

# INFORMATION REGULATOR

## BRIEFING OF THE PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES

CAPE TOWN

24 APRIL 2018



**INFORMATION  
REGULATOR  
(SOUTH AFRICA)**

*Ensuring protection of your personal information  
and effective access to information*

# OUTLINE OF THE PRESENTATION



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- Introduction
- Update on issues discussed in October 2017
- Capacity of the Regulator
- Budget
- Annual Performance Plan

# INTRODUCTION

- The Information Regulator (Regulator) appeared before the Portfolio Committee on Justice and Correctional Services (Committee) in October 2017.
- The Committee was briefed on the activities and capacity issues of the Regulator.
- This briefing seeks to provide an update on the issues raised in October 2017 and to brief the Committee on capacity related issues, the budget and the annual performance plan for 2018/19.

# UPDATE ON THE ISSUES DISCUSSED IN OCTOBER 2017

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## Stakeholder and Training engagements

- The Regulator met a number of organizations as part of its on-going stakeholder and training programmes in terms of Section 40 of the Protection of Personal Information Act 4 of 2013 (POPIA). The schedule of these engagements is attached.

# UPDATE OF THE ISSUES DISCUSSED IN OCTOBER 2017 (cont.)

## Important issues dealt with by the Regulator

### **Black Sash Trust v Minister of Social Development and Others: Case No. CCT/48.**

- The Committee would recall that the Regulator was cited as the seventh respondent in the above mentioned matter.
- The Regulator has been monitoring the implementation of the Court Order relating to the protection of personal information of grant beneficiaries.
- In this regard the Regulator has convened a series of meetings with relevant stakeholders namely:
  - ❖ The South African Social Security Agency (SASSA),
  - ❖ Cash Paymaster Services (CPS),
  - ❖ Grindrod Bank,
  - ❖ The South African Post Office (SAPO),
  - ❖ The South African Reserve Bank (SARB),
  - ❖ The Independent Panel of Experts appointed by the Constitutional Court, and
  - ❖ The Black Sash Trust

# UPDATE OF THE ISSUES DISCUSSED IN OCTOBER 2017 (cont.)

## **Black Sash Trust v Minister of Social Development and Others: Case No. CCT/48.**

Issues that were discussed at these meetings included the following:

- ❖ the disposal of the personal information of grant beneficiaries by CPS at the end of their contract with SASSA;
- ❖ the disposal of the personal information of grant beneficiaries by Grindrod Bank at the end of the above mentioned contract;
- ❖ assurance that measures that are going to be put in place to ensure that the contract that will be entered into between SASSA and SAPO and its operators would contain adequate measures for the protection of personal information of grant beneficiaries; and
- ❖ the establishment of a Joint Working Group (JWG) consisting of SASSA (as the convenor), SAPO, CPS, Grindrod Bank and the Regulator to monitor transition of payment of grants from CPS to SAPO;



# UPDATE OF THE ISSUES DISCUSSED IN OCTOBER 2017 (cont.)

## **Black Sash Trust v Minister of Social Development and Others: Case No. CCT/48.**

- In terms of the implementation of the Court Order, the Regulator has submitted two (2) reports to the Independent Panel of Experts in fulfilment of its monitoring obligation.
  - The first report was submitted on the 6<sup>th</sup> February 2018 and the second report was submitted on the 11<sup>th</sup> April 2018.

# UPDATE OF THE ISSUES DISCUSSED IN OCTOBER 2017 (cont.)

## Complaints management

- Regulator does not have the powers to enforce and settle complaints as sections 73 to 111 are not yet operative.
- Complaints are being received and dealt with on a proactive basis.
- The Regulator has received in excess of 180 complaints to date and has resolved some.

# UPDATE OF THE ISSUES DISCUSSED IN OCTOBER 2017 (cont.)

## Regulations

- Section 112(2) of POPIA empowers the Regulator to make Regulations.
- The Regulations were drafted by the Members and public consultations were held in all the nine (9) provinces.
- More than 200 organizations made submissions. These submissions were received from amongst others the public and private sectors, institutions of higher learning, community based organizations, non-governmental organizations and individuals.
- The submissions that were received were considered, and where possible, included in the draft Regulations.
- The final draft Regulations have been submitted to the Office of the State Law Advisors for constitutional compliance vetting process.
- The Regulations will be tabled by the Regulator to Parliament in compliance with section 113(5)(a) of POPIA upon completion of the vetting process.

