



FINANCIAL AND FISCAL COMMISSION: A FRAMEWORK FOR SUPPORTING THE STANDING COMMITTEE ON APPROPRIATIONS

“For an Equitable Sharing of National Revenue”

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Financial and Fiscal Commission
Montrose Place (2nd Floor), Bekker Street,
Waterfall Park, Vorna Valley, Midrand,
Private Bag X69, Halfway House 1685

www.ffc.co.za

Tel: +27 11 207 2300

Fax: +27 86 589 1038

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LIST OF ACRONYMS

DoR	Division of Revenue
FFC	Financial and Fiscal Commission
IGFR	Intergovernmental Fiscal Relations
MBAPRMA	Money Bill Amendment Procedures and Related Matters Act
MDG	Millennium Development Goal
MTBPS	Medium Term Budget Policy Statement
NHI	National Health Insurance
PBO	Parliamentary Budget Office
PICC	President's Infrastructure Coordinating Commission

1. ROLE AND FUNCTION OF THE FINANCIAL AND FISCAL COMMISSION

- 1.1. The Financial and Fiscal Commission (FFC or the Commission) is an independent and impartial statutory institution, accountable to the legislatures, with the objective of contributing towards the creation and maintenance of an effective, equitable and sustainable system of intergovernmental fiscal relations¹ (IGFR), rendering advice to legislatures and organs of state regarding any financial and fiscal matter which has a bearing on IGFR. The mandate of the Commission derives from the Constitution of South Africa, specifically section 220 which states that the FFC, in performing its mandate, must consider all relevant factors including those listed in section 214(2) of the Constitution.

- 1.2. Section 221 of the Constitution requires that the set of FFC commissioners comprise a chairperson and deputy chairperson, three commissioners selected based on consultations with provincial premiers, two commissioners selected based on consultation with organised local government and two other selected persons. Commissioners are appointed by the President for a minimum of one term (five years) and a maximum of two terms (ten years). Part two of the FFC Act further describes the rules around membership of the Commission.

- 1.3. The FFC also derives its mandate from other pieces of legislation which include the:
 - (a) IGFR Act No. 97 of 1997 as amended: Sections 4(2A) and 7(2A) make provision for FFC to attend Budget Council and Budget Forum. Section 9 of this Act delineates when the Commission must submit its annual submission on the division of revenue to Parliament and the Minister. Section 10(3) requires the Minister to consult with the FFC prior to introducing the Division of Revenue Bill in the National Assembly. Section 10(5B) requires that the Minister detail the extent to which the recommendations and advice of the FFC has been factored into the Division of Revenue Bill
 - (b) FFC Act No. 99 of 1997 as amended: This Act gives effect to the constitutional requirements relating to the FFC. It details the functions and powers of the

¹ Intergovernmental Fiscal Relations (IGFR) concerns structure of public finance in a state with more than one level of government: How spending, taxing, borrowing and regulatory functions are distributed among levels of government, the nature of transfers (grants) between national, provincial and local levels and the Institutional mechanisms for coordination, monitoring, support, supervision and intervention.

Commission, membership of the Commission, administrative and staff matters and aspects related to the finances of the Commission

- (c) Municipal Systems Act No. 32 of 2000 as amended: Section 9 of this Act delineates the role of the Commission in the case of assignments initiated by the Executive to municipalities
- (d) Provincial Tax Regulation Process Act No. 53 of 2001 as amended: Section 3(4B) of this Act requires the Commission to be consulted and comment on the imposition of any new provincial tax.
- (e) Municipal Finance Management Act No. 56 of 2003 as amended: Section 4 of this Act requires that any draft national legislation directly or indirectly amending the Municipal Finance Management Act or conflicting with the Act, may only be introduced once the Minister and the FFC have been consulted.
- (f) Intergovernmental Relations Framework Act No. 13 of 2005 as amended: This Act applies to, amongst others, any constitutionally independent institution. The Act provides a framework to facilitate intergovernmental relations and procedures to facilitate the settlement of intergovernmental disputes.
- (g) Municipal Fiscal Powers and Functions Act No. 12 of 2007: Section 4 of this Act requires the Minister to first consult with the FFC prior to authorising a new municipal tax. Section 10 of this Act enjoins the Minister to consult with the FFC prior to passing regulations regarding any matter prescribed in terms of the Municipal Fiscal Powers and Functions Act, or in the case where a decision must be made regarding the appropriate division of fiscal powers and function where two municipalities have similar fiscal powers and functions over the same area.
- (h) Money Bills Amendment Procedure and Related Matters Act No. 9 of 2009: Section 4(4C) enjoins the appropriations committees to consider the recommendations of the FFC when considering any money bill. Section 9(7A) further requires that the committees on appropriations consult with the FFC when passing the Division of Revenue Bill.

