe measures to ensure transparency and expenditure control in each sphere of government by introducing, among others, uniform treasury norms and standards which in our opinion includes procurement.

d. Co-operative governance

The provisions in the Bill are based on s216(1) and (2) of the Constitution providing that national legislation must establish uniform treasury norms and standards in each sphere of government and that the national treasury must enforce compliance with these norms and standards. The Bill (ch 4 in particular) is based on s217(3) of the Constitution which requires national legislation to prescribe the framework within which s217(2) policy must be implemented. Section 217 applies to all organs of state. Therefore, the legislative and executive powers of provincial and local government are not usurped. The Minister of Finance is empowered currently to make regulations under the PFMA that is applicable to provincial institutions and under the MFMA that is applicable to municipality. NT is empowered by the PFMA to issue instructions applicable to provincial institutions and provincial treasury may issue instructions specific to their provinces.

In terms of section 156 of the Constitution, the legislative authority of the local sphere of government is vested in the Municipal Council. The Bill does not seek to undermine or amend the independence and constitutional authority that is vested in Municipal Councils. It seeks to regulate procurement activities to ensure uniformity throughout the public sector.

The regulation of the local government in the Bill is comparable to the current MFMA (sections 110-119) and SCM regulations and also the PPPFA. The difference is that the Bill will be provide for local, provincial and national government in the same statute. Having single statute is not precluded by the Constitution and sections 216 and 217 of the Constitution which are primary basis for the Bill.

Clause 8 provides that a procuring institution must implement a procurement system within the framework prescribed by regulation in terms of clause 25, which also includes its procurement policy.

In terms of section 151 of the Constitution the municipal right to govern is circumscribed by the national and provincial legislation as provided for in the Constitution. Chapter 4 is a national legislation that is provided for in sec 217(3) of the Constitution.

Clause 21 of the Bill recognises that there could be measures other than those identified in the Bill, that might require to be prescribed to ensure, amongst others that in terms of section 151(4) of the Constitution, the municipal ability or right to exercise its power or perform its function is not compromised, as the process will be after consultation with relevant Minister, and as proposed as an amendment, that organised local government will be consulted.

Clause 64(2) compels the Minister to consult with the relevant Minister on a drafting of regulation affecting the portfolio of that Minister, which includes the Minister of COGTA.

Proposed amendments:

(1) That the authority to issue instructions by PPO and the provincial treasuries be replaced by a provision that circulars may be issued that the municipality may adopt or not (cl 5(2)(a) and 6(2)(a)).

(2) That the enforcement function for provincial treasuries in respect of local government be omitted (cl 6(1)(b)).

(3) Include a provision in clause 64 that organised local government must be consulted on draft regulations affecting local government.

4.2 INDEPENDENCE OF PPO

Section 216(2) of the Constitution requires NT to enforce compliance with, among others, uniform norms and standards, which includes procurement rules, determined in primary and subordinate legislation. Therefore, having the Public Procurement Office (PPO) in National Treasury accords with section 216(2).

Therefore, the PPO should be located in NT. It is not a body distinct from NT, it is to be located within NT. The Bill provides for original powers for the PPO and it will not be dependent on delegations from the Minister and the DG NT which provides for a separation from the other functions of NT. Further, the role of the PPO is to perform functions regarding government's requirements which could not be provided in-house, and not that of the private sector. It does not regulate procurement by the private sector for their needs.

The PPO and its officials will be appointed in terms of the Public Service Act and the provisions of that Act will apply to those officials.

4.3 FUNCTIONS OF PPO AND PROVINCIAL TREASURIES

The functions of the Public Procurement Office (PPO), provincial treasuries and the procuring institutions are clearly articulated in the Bill and in the case of provincial treasuries, there are some functions that they will perform which are exactly the same as the PPO with the difference being that such functions will only be performed within the provincial administration of that provincial treasury; and in relation to procuring institutions within that province; and some are only functions that the PPO can perform as they relate to functions which set the minimum norms and standards for all procuring institutions. The functions of the PPO, which is to be located within NT, are comparable to the functions of NT under the PFMA and MFMA.

Clause 6 deals with the functions of provincial treasuries. As to the role of provincial treasuries, they already have an enforcement role in respect of provincial departments in section 18(2)(b) of the PFMA.

The issuance of binding instructions by-

a) PPO is only where so specified and also for the effective implementation of the Act; and
b) provincial treasuries for the effective implementation of the Act.

4.4 DECISION MAKING ON PROCUREMENT

Clause 7 makes it clear that decision-making on procurement vests in the accounting officer/ authority of the institution and accords with the financial responsibilities of accounting officers/ authorities under the PFMA and the MFMA. The accounting officer/authority must establish a procurement system and develop a procurement policy in accordance with this Bill (once enacted) to set requirements and procedures for decision-making.

Alignment between the PFMA and MFMA on the one hand, and the Bill on the other hand, are provided through recognising the role of accounting officer/authority in making procurement decisions, and also proposing amendments to the PFMA and the MFMA in the Schedule to the Bill.

It should be noted that terms accounting officer or accounting authority are not used interchangeably but rather refer to the accountable persons in procuring institutions, as defined in the PFMA and MFMA. For example, in a department and a municipality, you will have an accounting officer, whereas in public entities listed under Schedules 2 and 3 to the PFMA, you will have an accounting authority which is most cases the board of that public entity.

4.5 INTEGRITY, TRANSPARENCY, ACCOUNTABILITY FAIRNESS AND ANTI-CORRUPTION MEASURES

The Bill is premised on sections 195, 216 and 217 of the Constitution. Transparency is a constitutional provision and forms part of the requirements of the Bill. Issues relating to the fight against corruption and anti-corruption measures need collaboration with relevant government institutions and law enforcement agencies. The Bill with all its provisions on integrity of the procurement system and anti-corruption measures and transparency may not be the only instrument through which to combat corruption. Regarding the proposed anti-corruption agency, NT's view is that such an agency is best placed within the departments in the justice cluster - this relates to the recommendations of Judge Zondo.

