



AUDITOR - GENERAL  
SOUTH AFRICA



PFMA 2011-12

## Oversight responsibilities of national and provincial legislature and accountability of the executive

CONSOLIDATED GENERAL REPORT  
on NATIONAL and PROVINCIAL audit outcomes



# Our reputation promise/mission

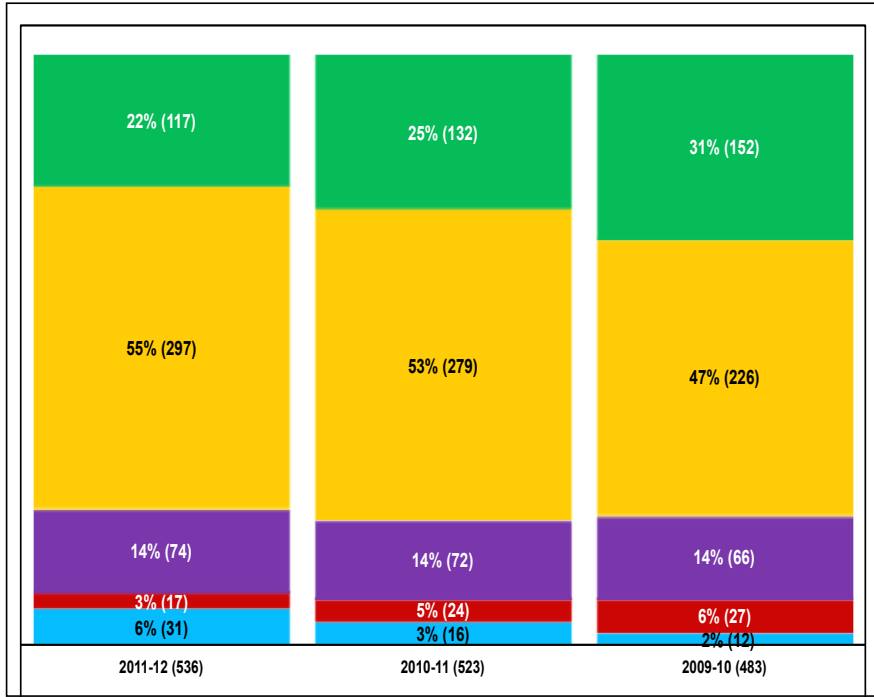
The Auditor-General of South Africa (AGSA) has a constitutional mandate and, as the Supreme Audit Institution (SAI) of South Africa, it exists to strengthen our country's democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence.





FOREWORD

**Slow progress towards clean audits with slightly more regressions than improvements**

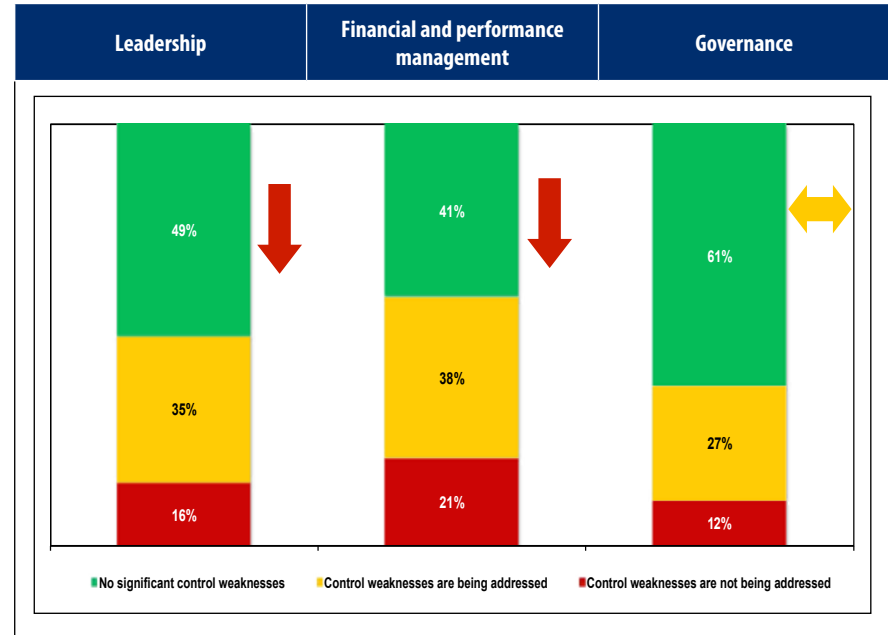


**Limited progress made in addressing five key risk areas and regression in overall status of key controls**

5 risk areas



Key controls



Pervasive root causes

- Vacancies in key positions, leadership instability and ineffective performance management
- Internal controls not effective – checks and balances not performed
- Not all role players are providing the level of assurance required

# FOREWORD

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It is a pleasure to present to Parliament my 2011-12 general report on audit outcomes of departments, legislatures, public entities and other entities in the national and provincial spheres of government.