1.4. In carrying out its mandate, the Commission has adopted a set of operational guidelines namely:

- (a) Respect the constitutional status of each sphere of Government
- (b) Adhere to Constitutional principles

- (c) Is mindful of the fact that the Constitution's Bill of Rights mandates the provision of basic services
- (d) Consider other principles of good intergovernmental fiscal relations
- (e) Undertake extensive research to inform the basis of its recommendations
- (f) Take into consideration stated government programme objectives and priorities

1.5. The Commission gives advice and makes recommendations as envisaged in Chapter 13 of the Constitution, and any national legislation to Parliament, provincial legislatures and any other authorities determined by national legislation. This mandate can be distilled into three broad areas:

(a) *The Commission must make recommendations to Parliament and provincial legislatures on the equitable division of nationally raised revenue:* It is in the Commission's mandate to apprise itself of all matters relating to the equitable division of nationally raised revenue including equitable share grants, conditional grants and any other grants annually. In this respect, the Commission has in the past, predominantly focused its recommendations on the horizontal division of revenue. Increasingly however, the Commission is making recommendations that affect the vertical division². The first set of issues that the Commission institutionalised as guiding principles for carrying out its mandate in 1995 can be summarised as follows and have generally been applied on the horizontal division of revenue and related matters:

- Equitable financial resources to perform assigned functions
- Predictable and objectively arrived-at allocations
- Sufficiency of resources to ensure the provision of minimum levels of basic services including administrative responsibilities
- Financing of unique national services
- Reasonable fiscal autonomy for provinces and municipalities
- Progressively addressing and eliminating backlogs, poverty, economic disparities, and meeting developmental need
- Supporting long-term economic growth objectives of the country

² This includes work on the Constitutionally Mandated Basic Services (CMBS) Model as well as research focussing on a range of other macro issues

- Supporting the development of democratic and accountable government
- Closing the fiscal gap both horizontally and vertically (grants, taxes and loans)
- Ensuring transparency in the budget process (budget reforms)

These matters that were addressed by the Commission quite widely in its 1995 framework document, constitute the foundation of what is contained in section 214(2A-J) of the Constitution. In assessing the vertical division, the FFC should consider:

- Credible projected macro-economic and fiscal environment (revenue, debt, inflation, expenditure)
- Fair costing of services based on minimum norms and standards or similar approach
- Clearly defined objectives and targets around the progressive realisation of constitutionally mandated basic services
- Addressing backlogs and other infrastructure requirements
- Adapting to function shifts among and across spheres of government

Further to the requirements on this mandate as enabled by section 9 of the IGFR Act of 1997 (annual submission on the division of revenue), the FFC Act enables the Commission to conduct research and make recommendations on any other financial and fiscal matter with a bearing on the IGFR system upon request by organs of state or of its own accord. The Commission must table and submit all legislatively required inputs to Parliament. This includes for example the Commission's Annual Submission on the Division of Revenue, its annual report and other inputs into the annual division of revenue process. While the Annual Submission should be submitted to the Minister as well in terms of the IGFR Act, there is no such requirement for the Commission to submit to the Minister reports that it prepares of its own accord. The requirement is that such reports have to be tabled in Parliament and the provincial legislatures or any other organ of state authorised by national legislation. All the Commission's outputs, whether required

in terms of legislation, or prepared out of its own initiative, are publicly accessible on its website (www.ffc.co.za).

- (b) *The Commission can make recommendations on any other financial and fiscal matters:* The passing of the enabling legislation to allow Parliament to amend the money bill (Money Bills Amendment Procedure and Related Matters Act (MBAPRMA) of 1999) provides some direction in the way that the Commission can add meaning to its mandate. To fulfil the requirements of the MBAPRMA, the Commission has to look at the issues of government expenditure and the funding mechanisms for such spending with a view to safeguarding the credibility and long-term sustainability of the fiscal frameworks. In doing this, it is then within the mandate of the Commission to for example examine, evaluate or make recommendations on the suitability or appropriateness of any norms and standards applicable to the implementation of government programs be they on the spending or the financing side. Furthermore it is well within the mandate of the Commission to examine, review or make recommendations on the appropriateness of indicators for policy outcomes, delivery outputs and financial inputs across the spheres of government in the pursuit of objectives around the progressive realisation of constitutionally mandated basic services
- (c) *The Commission should contribute towards the creation and maintenance of an effective, equitable and sustainable system of IGFR:* The Commission has a unique position and a strong role to play in the evolution of the IGFR system. The IGFR Act allows the Commission to participate in the Budget Council and the Budget Forum as an observer. The Commission can contribute immensely through influencing discussions here especially since its inputs are underpinned by a long-term research perspective. It is also important that the protocols for the Commission's participation are well defined. This is something that has to be done by the Commission in consultation with the Minister. These protocols can also be extended to other intergovernmental fora, (for example, provincial excos, minmeccs, SALGA, etc.) as deemed relevant to the work of the advancing the principles of an evolving IGFR system.