# UPDATE OF THE ISSUES DISCUSSED IN OCTOBER 2017 (cont.)

## Other important issues dealt with by the Regulator

- Material Data Breaches
- Master Deeds
- Facebook
- MiWay
- Processing of Personal Information in the Voters Roll
- Whether unsolicited direct marketing by Political Parties falls within the definition of direct marketing in sections 1 and 69 of POPIA. The Regulator has sought an opinion of a Senior Counsel in this regard

# MATERIAL DATA BREACHES

## MASTER DEEDS

- As soon as the Regulator became aware of the data breach, it wrote letters to Jigsaw Holdings, Govault.co.za and to Dracore Data Science to ascertain the veracity of the reports and to enquire about the steps that these companies had taken to avoid further breaches. The letters were sent on the 20 October 2017. The Regulator received responses from Hetzner (Pty) Ltd on behalf of Govault.co.za on the 10 November 2017 and from the lawyers of Dracore Data Science on the 16 November 2017.
- Following media reports that various government institutions were investigating the said alleged material data breach, the Regulator decided to convene a meeting of all the institutions involved in the investigation to co-ordinate their efforts. These institutions are; the National Prosecutorial Authority (NPA), the State Security Agency (SSA), the Directorate for Priority Crime Investigations of the South African Police Services (HAWKS), the Registrar of Deeds, the National Credit Regulator (NCR) and the Credit Bureau Association (CBA). The first (1<sup>st</sup>) meeting was held on the 28 March 2018 and was attended by all parties except SSA. The meeting agreed to establish a Task Team to oversee the investigation. The draft Terms of Reference of the Task Team have already been developed.

# MATERIAL DATA BREACHES (cont.)

## FACEBOOK

- The Regulator has also dealt with the alleged data breach of almost Sixty Thousand (60 000) South African Facebook users whose personal information was alleged to have been shared with a data firm called Cambridge Analytica. On the 10 April 2018, the Regulator wrote a letter to Facebook and requested information on the alleged breach. The Regulator has received a comprehensive response Facebook.

## MI WAY

- On the 12 February 2018, the Regulator wrote to MiWay Insurance Ltd. regarding the alleged unlawful processing of personal information of King Goodwill Zwelithini. On the 13 February 2018, the Regulator received a comprehensive response from the Chief Executive Officer of MiWay on the steps his company had taken to address the matter. The Regulator is satisfied with the response.

# CAPACITY



# ORGANISATIONAL STRUCTURE

## Personnel

- The Acting Chief Executive Officer and the Acting Head of Legal and Compliance were seconded from the Department of Justice and Constitutional Development (DoJ&CD) and they assumed duty on 1 November 2017.



# ORGANISATIONAL STRUCTURE (cont.)

- Subsection 47(5) of POPIA states that the Regulator must consult with the Minister of Finance in exercising its powers in terms of subsections (1) and (4).
- Subsection 47(1) of POPIA deals with the establishment of the administration of the Regulator while subsection 47(4) deals with remunerations and other conditions of service of staff .
- In compliance with the above mentioned sections of POPIA a meeting was held with officials from National Treasury. They advised the Regulator to consult with the Department of Public Service and Administration (DPSA) on its organizational structure despite section 47(5) of POPIA.
- The Regulator met with the Public Service Commission who advised on the documents required for the approval of the organizational structure.
- Upon compilation of the required documents, which included the report of the Benchmarking visit of the Regulator to Canada, United Kingdom and Germany, the Regulator met with the officials of the DPSA responsible for the development of organizational structure in the public sector.

# ORGANISATIONAL STRUCTURE (cont.)

- The DPSA officials indicated that the Regulator has to be listed in the Public Finance Management Act 1 of 1999 (PFMA) as a schedule 3A Entity before its organizational structure can be approved.
- A business case to this effect will have to be made by the Regulator.
- It is the Regulator's considered view that there is a contradiction between section 48(a) of POPIA which provides for the appointment of the Chief Executive Officer (CEO) who is also its Accounting Officer and section 49 of the PFMA which provides that if a public entity has a board or other controlling body, that board or controlling body is the Accounting Authority for that Entity.
- The Regulator will be approaching the Minister of Finance to assist with the resolution of this contradiction and has in this regard solicited the assistance of the Deputy Minister of Justice and Constitutional Development.
- The Regulator plans to advertise the key executive positions as soon as the consultation with the Minister of Finance is completed and organizational structure is approved.