In response to the 2010-11 audit outcomes, commitments were made by the executive and oversight bodies to intensify their efforts in bringing positive change within the administration.

Despite my expectation that these commitments would drive improvements towards clean audits, the audit outcomes for the year show a general stagnant trend, with less than a quarter of auditees obtaining clean audit opinions and 52 not able to sustain their prior year clean audit opinion. My report shows that many leaders did not own and drive these commitments, so the commitments are left to flounder until the next audit starts. In this regard, I single out two significant commitments made a year ago:

- The executive committed to meet with my office quarterly for at least an hour. About 78% of them have made time at least three times in the past year to meet and share the results of our assessment of the risks and controls and to consider the status of commitments made and make new commitments. Although the engagements were well received, only small movements in audit outcomes can be seen. This was due to frequent leadership changes resulting in disruption in the implementation of commitments, our message being ignored, or our conversation not being compelling and persuasive enough. We therefore undertake to continue with the quarterly engagements, but with greater emphasis on quality conversations leading to increased impact.



- Parliament and legislatures committed to improve the collaboration between their respective public accounts committees and portfolio committees. We have yet to see more concentrated efforts in this regard as an uncoordinated approach will continue to weaken the effectiveness of oversight.

Of special concern is the increase in auditees with material findings on non-compliance with legislation, bringing it to 74%. Even though I have stressed for the past three years the urgent need to address the quality of the financial statements submitted for audit and weaknesses in supply chain management, human resource management and information technology controls, there has been minimal improvement.

The usefulness and reliability of the annual performance reports continue to improve, which is gratifying. I am now able to make a clearer assessment of service delivery risks but not to the full extent necessary (as some key departments responsible for national outcomes, such as those in the health, education and human settlement sectors, continue to have material shortcomings). Based on the annual performance reports, about 42% of auditees achieved 80% or fewer of their planned service delivery targets, while some departments had significantly underspent their conditional grants and capital budgets. My report further highlights risks to the financial health of national and provincial government flowing from poor budget management, cash and debtors management of departments and the financial management of some public entities. These indicators reflect that the fiscus could be placed under further pressure if such risks are not addressed.

In this general report, I raise three areas that require corrective steps by those charged with governance to achieve improvements in the audit outcomes:

- **Vacancies in key positions** and **instability in leadership** positions affect the pace of sustainable improvements. **Ineffective performance management** is evident at some auditees, which means that officials who perform poorly are not dealt with decisively. A concerted effort is required to address the challenges in human resource capacity and productivity.

- **Effective internal controls** to prevent, detect and correct non-compliance with legislation and mistakes in the financial and performance reports are lacking. Overall the effectiveness of key controls has regressed, as they were not designed and implemented in a sustainable manner. Checks and balances for all key processes, monthly reporting and validation processes to ensure the credibility of all management information are basic controls which skilled professional should be able to implement.
- Governments should be monitored in a thorough, diligent and collaborative manner. My office only provides independent assurance on the credibility of financial and performance information and compliance with selected legislation. We are not the only **provider of assurance** to the citizens that government is delivering services in a responsible and accountable manner. The monitoring functions vested in **senior management, accounting officers, internal audit, audit committees and executive authorities** should be better exercised so that audit outcomes and service delivery issues are dealt with through self-monitoring, while audit provides an external validation. The **treasuries, offices of the premiers, public service administration and other coordinating/monitoring institutions** should fulfil their role envisaged in legislation to guide, support, coordinate and monitor government. The **legislatures and Parliament** should be scrupulous and courageous in performing their oversight function in order to make an impact on clean administration. My assessment (detailed in this report) is that not all of these role players are providing the level of assurance required to create the momentum towards improve audit outcomes.

A common reaction to the audit outcomes is the question posed by many about the need for officials to be accountable, and for there to be consequences for poor performance, misappropriation of state resources and fraud. In response, we have highlighted in a separate booklet, the range of legislation at the government's disposal that enables remedies to be applied where there has been transgression. These must be used where necessary to reverse the culture of "business-as-usual". It is my assessment that the full power of the law is yet to be activated, leading to commentators asking "What can be done?" or saying "There are no consequences".

Highlighting these remedies provides a starting point for our responsible leaders and the relevant legislatures and departments to take action. All parties have to play their part.