It is well within the Commission's mandate in this respect to contribute through research to public debate in a manner that clarifies the linkages between fiscal decisions and the policy decisions required or adopted by government. These include progressive realisation of constitutionally mandated socio-economic rights and initiatives with respect to poverty alleviation and reduction, and international commitments such as the Millennium Development Goals (MDG's). It is well within the Commission's mandate to create and maintain functional relationships with its broader stakeholder base through enriching its research program, building human capacity within the country for the conduct of IGFR and encouraging a broader discourse within society on important fiscal and financial issues which are among the most important decisions of government. The Commission is also expected to respond to requests or legislation referred to it due to intergovernmental financial and fiscal dimensions involved. Such referrals can be comprehensive in scope with implications cutting across the three spheres of government, e.g. the National Health Insurance (NHI) and the Comprehensive Social Security Reform. Others may yet be more limited in scope but in either case it is in the mandate of the Commission to apprise itself on all of these matters through its research and recommendations program.

- 1.6. The three pillar mandate discussed above is executed through focused research, recommendations and policy advice and outreach activities (including public hearings, training, briefings and publications). The Commission has successfully interpreted its mandate over the past 18 years of its existence. Generally the Commission has also been able to respond to the demands of its mandate although there have been healthy tensions between the Commission and Government on occasion. The tension has resulted in the Commission having to continuously evaluate its engagement with government through its recommendations process and been very successful in maintaining what has been referred to by a past Commissioner as an "attentionable" relationship with Government.
- 1.7. Another important advisory task for the Commission relates to recommendations on assignments between spheres of government. In terms of section 3 of the FFC Act (No. 99 of 1997 as amended), the Commission serves to act as a consultative body that makes recommendations and provides advice to organs of state on financial and fiscal matters. These functions may be performed either at the request of an organ of state or through

the Commission's own initiative. Section 3(2A) makes specific reference of the Commission's role with respect to one sphere of government seeking to assign any power or function to an organ of state in another sphere of government. This section enjoins organs of state to:

- (a) Notify the Commission of the fiscal and financial implications of such assignments on the future division of revenue
- (b) Request the recommendation or advice of the Commission regarding such an assignment.

Section 3(2A)(c) of the FFC Act further stipulates that any shift in the assignment of a function from one sphere to another has no legal force unless the FFC's advice and/or recommendations have been taken into account. In its 2014 Submission on the Division of Revenue (DoR) Bill³, the Commission noted the increased frequency with which functions are being moved around between provincial, local and national government with disregard for due processes. The law requires the Commission to carry out an assessment of the fiscal implication for the division of revenue when functions are assigned. In 2007, the Commission devised a comprehensive check-list regarding critical aspects that organs of state need to consider when contemplating function shifts⁴. A recent example where the Commission was not consulted prior to a function being shifted is with respect to Further Education and Training (FET) colleges being shifted from the provincial to the national sphere. The Commission is concerned that this type of behaviour not only violates due process but also puts at risk the integrity of the fiscal system and can lead to distortions to the division of revenue and budget process. With respect to the shifting of the FET colleges for example, the legislation⁵ giving effect to the shift becomes valid as of 01 April 2014. However the funding related to the function has yet to be transferred from provinces to the national Department of Higher Education and Training.

- 1.8. The Commission has established a parliamentary liaison office in Cape Town to act as an interface between the Commission and Parliament. Due to the monitoring and tracking

³ This document can be accessed on the FFC website at: www.ffc.co.za

⁴ This document can be accessed at: <http://www.ffc.co.za/index.php/reports/other-reports>

⁵ FET Colleges Act (No 3 of 2012)

of parliamentary activities relevant for the Commission, there has been an increased presence of the FFC in Parliament.

