

2 Report of the AGSA to Parliament on the Financial Statements and Performance Information of Vote 21 for the year ended 31 March 2009

Report on the financial statements

Introduction

1. I have audited the accompanying financial statements of the Department of Justice and Constitutional Development, which comprise the appropriation statement, the statement of financial position as at 31 March 2009, and the statement of financial performance, the statement of changes in net assets and the cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory notes as set out on pages 153 to 206.

The accounting officer's responsibility for the financial statements

2. The accounting officer is responsible for the preparation and fair presentation of these financial statements in accordance with the modified cash basis of accounting determined by the National Treasury, as set out in accounting policy note 1 and in the manner required by the Public Finance Management Act, 1999 (Act No 1 of 1999) (PFMA) and for such internal control as the accounting officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

The AGSA's responsibility

3. As required by section 188 of the Constitution of the Republic of South Africa, 1996, read with section 4 of the Public Audit Act, 2004 (Act No 25 of 2004) (PAA), my responsibility is to express an opinion on these financial statements based on my audit.
4. I conducted my audit in accordance with the International Standards on Auditing, read with General Notice 616 of 2008, issued in Government Gazette No 31057 of 15 May 2008.

Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

5. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
6. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Basis for qualified opinion

Departmental revenue, contingent liability and receivables for departmental revenue:

7. In the course of administering justice, the department established the Third Party Funds (the fund), which acts as a conduit for the receipt and payment of funds on behalf of other parties and the state (e.g. bail, maintenance money, various types of fines, payments into court and legal costs), through court processes as a result of its mandate. A separate set of financial statements for the fund is maintained.
8. For the purpose of my audit, I could not rely on the adequacy of the fund's financial and control system and the system did not permit the application of alternative audit procedures to determine:



- The revenue to the state amounting to R272 million, as disclosed in note 3.2 to the financial statement, has been properly collected and recorded by the fund and surrendered to the department.
 - The potential claims against the fund as a result of fraud, theft and losses, to be paid by the department as disclosed in note 22 to the financial statements.
 - The money collected on behalf of the state and not yet paid to the department as at 31 March 2009 according to the fund money, as disclosed in note 27 to the financial statements.
9. Consequently, I did not obtain all the information and explanations I considered necessary to satisfy myself as to the completeness, accuracy and valuation of the above disclosures to the financial statements.

Employee benefit

10. Manual leave forms are not captured timeously and accurately on PERSAL due to insufficient controls over leave. The department’s records did not permit the application of alternative audit procedures to determine the effect of the late and incorrect capturing of leave forms.
11. Consequently, I did not obtain all the information and explanations I considered necessary to satisfy myself as to the completeness, existence and valuation of leave entitlement and capped leave commitments amounting to R397 million and R214 million respectively, as disclosed in note 25 to the financial statements.

Finance lease commitment

12. The agreement date, period of the contract and monthly instalment used to calculate the future lease commitment were not in all instances supported by lease agreements. The department’s records did not permit the application of alternative audit procedures to determine the finance lease commitment.
13. Consequently, I did not obtain all the information and explanations I considered necessary to satisfy myself as to the completeness, existence and valuation of

the finance lease commitment amounting to R63 million, as disclosed in note 26.2 to the financial statements.

Irregular expenditure condoned

14. In terms of Practice note 5 of 2006/07, finance lease agreements for equipment exceeding 36 months is not condoned. Finance lease agreements exceeding 36 months were included in note 28.3.
15. The department’s records did not permit the application of alternative audit procedures to determine the condoned irregular expenditure, as lease agreements were not in all instances available.
16. Consequently, I did not obtain all the information and explanations I considered necessary to satisfy myself as to the accuracy and existence of irregular expenditure condoned amounting to R34 million, as disclosed in note 28.3 to the financial statements.

Capital and minor assets

17. The department embarked on an asset turnaround project that was finalised during the current year. However, significant errors relating to the completeness of the capital and minor asset register and the existence of certain capital and minor assets were still identified.
18. Consequently, I did not obtain all the information and explanations I considered necessary to satisfy myself as to the completeness of the capital and minor asset register and existence of capital and minor assets amounting to R585 million and R554 million respectively, as disclosed in note 32 and 32.4 to the financial statements.