Although progress towards clean audits is slow, I am encouraged by examples of commitments by leaders and officials which translated into improved audit outcomes and I am confident similar results can be achieved by all auditees. In conjunction with various key role players, my office has provided input towards the development of solutions to the challenges highlighted in this report, and will in future share assessments of progress in joint sessions with the Head of Government Business and Parliament and through similar engagements in the provinces.

It is through all our efforts and the work of auditors that we will contribute towards strengthening our democracy through auditing.

*Auditor-General*

**Auditor-General  
Pretoria  
March 2013**



OVERSIGHT RESPONSIBILITIES

LEGISLATION	SECTION	REQUIREMENT
<b>Financial misconduct by accounting officer</b>		
<i>PFMA</i>	Section 81(1)(a) & (b)	An accounting officer for a department commits an act of financial misconduct if he/she wilfully or negligently— (a) fails to comply with a requirement of section 38, 39, 40, 41 or 42; or (b) incurs or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.
<i>Treasury Regulations</i>	4.1.3	If an accounting officer is alleged to have committed financial misconduct, the relevant treasury, as soon as it becomes aware of the alleged misconduct, must ensure that the relevant executive authority initiates an investigation into the matter and, if the allegations are confirmed, holds a disciplinary hearing in accordance with the prescripts and agreements applicable in the public service.
<i>Treasury Regulations</i>	3.1.14	Should a report to an audit committee, whether from the internal audit function or any other source, implicate the accounting officer in fraud, corruption or gross negligence, the chairperson of the audit committee must promptly report this to the relevant executive authority.
<i>PFMA</i>	Section 84	A charge of financial misconduct against an accounting officer or official referred to in section 81 or an official referred to in section 82 must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer, member or official, and any regulations prescribed by the minister in terms of section 85.

LEGISLATION	SECTION	REQUIREMENT
<b>Financial misconduct of officials</b>		
<i>Treasury Regulations</i>	4.1.4	A treasury may direct that an official other than an employee of the institution conduct the investigation or issue any reasonable requirement regarding the way in which the investigation should be performed.
<i>PFMA</i>	Section 86	An accounting officer is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years, if that accounting officer wilfully or in a grossly negligent way fails to comply with a provision of section 38, 39 or 40.
<i>PFMA</i>	Section 65(1)(b)	The executive authority responsible for a department or public entity must table in the National Assembly or a provincial legislature, as may be appropriate, the findings of a disciplinary board and any sanctions imposed by such a board, which had heard a case of financial misconduct against an accounting officer or accounting authority in terms of section 81 or 83.
<b>Financial misconduct of officials</b>		
<i>PFMA</i>	Section 81(2)	An official of a department, a trading entity or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if he/she wilfully or negligently fails to exercise that power or perform that duty.
<i>PFMA</i>	Section 84	A charge of financial misconduct against an accounting officer or official referred to in section 81, or an official referred to in section 82, must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer, member or official, and any regulations prescribed by the minister in terms of section 85.
<i>Treasury Regulations</i>	4.1.1	If an official is alleged to have committed financial misconduct, the accounting officer of the institution must ensure that an investigation is conducted into the matter and, if confirmed, must ensure that a disciplinary hearing is held in accordance with the prescripts and agreements applicable in the public service.



LEGISLATION	SECTION	REQUIREMENT
<i>Treasury Regulations</i>	4.2.1	The accounting officer must advise the executive authority, relevant treasury and the Auditor-General of any criminal charges it has laid against any person in terms of section 86 of the act.
<i>Treasury Regulations</i>	4.2.2	The relevant treasury may direct an institution to lay criminal charges against any person should an accounting officer fail to take appropriate action.
<i>Treasury Regulations</i>	4.3.1	The accounting officer must, as soon as the disciplinary proceedings have been completed, report to the executive authority, the Department of Public Service and Administration and the Public Service Commission on the outcome, including— a) the name and rank of the official against whom the proceedings were instituted; b) the charges, indicating the financial misconduct the official is alleged to have committed; c) the findings; d) any sanction imposed on the official; and e) any further action to be taken against the official, including criminal charges or civil proceedings.
<i>Treasury Regulations</i>	4.3.4	The accounting officer of an institution must, on an annual basis, submit to the provincial treasury (if applicable), the National Treasury and the Auditor-General a schedule of— (a) the outcome of any disciplinary proceedings and/or criminal charges; (b) the names and ranks of officials involved; and (c) the sanctions and any further actions taken against these officials.

