

MEDIA RELEASE

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For immediate release

PSC RELEASES THE REPORTS ON THE ASSESSMENTS OF THE EFFECTIVENESS AND EFFICIENCY OF THE OFFICE OF THE CHIEF STATE LAW ADVISER AS WELL AS THE OFFICE OF THE STATE ATTORNEY

The Public Service Commission (PSC) conducted separate studies to assess the effectiveness and efficiency of the Office of the State Attorney (OSA) and the Office of the Chief State Law Adviser (OCSLA).

1. REPORT ON THE ASSESSMENT OF THE EFFECTIVENESS AND EFFICIENCY OF THE OFFICE OF THE CHIEF STATE LAW ADVISER

The OCSLA plays an important role in ensuring that the machinery of government operates effectively within the rule of law and in a manner that is consistent with the values, principles and spirit of the Constitution of South Africa, 1996. It also provides *“legal advice, representation and legislative drafting services to the executive, all state departments, state owned enterprises and autonomous government bodies”*.

In the past few years, the PSC received a number of grievances relating to the internal operations of the OCSLA and isolated concerns by stakeholders about the quality of services provided to departments. A thorough analysis of grievances received from the OCSLA revealed that there are operational challenges related to the workload, reporting lines, quality assurance, performance standards and management of staff and work. Concerns from stakeholders relate to the constitutionality of certain laws based on the advice provided by the OCSLA and the quality of advice given on various legal matters, including legislation and international agreements. Accordingly, the PSC identified a need to assess the functioning of the OCSLA.

The overall purpose of the study was to review the effectiveness and efficiency of the OCSLA in order to make recommendations that would enhance its functioning and impact.

The objectives of the study were as follows:

- To assess the OCSLA’s mandate, in particular, the roles, status, powers and functions;
- To assess the organisational structure, administration and operational processes that guide, amongst others, the allocation of work, quality assurance mechanisms and balance between individual and organisational professional opinions;
- To apply the Effectiveness, Efficiency and Economic test in relation to human resource

capacity, budget allocations and performance;

- To establish whether the status of the OCSLA may be improved through providing the OCSLA with more operational independence;
- To establish whether the work of the OCSLA is enhancing the optimal functioning of government departments; and
- To establish whether the operations of the OCSLA have ever been reviewed, and if so, whether recommendations from such reviews were implemented and what the impact was.

The following are some of the findings of the study on the OCSLA:

- The Report indicates that there were mixed views from participants on whether the OCSLA is executing its mandate adequately to safeguard the independence of the OCSLA from the Department of Justice and Constitutional Development (DoJ&CD) and political interference.
- Out of a total of **1232** Laws that were enacted from 27 April 1994 to 2014, **26** Bills and Acts of Parliament were declared invalid and unconstitutional.
- Other challenges include increased workload, unrealistic timeframes, a duplication of services rendered with the Office of the State Attorney, the implementation of the Occupation Specific Dispensation (OSD) for qualified legal professions and insufficient or lack of continuous training.
- The majority of client departments and other stakeholders rated the competency levels of employees of the OCSLA as good. It seems that despite internal challenges, the perception of the majority of external stakeholders is still positive.

Based on the findings, the PSC made the following recommendations amongst others:

- The possibility of centralising the SLA function in terms of recruitment, quality assurance and performance standards, while still using a decentralised approach to service delivery through the deployment of capacity to the relevant sites by the OCSLA, should be investigated.
- Conduct a feasibility study into the establishment of an independent OCSLA through legislation (similar NPA). This may include setting it up as a public entity or an agency.

The full report can be accessed on the PSC website <http://www.psc.gov.za/>

2. REPORT ON THE ASSESSMENT OF THE EFFECTIVENESS AND EFFICIENCY OF THE OFFICE OF THE STATE ATTORNEY.

The OSA falls within the sub-programme: Litigation and Legal Services, in the DoJ&CD. The functions of the State Attorney are set out in section 3(1) of the same act as follows: *“... the performance in any court or in any part of the Republic as is by law, practice or custom performed by attorneys, notaries and conveyancers or by parliamentary agents: Provided that the functions in regard to his duties as parliamentary agent shall be subject to the*

Standing Rules of the respective Houses of Parliament.” The OSA therefore acts on behalf of the State.

In 2014 the Office of the State Attorney was criticized in the North Gauteng High Court for gross dereliction of duty by Judge Bertelsmann. Also, Judge Natvarial in a separate case criticised the State attorney for professional neglect. According to public perception, the majority of the court cases against government, which are estimated at 7 out of 10 cases, are lost, thus resulting in massive financial implications for government.

The court cases and public concern in relation to the OSA prompted the PSC to undertake a study into the effectiveness and efficiency of the processes and practices of the OSA. Through the study, the PSC also set out to establish whether there are clear service agreements between the OSA and government departments.

The aim of the study was to examine the effective, efficient and economic functioning of the OSA. The objectives of the study included the following:

- To assess the OSA’s mandate, in particular, the roles, status, powers and functions.
- To assess the organisational structure, administration and operational processes that guide, amongst others, the allocation of work, quality assurance mechanisms and balance between individual and organisational professional opinions.
- To apply the Effectiveness, Efficiency and Economy test in relation to human resource capacity, budget allocations and performance.
- To determine the relationship between the status of the OSA and the operational efficiency of the OSA.
- To establish whether the work of the OSA enhances the optimal functioning of government departments.
- Establish whether the operations of the OSA have ever been reviewed, and if so, whether recommendations from such reviews were implemented and the impact thereof.

The following are some of the findings of the study on the OSA:

- The Report reveals that from the limited information provided, it is evident that Rand value of legal costs is substantial in some of the sampled departments. For instance, the Department of Health indicated that it cost a total **R20 464 585** on cases settled over two financial years, whilst the Department of International Relations and Co-operation (DIRCO) had paid **R928 442.11** for briefs provided to counsel over three financial years. On the other hand, South African Police Service (SAPS): Litigation and Administration had spent **R5 931 700** for cases related to recovery of debt.
- A total amount of **R323 789 290.452** was spent by SAPS: Gauteng for cases that were decided against the department over the three financial years.
- Furthermore, documentation provided to the PSC by the OSA revealed that an amount of **R8 666 371** emanating from payment of invoices to a law firm was written off as

fruitless and wasteful expenditure. It is noted that the OSA is still engaged in a legal process to recover the over payments.

Based on the findings, the PSC made certain recommendations:

- The manner in which cases are allocated to attorneys at the OSA should be properly managed to ensure a more realistic distribution of work.
- An independent Work Study should be undertaken to determine whether the capacity of the office is sufficient to deal with the workload.
- A retention strategy should be developed to ensure that the OSA does not lose its highly qualified and competent employees.
- Recommendations that were made and have been ongoing as far back as 2012 and beyond should be implemented with specific emphasis on the implementation of a briefing policy to curb perceptions of corruption in briefing patterns.

The full report can be accessed on the PSC website <http://www.psc.gov.za/>

ISSUED BY THE PUBLIC SERVICE COMMISSION

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