Qualification

19. In my opinion, except for the effects of the matters described in the basis for qualified opinion paragraphs, the financial statements present fairly, in all material respects, the financial position of the department as at 31 March 2009 and its financial performance and its cash flows for the year then ended,



in accordance with the modified cash basis of accounting determined by the National Treasury, as set out in accounting policy note 1.

Emphasis of matters

20. I draw attention to the following matters on which I do not express an qualified of opinion:

Basis of accounting

21. The department's policy is to prepare financial statements on the modified cash basis of accounting determined by the National Treasury, as set out in the accounting policy note 1.

Irregular expenditure

22. As disclosed in note 28 to the financial statements, irregular expenditure amounting to R69 million was incurred, mainly as a result of proper tender processes that were not followed.

Fruitless expenditure

23. As disclosed in note 12 to the financial statements, possible fruitless expenditure amounting to R18 million was identified as a result of the audit. The department is still in the process of investigating this matter.

Restatement of corresponding figures

24. As disclosed in the following notes to the financial statements, the corresponding figures for 31 March 2008 have been restated as a result of errors discovered during the year ended 31 March 2009 in the financial statements of the department:
- Note 22, contingent liability (claims against the state) comparative restated with R90 million
 - Note 23, commitments comparative restated with R257 million
 - Note 25, employee benefits comparative restated with R283 million
 - Note 27, receivables for departmental revenue comparative restated with R139 million
 - Note 30, key management personnel comparative restated with R82 million

Other matters

I draw attention to the following matters that relates to my responsibilities in the audit of the financial statements:

Human Resource Management

25. The substantive documentation to support the information disclosed in Part 5 (page 208 to 231) of the annual report was not available and the correctness could therefore not be verified.

Non-compliance with applicable legislation

26. Treasury Regulations (TR)
- Not all procurement of goods and services, either by way of quotations or through a bidding process, was within the threshold values as determined by the National Treasury as required by TR16A6.1.
 - Payments were not in all instances made within 30 days. Accruals that exceed the payment terms of 30 days as detailed in TR 8.2.3 amounted to R209 million. This amount in turn exceeds the voted funds to be surrendered of R28 million as per the statement of financial performance by R181 million. The amount of R181 million would therefore have constituted unauthorised expenditure, should the invoices have been paid in time.
 - The person in charge at the respective pay points did not in all instances certify that all persons listed on the payroll report are entitled to payments, as required by TR 8.3.4.
27. Public Service Regulations (PSR)
- The human resource organisational structure did not include certain functional information, and was not approved by the Department of Public Service and Administration, as required by the PSR part III B 2(a).
 - The job descriptions and titles were not reviewed at least once every three years and, where necessary, redefined to ensure that they remain appropriate and accurate, as required by PSR, chapter 1, Part III, 1.1 and 1.2.
 - All newly appointed employees did not have signed written contracts of employment, as required PSR, section 11(2).



Governance framework

28. The governance principles that impact the auditor’s opinion on the financial statements are related to the responsibilities and practices exercised by the accounting officer and executive management and are reflected in the internal control deficiencies and other key governance requirements addressed below:

Internal control deficiencies

29. Section 38(1)(a)(i) of the PFMA states that the accounting officer must ensure that the

department has and maintains effective, efficient and transparent systems of financial and risk management and internal control. The table below depicts the root causes that gave rise to the deficiencies in the system of internal control, which led to the qualified opinion. The root causes are categorised according to the five components of an effective system of internal control. (The number listed per component can be followed with the legend below the table.) In some instances, deficiencies exist in more than one internal control component.