LEGISLATION	SECTION	REQUIREMENT
<b>Unauthorised expenditure, irregular and fruitless and wasteful expenditure</b>		
<i>PFMA</i>	Section 1	“ <b>unauthorised expenditure</b> ” means— (a) overspending of a vote or a main division within a vote; (b) expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division.
<i>PFMA</i>	Section 1	“ <b>fruitless and wasteful expenditure</b> ” means expenditure which was made in vain and would have been avoided had reasonable care been exercised.
<i>PFMA</i>	Section 1	“ <b>irregular expenditure</b> ” means expenditure, other than unauthorised expenditure, incurred in contravention of or not in accordance with a requirement of any applicable legislation, including— (a) this act; or (b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of that act; or (c) any provincial legislation providing for procurement procedures in that provincial government.
<i>PFMA</i>	Section 40(3)(b)	The annual report and audited financial statements must include particulars of any material losses resulting from criminal conduct, and any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year.
<i>Treasury Regulations</i>	9.1.1	The accounting officer of an institution must exercise all reasonable care to prevent and detect unauthorised, irregular and fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent processes of financial and risk management.
<i>Treasury Regulations</i>	9.1.5	The amount of the unauthorised, irregular and fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements of the institution.

LEGISLATION	SECTION	REQUIREMENT
<i>PFMA</i>	Section 38(1)(h)	The accounting officer for a department or trading entity must take effective and appropriate disciplinary steps against any official in the service of the department who— i) contravenes or fails to comply with a provision of this act ii) commits an act which undermines the financial management and internal control system of the department; or iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure.
<i>Treasury Regulations</i>	9.1.3	When an accounting officer determines the appropriateness of disciplinary steps against an official in terms of section 38(1)(g) of the act, the accounting officer must take into account— (a) the circumstances of the transgression; (b) the extent of the expenditure involved; and (c) the nature and seriousness of the transgression.
<i>Treasury Regulations</i>	9.1.4	The recovery of losses or damages resulting from unauthorised, irregular or fruitless and wasteful expenditure must be dealt with in accordance with regulation 12.
<i>PFMA</i>	Section 38(1)(g)	On discovery of any unauthorised, irregular or fruitless and wasteful expenditure, the accounting officer must immediately report, in writing, particulars of the expenditure to the relevant treasury and, in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board.

LEGISLATION	SECTION	REQUIREMENT
<i>PFMA</i>	Section 34	1) Unauthorised expenditure does not become a charge against a revenue fund except when: a) the expenditure constitutes overspending of a vote and Parliament or a provincial legislature, as may be appropriate, approves, as a direct charge against the relevant revenue fund, an additional amount for that vote which covers such overspending; or b) the expenditure is unauthorised for another reason and Parliament or a provincial legislature, as may be appropriate, authorises the expenditure as a direct charge against the relevant revenue fund. 2) If Parliament or a provincial legislature does not approve in terms of subsection (1) (a) an additional amount for the amount of any overspending, that amount becomes a charge against the funds allocated for the next or future financial years under the relevant vote.
<b>Possible fraud and corruption</b>		
<i>Treasury Regulations</i>	16A9.1(b)	The accounting officer must investigate any allegations against an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system, and when justified— a) take steps against such official or other role player and inform the relevant treasury of such steps; and b) report any conduct that may constitute an offence to SAPS.
<i>Treasury Regulations</i>	16A9.3	The National Treasury and each provincial treasury must establish a mechanism— (a) to receive and consider complaints regarding alleged non-compliance with the prescribed minimum norms and standards; and (b) to make recommendations for remedial actions to be taken if non-compliance with any norms and standards is established, including recommendations for criminal steps to be taken in the case of corruption, fraud or other criminal offences.

LEGISLATION	SECTION	REQUIREMENT
<i>Prevention and Combating of Corrupt Activities Act (PRECCA)</i>	Section 34	<p>1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed an offence under the act or the offence of theft, fraud, extortion, forgery or uttering a forged document involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.</p> <p>2) Any person who fails to comply with subsection (1) is guilty of an offence.</p> <p>3) The following persons hold a position of authority:</p> <ul style="list-style-type: none"> <li>• The director-general or head, or equivalent officer, of a national or provincial department;</li> <li>• In the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);</li> <li>• Any public officer in the senior management of a public body;</li> <li>• Any head, rector or principal of a tertiary institution;</li> <li>• The manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), including a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984);</li> <li>• The executive manager of any bank or other financial institution;</li> <li>• Any partner in a partnership;</li> <li>• Any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service or any other institution or organisation, whether established by legislation, contract or any other legal means;</li> <li>• Any other person who is responsible for the overall management and control of the business of an employer; or</li> <li>• Any person contemplated in paragraphs (a) to (i), who has been appointed in an acting or temporary capacity.</li> </ul>