2. FFC SUPPORT DURING THE BUDGET PROCESS

2.1 DIVISION OF REVENUE AND FFC: The Commission's regular and annual engagement with the Division of Revenue Bill takes three forms:

- (a) In the first instance, the Commission produces recommendations on the equitable division of revenue amongst the three spheres of government. This is done in terms of Section 9(1) of the IGFR Act. The recommendations are accompanied by a technical report and simpler policy briefs – all of which are accessible on the Commission's website (www.ffc.co.za)
- (b) The Minister must consult the Commission fourteen days prior to the introduction of the Division of Revenue Bill in Parliament. In addition, government's response to the Commission's recommendations must accompany the Division of Revenue Bill – this is required in terms of Sections 10(3) and 10(4) of the FFC Act. Government's response is documented as part of Annexure W1.
- (c) Finally, the Commission produces its third document which takes the form of a response to the Division of Revenue Bill

2.2 MBAPRMA AND FFC: There are two sections in the MBAPRMA that make specific reference to and impact upon the FFC, namely section 4(4C) and section 9(7A). These sections require the following:

- (a) Section 4(4C): requires that when committees on appropriations consider any money bill, the recommendations of the FFC must be considered and/or reported on
- (b) Section 9(7A): requires that in passing the annual division of revenue bill, the appropriations committees must consult with the FFC

2.3 INCORPORATING MBAPRMA REQUIREMENTS INTO FFC'S ACTIVITIES: In fulfilling the requirements of section 4(4C) and section 9(7A) of the MBAPRMA, the Commission provides the following outputs/reports:

- (a) Submission on the Appropriation Bill: The submission is made annually to the Standing and Select Committees on Appropriations. Commission submissions on

the Appropriation Bill commenced in 2011 and have been submitted consistently each year since then. The Commission's most recent input was on the 2014 Appropriation Bill which was presented to the Committee on the 09th July 2014

(b) In addition to the outputs detailed in sections 2.1. and 2.3., the Commission also produces the following outputs:

- Submission on the Fiscal Framework and Revenue Proposals: This input contains the FFC's response to the fiscal framework and revenue proposals contained in the annual budget tabled by the Minister.
- Submission on the Medium Term Budget Policy Statement (MTBPS): This report contains the FFC's response to the MTBPS and adjustments to the division of revenue.
- Any other special reports made at the own initiative of the Commission or requests by organs of state

2.4 VALUE FOR MONEY IN PUBLIC SERVICES: The Commission's research strategy has shifted focus from aspects related to access to services to more second generation issues that underpin sustainable resources allocation – this includes a closer look at the key area of allocative efficiency and value for taxpayers' money.

2.5 MONITORING INFRASTRUCTURE EXPENDITURE: Significant investment in infrastructure has been made to spur on economic growth and employment. To improve oversight over infrastructure expenditure, the FFC would recommend the Committee to explore the following options:

- (a) Institute regular reporting by the President's Infrastructure Coordinating Commission (PICC): The PICC was established in 2011 to fast-track infrastructure development – it has prioritised eighteen strategic infrastructure projects. The PICC's mandate is to ensure selection, planning and monitoring of implementation of large infrastructure projects. The Committee could therefore benefit through regular reports by the PICC
- (b) Institute regular reporting by relevant sector departments and the National Treasury: Generally infrastructure projects are funded via conditional grants. Grant recipients report to the relevant sector department and the National Treasury regarding expenditure and roll-out of infrastructure projects. Again, the Committee

could benefit through regular interactions and reports by sector departments and the National Treasury

- (c) Oversight visits: Site visits to assess progress of infrastructure projects are valuable in confirming reports from departments and other organs of state.

2.6 PARLIAMENTARY BUDGET OFFICE: The South African Parliamentary Budget Office (PBO) is established in terms of Section 15 of the MBAPRMA. The mandate of the PBO is much broader than that of the FFC. While the PBO’s purview extends across the entire gamut of the macroeconomic, fiscal, financial, public economics and public finance domain, the FFC’s sphere of influence is more specialised and restricted to IGFR. Table 1 below outlines the key differences and areas of overlap between the FFC and the PBO.

Table 1. Key Differences and Overlaps between the FFC and the PBO

FISCAL & FINANCIAL POLICY AREA	PBO FOCUS	FFC FOCUS
Coordination of fiscal and monetary policy	Key focus of PBO	Beyond the remit of FFC
Coordination of fiscal, exchange rate, trade and industrial policy	Key focus of PBO	Beyond the remit of FFC
Coordination of fiscal policy and labour market regulation	Key focus of PBO	Beyond the remit of FFC
Broad economy and sector wide outlook	Key focus of PBO comprehensively for domestic and global economy	Focus of FFC in relation to the fiscal framework
Fiscal Framework: assumptions, aggregate revenues and expenditures	Key focus of PBO	Focus of FFC in so far as it impacts on IGFR
Unfunded Mandates	Statutory focus of PBO	Focus of FFC is on unfunded mandates occurring at interface between sphere of government only
Revenue Management	Key focus of PBO	Subnational revenue management primarily
Debt management and deficit financing	Key focus on the PBO	FFC focus is on top-slice, aggregate debt only to the extent it impacts DoR, and subnational
Revenue sharing: DoR and conditional grant design	Secondary focus of PBO,	Primary focus of FFC, focussing within spheres and interface across spheres
Public expenditure management	PBO needs to support the budget oversight role of Parliament and will focus on	FFC does not analyse individual appropriations, but focuses on transversal public expenditure