# BUDGET

## INFORMATION REGULATOR Budget Allocations per Economic Classification

Programme Economic classification	Indicative Medium-term allocation			
	2017/18 '000	2018/19 '000	2019/20 '000	2019/21 '000
<b>Current payments</b>	<b>23 402</b>	<b>24 712</b>	<b>25 095</b>	<b>27 531</b>
Compensation of employees	17 486	18 500	18 536	21 001
Goods and services	5 916	6 212	6 559	6 530
<b>Transfers and subsidies</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
Provinces and municipalities	-	-	-	-
Departmental agencies and accounts	-	-	-	-
Public corporations and private enterprises	-	-	-	-
Foreign governments and international organisations	-	-	-	-
Non-profit institutions	-	-	-	-
Households	-	-	-	-
<b>Payments for capital assets</b>	<b>2 535</b>	<b>2 662</b>	<b>2 812</b>	<b>2 966</b>
Buildings and other fixed structures	-	-	-	-
Machinery and equipment	2 535	2 662	2 812	2 966
Cultivated assets	-	-	-	-
Software and other intangible assets	-	-	-	-
Land and subsoil assets	-	-	-	-
<b>Total</b>	<b>25 937</b>	<b>27 374</b>	<b>27 907</b>	<b>30 497</b>
<b>Year on Year Growth</b>		<b>6%</b>	<b>2%</b>	<b>9%</b>

# BUDGET AND EXPENDITURE

## 2017/18 Budget

- **Allocation R25. 937 million**
  - a. **Compensation of Employees :R17. 486 million**
  - b. **Goods and Services : R 5.916 million**
  - c. **Capital Assets: R2.535 million**
  
- **Expenditure**
  - a. **Compensation of Employees: R88 111 152.74**
  - b. **Goods and Services: R 2 393 545.79**
  - c. **Capital Assets: R169 042.38**
  - d. **Reasons for under-expenditure**

# BUDGET AND EXPENDITURE

## 2018/19 Budget

- **Allocation R27. 374 million**
  - ❖ Compensation of Employees: **R18.500 million**
  - ❖ Goods and Services: **R6.212 million**
  - ❖ Capital Capital Assets: **R2.662 million**
- **Procurement plan**
  - ❖ Compensation of Employees : Salaries and filling of positions
  - ❖ Goods and Services : Procurement plan approved by the DOJ & CD Director General and submitted to National Treasury
  - ❖ Capital Assets: Procurement of furniture and machinery

# ANNUAL PERFORMANCE PLAN



## RESEARCH AND OUTREACH COMMITTEE

### STRATEGIC OBJECTIVE 1.1: DEVELOP AND IMPLEMENT AWARENESS AND EDUCATIONAL PROGRAMME AIMED AT PROMOTING THE PROTECTION OF PERSONAL INFORMATION AND ACCESS TO INFORMATION

Indicator	Annual target: 2018/2019	Quarter 1	Quarter 2	Quarter 3	Quarter 4
		Target	Target	Target	Target
1.1.1 Approved Public Awareness Strategy	Draft strategy approved and Phase one (1) of the Public Awareness Strategy implemented	Draft Strategy tabled	Final Draft Strategy approved	Phase one of the Strategy implemented	Phase one of the Strategy implemented



## RESEARCH AND OUTREACH COMMITTEE

### STRATEGIC OBJECTIVE 2.1: MONITOR AND RESEARCH THE PROCESSING OF PERSONAL INFORMATION AND COMPUTER TECHNOLOGY

Indicator	Annual target: 2018/2019	Quarter 1	Quarter 2	Quarter 3	Quarter 4
		Target	Target	Target	Target
2.1.1 Approved Research Strategy	Research Strategy developed focusing on: <ul style="list-style-type: none"> <li>• Processing of personal information</li> <li>• Computer technology that promote protection of personal information and access to information</li> </ul>	Research Strategy approved	Research project arising from the strategy is commissioned	Research project continues	Research results are analysed