Paragraph no	Basis for qualified opinion	CE	RA	CA	C	M
7 – 9	Departmental revenue, contingent liability and receivables for departmental revenue			3	1	1
10 – 11	Employee benefit			3	1	1
12 – 13	Finance lease commitments			3	1	1
14 – 16	Irregular expenditure condoned			3	1	1
17 – 18	Capital and minor assets			3	1	1

Legend	
CE = Control environment	
The organisational structure does not address areas of responsibility and lines of reporting to support effective control over financial reporting.	1
Management and staff are not assigned appropriate levels of authority and responsibility to facilitate control over financial reporting.	2
Human resource policies do not facilitate effective recruitment and training, disciplining and supervision of personnel.	3
Integrity and ethical values have not been developed and are not understood to set the standard for financial reporting.	4
The accounting officer does not exercise oversight responsibility over financial reporting and internal control.	5
Management’s philosophy and operating style do not promote effective control over financial reporting.	6
The entity does not have individuals competent in financial reporting and related matters.	7
RA = Risk assessment	
Management has not specified financial reporting objectives to enable the identification of risks to reliable financial reporting.	1
The entity does not identify risks to the achievement of financial reporting objectives.	2
The entity does not analyse the likelihood and impact of the risks identified.	3
The entity does not determine a risk strategy/action plan to manage identified risks.	4
The potential for material misstatement due to fraud is not considered.	5
CA = Control activities	
There is inadequate segregation of duties to prevent fraudulent data and asset misappropriation.	1
General information technology controls have not been designed to maintain the integrity of the information system and the security of the data.	2
Manual or automated controls are not designed to ensure that the transactions have occurred, are authorised, and are completely and accurately processed.	3
Actions are not taken to address risks to the achievement of financial reporting objectives.	4
Control activities are not selected and developed to mitigate risks over financial reporting.	5
Policies and procedures related to financial reporting are not established and communicated.	6
Realistic targets are not set for financial performance measures, which are in turn not linked to an effective reward system.	7



IC = Information and communication	
Pertinent information is not identified and captured in a form and time frame to support financial reporting.	1
Information required to implement internal control is not available to personnel to enable internal control responsibilities.	2
Communications do not enable and support the understanding and execution of internal control processes and responsibilities by personnel.	3
M = Monitoring	
Ongoing monitoring and supervision are not undertaken to enable an assessment of the effectiveness of internal control over financial reporting.	1
Neither reviews by internal audit or the audit committee, nor self-assessments are evident.	2
Internal control deficiencies are not identified and communicated in a timely manner to allow for corrective action to be taken.	3

Key governance responsibilities

30. The PFMA tasks the accounting officer with a number of responsibilities concerning financial and risk management and internal control. Fundamental to achieving this is the implementation of key governance responsibilities, which I have assessed as follows:

No	Matter	Yes	No
Clear trail of supporting documentation that is easily available and provided in a timely manner			
1.	No significant difficulties were experienced during the audit concerning delays or the availability of requested information.		No
Quality of financial statements and related management information			
2.	The financial statements were not subject to any material amendments resulting from the audit.		No
3.	The annual report was submitted for consideration prior to the tabling of the auditor’s report.		No
Timeliness of financial statements and management information			
4.	The annual financial statements were submitted for auditing as per the legislated deadlines section 40 of the PFMA.		No
Availability of key officials during audit			
5.	Key officials were available throughout the audit process.	Yes	
Development and compliance with risk management, effective internal control and governance practices			
6.	Audit Committee		
	• The department had an audit committee in operation throughout the financial year.	Yes	
	• The audit committee operates in accordance with approved, written terms of reference.	Yes	
	• The audit committee substantially fulfilled its responsibilities for the year, as set out in section 77 of the PFMA and Treasury Regulation 3.1.10.	Yes	
7.	Internal Audit		
	• The department had an internal audit function in operation throughout the financial year.	Yes	
	• The internal audit function operates in terms of an approved internal audit plan.	Yes	
	• The internal audit function substantially fulfilled its responsibilities for the year, as set out in Treasury Regulation 3.2.		No
8.	There are no significant deficiencies in the design and implementation of internal control in respect of financial and risk management.		No
9.	There are no significant deficiencies in the design and implementation of internal control in respect of compliance with applicable laws and regulations.		No
10.	The information systems were appropriate to facilitate the preparation of the financial statements.		No
11.	A risk assessment was conducted on a regular basis and a risk management strategy, which includes a fraud prevention plan, is documented and used as set out in Treasury Regulation 3.2.	Yes	
12.	Powers and duties have been assigned, as set out in section 44 of the PFMA.	Yes	
Follow-up of audit findings			
13.	The prior year’s audit findings have been substantially addressed.		No
14.	SCOPA resolutions have been substantially implemented.		No