	individual departments and public institutions	management issues that have broad impact across/between spheres, or across a particular sector (mainly for concurrent functions)
Monitoring and evaluation	PBO focuses on achievement of value for money obtained across all outcomes of the executive	FFC focuses primarily on developmental impact of concurrent functions
Costing of new legislation and significant legislative amendments	Primary focus of the PBO	Only relevant in so far as new legislation has intergovernmental fiscal implications

3. OVERVIEW OF SUPPORT AND INTERVENTIONS PROVIDED BY THE FFC

3.1 The FFC provides direct and indirect types of support and interventions as follows:

3.2 DIRECT INTERVENTIONS AND SUPPORT:

- (a) Training on request, by members of parliamentary committees, parliamentary researchers and councillors (for example training on utilising budget analysis as a tool to enhance fiscal oversight, was conducted with parliamentary researchers in 2013. In 2012 councillor training focussing on the IGFR system and the various tools that be used to conduct oversight was carried out in Bushbuckridge).
- (a) Providing advice to municipalities (a recent example includes the advice provided to the City of Tshwane regarding the merger of Metsweding district municipalities and its accompanying local municipalities, into the borders of the City).
- (b) Inputs in various fora such as regular presentations to the South African Local Government Association (SALGA).
- (c) Recommendations through the Commission’s Annual Submission on the Division of Revenue: annually the Commission makes recommendations to Parliament on a variety of critical IGFR issues.

3.3 INDIRECT INTERVENTIONS AND SUPPORT:

- (a) Member of review committees: this includes the committees established to review the local government equitable share formula, conditional infrastructure grants and the own revenue instruments available to metropolitan municipalities.

- (b) Public hearings: the Commission has incorporated the use of public hearings into the array of methodological approaches it employs to provide high quality policy advice. Public hearings have been held with respect to the local government fiscal framework (in 2012), housing finance (in 2013) and child welfare services (in 2013).
- (c) Inputs into benchmarking exercises: The FFC's Local Government Unit regularly attends and provides input at the National Treasury's benchmarking exercise hosted with municipalities.
- (d) Rapid response requests from Parliament for Commission inputs on various issues: Examples range from briefing committees on aspects critical to IGFR such as the state of electricity distribution and provision of free basic electricity in South Africa to requests for the Commission to assess the performance and strategic plans of specific departments as part of parliamentary committee inputs to budget review and recommendations reports.
- (e) Other forms of dissemination which include press releases, presentations at conferences and academic or popular media publications all of which contribute knowledge in the IGFR field.

3.4 ENHANCING THE PARTNERSHIP BETWEEN THE FFC AND THE STANDING COMMITTEE ON APPROPRIATIONS

- (a) The value add that the Commission brings is through its provision of advice, analysis and training to assist the work of the Standing Committee on Appropriations. This includes:
 - Specialised IGFR training to committee members and/or parliamentary researchers
 - Provision of recommendations that are founded on evidence-based research
 - Technical support with respect to parliamentary fiscal oversight activities
 - Readily available recommendations and reports in the public domain
- (b) To ensure relevance of its outputs, one of the key avenues through which the Commission identifies and prioritises areas for research is through attendance and monitoring of parliamentary committee interactions and requests. The Commission is open to and would encourage the Committee to inform the FFC of any research areas it considers to be key.

3.5 OPPORTUNITIES FOR ENHANCING PUBLIC PARTICIPATION IN THE BUDGET PROCESS

- (a) Enhancing public participation in the budget process has many advantages including:
- Citizens feel engaged, empowered and involved in public policy decision-making
 - Public participation can serve to ensure that the interests of vulnerable groups can be better protected
 - Public participation can assist in making government more accountable to citizens. The spin-off is that as accountability increases, opportunities for waste and fraud can be reduced.
- (b) Forging stronger ties with civil society organisations can serve to facilitate greater public participation in budget processes. These efforts should be particularly directed at subnational levels of government so as to strengthen participation at local level.

4. CONCLUSION

- 4.1 The Commission has in the past established fruitful working relations with the Appropriations Committee and looks forward to continuing in this fashion and supporting the Committee in carrying out its fiscal oversight function.