LEGISLATION	SECTION	REQUIREMENT
<i>Treasury Regulations</i>	16A9.1(f)	<p>The accounting officer must cancel a contract awarded to a supplier of goods or services—</p> <p>i) if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract; or</p> <p>ii) if any official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of that contract that benefited that supplier.</p>
<b>Poor work performance – officials</b>		
<i>Public Service Regulation (PSR)</i>	Chapter 1, part VIII/ B1	An executive authority shall determine a system of performance management and development for employees in her or his department other than employees who are members of the senior management, consistent with the principles in regulation VIIIA.
<i>Public Service Regulation (PSR)</i>	Chapter 4, part III/A	The performance of a person appointed to a post in the senior management shall be managed in accordance with a performance agreement. Such an agreement shall be linked to the department's strategic goals and shall meet with the criteria prescribed in this part.
<i>Public Service Regulation (PSR)</i>	Chapter 1, part VIII/ D1	The employee's supervisor shall inform the employee in writing of the outcome of the assessment and, if the employee's performance is unsatisfactory, of the reasons for that assessment.
<i>Public Service Regulation (PSR)</i>	Chapter 4, part III/ B2(c)	Such performance agreement shall enable the person to whom that member reports to assess his or her work and provide appropriate support.
<i>Public Service Regulation (PSR)</i>	Chapter 1, part VIII/E	<p>In the case of unsatisfactory performance, an executive authority shall—</p> <p>(a) provide systematic remedial or developmental support to assist the employee to improve her or his performance;</p> <p>(b) if the performance is so unsatisfactory as to be poor and the desired improvement cannot be effected, consider steps to discharge the individual for unfitness or incapacity to carry out his or her duties.</p>

LEGISLATION	SECTION	REQUIREMENT
<b>Poor work performance – suppliers</b>		
<i>PFMA</i>	Section 38(1)(a)(i)	The accounting officer for a department must ensure that the department has and maintains effective, efficient and transparent systems of financial and risk management and internal control
<i>PFMA</i>	Section 38(1)(b)	The accounting officer for a department is responsible for the effective, efficient, economical and transparent use of the resources of the department or trading entity.
<i>PFMA</i>	Section 38(1)(c)(ii)	The accounting officer for a department must take effective and appropriate steps to prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct
<i>Preferential Procurement Regulation</i>	13(1)(b)	An organ of state must, upon detecting that any of the conditions of the contract have not been met, act against the tenderer or person awarded the contract.
<i>Preferential Procurement Regulation</i>	13(2)	An organ of state may, in addition to any other remedy it may have against the person contemplated in regulation 13(1)— <ul style="list-style-type: none"> <li>disqualify the person from the tendering process;</li> <li>recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;</li> <li>cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;</li> <li>restrict the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and</li> <li>refer the matter for criminal prosecution.</li> </ul>

LEGISLATION	SECTION	REQUIREMENT
<b>Other on compliance with legislation – PFMA</b>		
<i>PFMA</i>	Section 38(h)(i)	The accounting officer for a department must take effective and appropriate disciplinary steps against any official in the service of the department who contravenes or fails to comply with a provision of this act.

# overview of full report



**Message from  
the  
Auditor-  
General**

12

**Slow progress towards clean  
audits with more regressions than  
improvements  
(Part 1)**

38



**117 auditees achieved clean audits  
(Part 1)**

39



**Some progress  
made towards  
improving the  
reliability and  
usefulness of  
service  
delivery reporting  
(Part 1)**

69



**Continuing  
high level  
of non-  
compliance  
with laws  
and  
regulations  
(Part 1)**

79



**High levels of unauthorised,  
irregular as well as fruitless and  
wasteful expenditure  
(Part 1)**

91

*Auditees' internal control systems are not improving (Part 1)*

106



HR and IT management needs further attention (Part 1)

115



*Executive leadership, coordinating institutions and legislative oversight should strengthen their contributions (Part 1)*

138



Indications of financial health issues at some departments and public entities (Part 1)

168

Audit outcomes of ministerial portfolios and commitments made for improvement (Part 2)

178



Audit outcomes and weaknesses in implementation of key national programmes in Health, Human Settlements, Education, Social Development and Public Works sectors (Part 3)

428



**The audit outcomes of 3 provinces regress (Part 4)**

470

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