No	Matter	Yes	No
Issues relating to the reporting of performance information			
15.	The information systems were appropriate to facilitate the preparation of a performance report that is accurate and complete.		No
16.	Adequate control processes and procedures are designed and implemented to ensure the accuracy and completeness of reported performance information.		No
17.	A strategic plan was prepared and approved for the financial year under review for purposes of monitoring the performance in relation to the budget and delivery by the department against its mandate, predetermined objectives, outputs, indicators and targets (Treasury Regulations 5.1, 5.2 and 6.1).		No
18.	There is a functioning performance management system and performance bonuses are only paid after proper assessment and approval by those charged with governance.		No

Investigations

- 31. Various allegations of financial misconduct and irregularities are currently being investigated.

Report on other legal and regulatory requirements

Report on performance information

- 32. I have reviewed the performance information as set out on pages 3 to 123.

The Accounting Officer's responsibility for the performance information

- 33. The accounting officer has additional responsibilities, as required by section 40(3)(a) of the PFMA, to ensure that the annual report and audited financial statements fairly present the performance against the predetermined objectives of the department.

The AGSA's responsibility

- 34. I conducted my engagement in accordance with section 13 of the PAA, read with General Notice 616 of 2008, issued in Government Gazette No 31057 of 15 May 2008.
- 35. In terms of the foregoing, my engagement included performing procedures of an audit nature to obtain sufficient appropriate evidence about the performance information and related systems, processes and procedures. The procedures selected depend on the auditor's judgment.
- 36. I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for the review findings reported below.

Findings on performance information

Non-compliance with regulatory requirements

Submission of strategic plan

- 37. The accounting officer of the department did not provide Parliament with the strategic plan at least 10 days prior to the discussion of the department's budget vote, as required by Treasury Regulations 5.2.1 and 5.2.2.

Lack of effective, efficient and transparent systems and internal controls regarding performance management

- 38. The accounting officer did not ensure that the department has and maintains an effective, efficient and transparent system and internal controls regarding performance management, which describe and represent how the department's processes of performance planning, monitoring, measurement, review and reporting will be conducted, organised and managed, as required in terms of section 38(1) (a)(i) and (b) of the PFMA. The current draft policy does not address key control elements expected in a policy.

Inadequate quarterly reporting on performance information

- 39. The quarterly reports of the department did not in all instances adequately and consistently track progress against outputs, indicators and targets as per the approved strategic plan and therefore did not facilitate effective performance monitoring and evaluation, as required by Treasury Regulation section 5.3.1.



Usefulness and reliability of reported performance information

40. The following criteria were used to assess the usefulness and reliability of the information on the department's performance with respect to the objectives in its strategic plan:
- **Consistency:** Has the department reported on its performance with regard to its objectives, indicators and targets in its approved strategic plan?
 - **Relevance:** Is the performance information as reflected in the indicators and targets clearly linked to the predetermined objectives and mandate? Is this specific and measurable, and is the time period or deadline for delivery specified?
 - **Reliability:** Can the reported performance information be traced back to the source data or documentation and is the reported performance information accurate and complete in relation to the source data or documentation?

The following audit findings relate to the above criteria:

Reported performance information not relevant

41. A certain number of targets with regard to the department's programmes were not:
- specific in clearly identifying the nature and the required level of performance;
 - measurable in identifying the required performance; and
 - time-bound in specifying the time period or deadline for delivery.

Reported performance information not reliable

Lack of source documentation

42. Sufficient appropriate audit evidence in relation to certain reported performance information of the department could not be obtained, as the relevant source documentation could not in all instances be provided for audit purposes.

Source information not accurate and complete

43. The source information provided to support certain reported performance information with regard to the programmes, subprogrammes and objectives did not adequately support the accuracy and completeness of the facts.

Performance information not received in time

44. The performance information was not submitted for auditing as per the legislated deadlines in terms of section 40 of the PFMA.

Other reports

Performance audits

45. A performance audit was conducted during the year under review concerning the appointment and utilisation of consultants. The results of the performance audit will be reported to management and tabled to Parliament separately.

Appreciation

46. The assistance rendered by the staff of the department during the audit is sincerely appreciated.

Auditor-General

Pretoria
21 September 2009