The Bill provides for the Codes of conduct for everyone involved in procurement, and any contravention of this would constitute misconduct and appropriate steps must be taken to address non-compliance or contravention. Further, the Bill provides for the prohibition of undue influence in the procurement processes, the declaration of interest regarding persons involved in procurement, the automatic exclusion of specified persons from submitting bids, the debarment of bidders and suppliers or any of the directors, members, trustees or partners of that bidder or supplier and also makes the directions inconsistent with the Act punishable

and related offences for persons who knowingly gives false or misleading information, connives or colludes to commit a corrupt or fraudulent, collusive acts.

The Bill contains several transparency provisions, e.g. clauses 2(2)(b) (objects), 15(6) (debarment register), 30(2)(a) and (b) (access to procurement services and open data), 32 (access to procurement processes) and 33 (disclosure of information) and 64 and 65 (process to make regulations and instructions).

4.6 INCENTIVISED WHISTLEBLOWING AND PROTECTION OF WHISTLE-BLOWERS

Strengthening the protection of whistle-blowers is supported through amendments to the Protected Disclosures Act (PDA) administered by the Department of Justice and not through this Bill. The Minister of Justice has published a paper for which public comment was sought.

During the public hearings, stakeholders raised concerns that by introducing incentivized whistle-blowing, as this would create an unwelcome market for criminal conduct because they were concerned that unscrupulous people would plant information implicating persons involved in procurement; fabricate proof, and then later claim the payment, and so the cycle continues. To this end, rather than paying whistle-blowers, they called for enhanced protection of whistle-blowers. They made mention of a recent incident and asked “how much money can save a life?”

4.7 RELATIONSHIP BETWEEN THE BILL WITH OTHER ACTS AND BILLS

The Bill refers to several Acts that are relevant or appropriate for the implementation thereof, such as POPIA, PAJA, PSA, CIDB Act, Companies Act, B-BBEEA etc. Provisions of some of the Acts in the Schedule to the Bill are proposed to be amended to align with the Bill.

4.8 TRIBUNAL (PANEL AND RESOURCES) AND DISPUTE RESOLUTION MECHANISM

The dispute resolution procedures are aimed at saving costs and improving turnaround times in service delivery. The remedies are clearly set out. Tribunals are provided for in existing legislation (e.g. the Financial Services Tribunal established by the Financial Sector Regulation Act, 2017 and the Tribunal established by the Social Assistance Act, 2004 for appeals against SASSA decisions). It is a remedy to be used before seeking judicial review which is provided for in clause 54(1).

Clause 47(1) provides that the Chairperson of the Tribunal must constitute a panel for each application. Having panels to attend to disputes in provinces could be provided for in Tribunal rules (cl 48). <u>For this purpose, it is therefore proposed that clause 48 be amended to specifically deal with the regulation of panels and require for operation at a provincial level.</u>

The costs of Tribunal are to be carried through appropriations from the National Revenue Fund by Parliament and will only be proposed through the normal budget process once the

estimated costs have been determined and the required readiness for the Tribunal to commence its work exist.

4.9 BALANCE BETWEEN ACT AND REGULATIONS

Providing in the Bill for all the different prescripts required for different types of procuring institutions and different types of procurement is not viable, in NT's view. For sections 216(1) and 217(3) of the Constitution, national legislation includes subordinate legislation according to section 239 of the Constitution.

The Bill sets a framework for procurement with specificity to be provided in Ministerial regulations, Public Procurement Office's instructions (limited in nature), and procurement systems and policies of institutions determined within the framework of the Bill and requirements of the regulations. The primary reason for this approach is to allow for different regulations to be made for different categories of procurement (e.g. infrastructure, capital assets, PPPs, normal goods and services, consultants, etc.) and different categories of institutions (e.g. departments, government business enterprises, municipalities), and to cater for new developments in procurement. These regulations may be amended or repealed when required without the need for amendments to the primary legislation. Notwithstanding the aforesaid, it should be noted that the process to develop regulations is more rigorous than before. The development of the regulations by the Minister does not mean that the public would not be afforded an opportunity to make comments. Regulations would be published for comments. Further, even binding instructions by the PPO or the provincial treasuries would be published for comments.

4.10 FINANCIAL IMPLICATIONS FOR IMPLEMENTATION

The elements of the procurement systems mentioned in clause 25, are existing elements which may only have to be made part of the procurement system. As to expanding the scope of procurement function in a procuring institution, and most of these are not new functions for institutions but are elevated to primary legislation. Shifting functions within the institutions should result in minimal costs.

The enforcement function for provincial treasuries is not new – they already have an enforcement role in respect of provincial departments in section 18(2)(b) of the PFMA. The enforcement role for provincial treasuries in respect of municipalities is proposed to be removed. Investigations about allegations in clause 27 and steps, are functions that are required in terms of the PFMA and MFMA and their respective prescripts.

4.11 INVESTIGATIVE POWERS OF THE PPO

Several regulatory/ supervisory bodies have such powers. Clause 56(1) makes it clear that the purpose of these powers is for compliance and not to investigate alleged criminal conduct. Examples of such provisions are in the Financial Sector Regulation Act and the

Financial Intelligence Centre Act and Property Practitioners Act. Only a person authorised by the PPO may seek warrants in terms of clause 58 (and not organs of state).

4.12 PROPOSED AMENDMENTS

In addition to the proposed amendments indicated above, the comment matrix contains other proposed amendments in response to written submissions.