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OUTA comments on the Public Administration Management Regulations for the Central Register

Submission by the Organisation Undoing Tax Abuse to The Director General: The Department of Public Service and Administration.

**Compiled by:
OUTA**

Tel: 087 170 0639
www.oua.co.za

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TO: The Director General
Department of Public Service and Administration

C/O: Dr Salomon Hoogenraad-Vermaak
Ms Pleasure Matshego

PER: (Email) [REDACTED]
[REDACTED]

**COMMENTS ON THE PROPOSED REGULATIONS TO THE PUBLIC ADMINISTRATION
MANAGEMENT REGULATIONS FOR THE CENTRAL REGISTER**

1. INTRODUCTION:

- 1.1 The Organisation Undoing Tax Abuse (OUTA) is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority, in particular the abuse of taxpayers' money.
- 1.2 OUTA is a strong promoter of effective legislation and regulations that emphasises the importance of enhancing administrative powers, strengthening accountability mechanisms, and improving efficiency in the public service.
- 1.3 The Public Administration Management Regulations for the Central Register ("PAMR") introduces the establishment of a central register and refers to a set of rules that govern the operation of a central database designed to record details of public service employees who have been dismissed for misconduct or resigned while facing disciplinary action, essentially acting as a tracking system for employee disciplinary issues across the public sector.

- 1.4 OUTA believes that these reforms are essential for building institutional capacity and an enhanced sense of ethics and service, so that professionalism is not only dictated by statutory professional oversight bodies but also by a built-in culture of good governance and selfless duty.
- 1.5 As a matter of principle, OUTA does not oppose the introduction of new laws and regulations by government but rather wishes to ensure that these laws and regulations are capable of effective execution and are aligned with the basic principles envisaged in our Constitution.
- 1.6 After having perused the proposed regulation, OUTA herewith wishes to provide the following comments.

2. OUTA'S COMMENTS:

2.1 THE ESTABLISHMENT OF A CENRAL REGISTER (NO CONSEQUENCE MANAGEMENT)

- 2.1.1 OUTA is of the opinion that the establishment of this central register is a step in the right direction for public governance and to ensure that the right individuals are being employed in the public service.
- 2.1.2 OUTA maintains that one of the public service's weakest areas has been the shuffling of employees who have been disciplined or even dismissed, to other posts. These new regulations will improve accountability and tackle corruption by tracking the movement of such employees and will prevent those public servants with disciplinary records from being appointed in another government department.
- 2.1.3 Although the proposed central register can be of great importance, OUTA is concerned about the lack of consequence management for the heads of institutions who do not adhere to the proposed regulation and institutions who do not consult this register before appointing individuals.

- 2.1.4 If these heads of institutions and/ or institutions do not consult the register before appointing individuals, we believe it would circumvent the entire purpose of the regulations which is to maintain transparency and accountability within the public service by keeping a record of employees who have been removed due to a disciplinary issue.
- 2.1.5 With the above in mind, OUTA strongly believes that for legislation and/ or regulations to be effective, it needs to be enforceable. If legislation and/ or regulations cannot be enforced it becomes moot, and government loses the public's trust. As such, OUTA is of the opinion that these regulations should include "sanctions" that can be implemented against heads of institutions and/ or institutions who do not comply with the regulations.
- 2.1.6 The wording of the regulations (where it states that heads of institutions and institutions MUST perform a certain function) implies that the heads of institutions and/ or institutions do not have a discretion on whether they wish to adhere to these regulations or not but rather that if they do not adhere to it that there will be consequences.
- 2.1.7 Unfortunately, these regulations do not set out any sanctions or penalty clauses and as such OUTA strongly urges the Department to include sanctions and/ or penalty clauses for non-compliance with these regulations. Examples of penalties and/ or sanctions could for example be disciplinary action against officials who ignore these regulations, financial penalties for institutions who do not comply with the regulations, instructing institutions to report their compliance publicly and/ or allowing oversight bodies to step in if the regulations aren't adhered to.

2.2 THE PUBLIC'S ACCESS TO THE CENTRAL REGISTER:

- 2.2.1 Further to the above, public interest refers to the well-being, welfare and rights of the general population or the community. It is a principle that guides government actions, public policy and legal decisions to prioritise the common good over individual or private interests.

2.2.2 OUTA believes that due to the overwhelming public interest, access to the register should be made available to the public through the Department of Public Service and Administration's website.

2.2.3 Although OUTA is alive to the limitations that The Protection of Personal Information Act (POPIA) might have on the public's access to the central register, it should not deter the Department to consider giving access to this register to the public.

2.3 CONCERNS AND INTERVENTIONS FOR MISUSE OR INAPPROPRIATE LISTINGS

2.3.1 Further to the above, OUTA believes that the regulations should include an option to address the listing of individuals who have been falsely dismissed or suspended, due to their role in raising concerns or whistleblowing against wrongdoing within Government departments.

2.3.2 We have witnessed on many occasions, the dismissal of employees from Government departments and municipalities based on trumped up charges, largely because these individuals stood up to the abuse of power or raised the alarm on nefarious activities or maladministration within their respective departments.

2.3.3 OUTA believes that a mechanism and/ or process (either in the form of an Appeal or Review process) needs to be introduced in the regulations to circumvent such incidents of maliciously listing of individuals. Individuals ought to have the opportunity to provide reasons why their listing would be inappropriate, irrational and/ or unreasonable and why it would be in contravention of, or work against the purpose of this "central register". Furthermore, those individuals that can prove that the allegations levelled against them were unfounded or were found not guilty of the misconduct by a competent court of law or tribunal, should have the option to apply for the removal of their names from the "central register".

3. CONCLUSION:

- 3.1 In conclusion, while OUTA recognises the establishment of the central register as a positive step towards improving public governance and accountability, we have concerns about the lack of consequence management for non-compliance. The absence of penalties and/ or sanctions for heads of institutions and institutions that fail to adhere to the proposed regulations, could undermine the register's effectiveness and ultimately hinder the goal of fostering transparency and accountability in the public service.
- 3.2 To ensure these regulations achieve their intended purpose, OUTA strongly recommends that public access to the register should be prioritised to uphold the principle of public interest and that individuals should be protected from wrongful listings, especially those who have been unjustly penalised for whistleblowing or raising concerns. OUTA suggests implementing a mechanism for review and/ or appeal. This would provide a safeguard against malicious or incorrect entries, ensuring that the register serves its true purpose of fostering integrity in the public service.
- 3.3 OUTA's aim is to ensure that public funds are used efficiently and effectively, with a focus on fighting corruption and ensuring that taxpayers' money benefits society rather than being misused. This vision is part of OUTA's ongoing efforts to promote strong institutions and a fair society, where citizens can trust that their taxes are being used for the common good.
- 3.4 We reiterate that OUTA does not oppose the introduction of new laws and regulations by government but rather wishes to ensure that these laws and regulations are capable of effective execution and are aligned with the basic principles envisaged in our Constitution.
- 3.5 We thank the department in advance for their consideration of our above comments.