## LEGAL AND COMPLIANCE COMMITTEE

### STRATEGIC OBJECTIVE 3.1: MAKE REGULATIONS, GUIDELINES, CODES OF CONDUCT AND NOTICES

Indicator	Annual target: 2018/2019	Quarter 1	Quarter 2	Quarter 3	Quarter 4
		Target	Target	Target	Target
3.1.1 Approved Regulations	Approved Regulations	Regulations submitted for constitutional vetting to the State Law Advisers	State Law Advisers input incorporated into the Regulations	Regulations tabled in Parliament	Implementation of the approved Regulations
	Guidelines and Notices developed	40% draft guidelines for codes of conduct developed	60% draft guidelines for codes of conduct developed	Relevant stakeholders consulted on guidelines	Relevant stakeholders consulted on guidelines

## RESEARCH AND OUTREACH COMMITTEE

### STRATEGIC OBJECTIVE 4.1: UNDERTAKE ENGAGEMENTS WITH RELEVANT STAKEHOLDERS CONCERNED WITH THE PROTECTION OF PERSONAL INFORMATION AND ACCESS TO INFORMATION

Indicator	Annual target: 2018/2019	Quarter 1	Quarter 2	Quarter 3	Quarter 4
		Target	Target	Target	Target
4.1.1 Approved Stakeholder Engagement Strategy	Implementation of the Stakeholder Engagement Strategy continued	Stakeholder engagement Strategy developed	Stakeholder engagement Strategy approved	Stakeholder engagement Strategy implemented	Stakeholder engagement Strategy implemented

## COMPLAINTS AND DISPUTE RESOLUTION COMMITTEE

### STRATEGIC OBJECTIVE 5.1: CONDUCT PROMPT INVESTIGATION OF COMPLAINTS AND ENSURE RESOLUTION OF DISPUTES

Indicator	Annual target: 2018/2019	Quarter 1	Quarter 2	Quarter 3	Quarter 4
		Target	Target	Target	Target
5.1.1 Approved Complaints Management System	Process Maps on Complaints Management developed	The specification for the appointment of the service provider for Business Process Engineer approved	The specifications for soliciting the services process of a Business Process Engineer are advertised	The preferred service provider is appointed	Execution of services by the service provider

# CORPORATE SERVICES COMMITTEE

## STRATEGIC OBJECTIVE 7.1: CREATE A HIGH PERFORMING INFORMATION REGULATOR TO DELIVER ON ITS MANDATE

Indicator	Annual target: 2018/2019	Quarter 1	Quarter 2	Quarter 3	Quarter 4
		Target	Target	Target	Target
7.1.1 Approved Organizational structure	<b>Organizational Structure implemented</b>	Final organisational structure submitted to National Treasury	draft is to The Minister of Finance is consulted in terms section 47 (5) of the Protection of Personal Information Act	Based on the approved structure key executive positions are advertised	Advertised positions are filled
7.1.2 Approved Corporate Services Policies, Procedures and Systems	<b>Corporate Services Policies, Procedures and Systems developed</b>	Draft recruitment policy is developed	Approval of the recruitment policy	Recruitment policy implemented	Recruitment policy implemented

## CORPORATE SERVICES COMMITTEE

### STRATEGIC OBJECTIVE 7.1: CREATE A HIGH PERFORMING INFORMATION REGULATOR TO DELIVER ON ITS MANDATE

Indicator	Annual target: 2018/2019	Quarter 1	Quarter 2	Quarter 3	Quarter 4
		Target	Target	Target	Target
7.1.3 Approved Corporate Governance Policies	Corporate Governance policies developed and implemented	Charter of roles and responsibilities developed	Charter of roles and responsibilities approved	Delegation of authority policy developed	Delegation of authority policy approved
7.1.4 Approved Branding and Communication strategy	Branding and Communication strategy finalized	Communication strategy specifications advertised	Service provider to develop communication strategy is appointed	Communication strategy is developed	Communication strategy is developed

## CORPORATE SERVICES COMMITTEE

### STRATEGIC OBJECTIVE 7.1: CREATE A HIGH PERFORMING INFORMATION REGULATOR TO DELIVER ON ITS MANDATE

Indicator	Annual target: 2018/2019	Quarter 1	Quarter 2	Quarter 3	Quarter 4
		Target	Target	Target	Target
7.1.5 Suitable Accommodation	Office accommodation for the Regulator secured	Accommodation specifications are submitted Facilities management of DOJ & CD	Facilities Management and DPW issue a request for proposal	Information Regulator invited to view the shortlisted buildings	Service provider is appointed by DPW and Facilities management