



**NEDLAC REPORT ON THE NATIONAL WATER RESOURCE INFRASTRUCTURE  
AGENCY BILL  
AUGUST 2023**

**1. BACKGROUND**

- 1.1. On 16 September 2022, the Department of Water and Sanitation (DWS) published the draft National Water Resource Infrastructure Agency (NWRIA) Bill for public comment. The objective of the Bill is to establish an Agency responsible for water resource infrastructure as a Schedule 2 major public entity under the Public Finance Management Act 1 of 1999. The public had 90 days to submit comments.
- 1.2. On 12 December 2022 Government presented the Bill at the Development Chamber meeting. It was agreed that a six-aside task team will be established to engage on the Bill, however, Government needed to incorporate the public comments into the Bill prior to tabling at Nedlac.
- 1.3. On 13 February 2023, Government advised Nedlac that the Minister of Water and Sanitation, Mr. Senzo Mchunu had extended the public submission to the NWRIA Bill until 17 March 2023.
- 1.4. Government (DWS) thereafter tabled the NWRIA Bill at the six-aside task team meeting held on 03 May 2023 for engagement.
- 1.5. This Nedlac Report provides a summary of the process at Nedlac and outlines the agreed amendments and recommendations arising from the task team engagements on the NWRIA Bill.

**2. PURPOSE OF THE NATIONAL WATER RESOURCE INFRASTRUCTURE AGENCY  
BILL**

- 2.1. The Bill seeks to provide for:
  - 2.1.1. The incorporation and establishment of the South African National Water Resources Infrastructure Agency Limited as a state-owned company and major public entity owned and controlled by the State. The Agency is

established to administer, fund, finance, provide, operate, maintain, and provide advisory services in respect of water infrastructure as per sections 10, 11, 24, 27(1)(b) and 27(2) of the Constitution and relevant national policy;

2.1.2. The transfer of assets and certain liabilities to the South African National Water Resources Infrastructure Agency Limited from the Department of Water and Sanitation and the Trans-Caledon Tunnel Authority; and

2.1.3. The disestablishment of the Trans-Caledon Tunnel Authority.

### 3. PROCESS AT NEDLAC

3.1. The Department of Water and Sanitation tabled the National Water Resource Infrastructure Agency Bill at the first meeting of the NWRIA Bill Task Team held on 03 May 2023.

3.2. The task team agreed that the Bill would be engaged chapter by chapter and they should strive to reach a consensus on the issues.

3.3. The Task Team convened six (6) meetings on the following dates:

3.3.1. 03 May 2023

3.3.2. 16 May 2023

3.3.3. 01 June 2023

3.3.4. 04 July 2023

3.3.5. 31 July 2023

3.3.6. 08 August 2023

3.4. The following documents were presented to the task team and will be annexed to this report as follows:

3.4.1. **Annexure A:** National Water Resource Infrastructure Agency Bill

3.4.2. **Annexure B:** Socio-Economic Impact Assessment

3.4.3. **Annexure C:** Business Case on the Water Infrastructure Resource Agency

3.5. At the end of the process, there were areas in which agreement was reached by social partners on the Bill presented by Government, as well as areas where social partners proposed changes. The section below outlines the sections in the Bill where amendments were proposed by social partners and agreed upon by Government, areas of agreements with comments for Government to consider when amending the Bill and areas of disagreement/s.

**4. AREAS OF AGREEMENT**

4.1. The task team agreed to amend the following sections of the Bill with proposals made as follows:

**[text\*] denotes deletion and \_\_\_\_\_ denotes insertion]**

CHAPTERS AS PER THE BILL	Views of Nedlac Social Partners on proposed amendments	Amendments Agreed to by all Nedlac Social Partners
Preamble	The support of socio-economic development or developmental objectives of the state and transformation needed to be included.	<p>Government agreed to reword the Preamble as follows:</p> <p><b>RECOGNISING</b> that a juristic person wholly owned by the State to administer, fund, finance, implement, develop, alter, maintain, rehabilitate, refurbish, operate and manage the national water resources infrastructure, to provide advisory services relating to such infrastructure and to do all things necessary to fulfil the functions entrusted to it under this Act, <b><u>including propelling the State’s socio-economic and transformation agenda</u></b> must be established to meet the obligations as set out in sections 10, 11, 24, 27(1)(b) and 27(2) of the Constitution in relation to water,</p> <p><b><u>BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,</u></b></p> <p><b><u>S7 (4) The Agency must promote the development of projects that meet social needs and must facilitate suitable financial arrangements for the funding thereof.</u></b></p>

CHAPTERS AS PER THE BILL	Views of Nedlac Social Partners on proposed amendments	Amendments Agreed to by all Nedlac Social Partners
Chapter 1 – Definitions and Purpose	The definition of “waterwork” in this Bill should be aligned with the amended National Water Act (NWA) “waterwork” definition.	<p>It was noted that once the definition of “waterwork” has been changed in the NWA, the new definition will automatically apply.</p> <p>It was agreed that the definition of “waterwork” would be expanded in the amended NWA as follows:  <u><b>waterwork includes any borehole, dam, weir, canal, pipeline, siphon, pump station, reservoir, structure, earthwork or equipment installed or used for or in connection with water use.</b></u></p>
Chapter 3 - Governance of Agency	<p><b>10. Principles to guide the Board</b></p> <p>Proposals were made to strengthen the wording to embed ethical practices and good governance as per King IV, the PFMA, and National Treasury regulations.</p>	<p>It was agreed that Government would reword the clause as follows:</p> <p><b>10.</b> The Board, as the accounting authority of the Agency, is guided by <u><b>ethical and good governance practices articulated in the legislative prescripts, including the Companies Act and the PFMA, as well as</b></u> the principles in governance codes of best practice, including King IV.</p>

CHAPTERS AS PER THE BILL	Views of Nedlac Social Partners on proposed amendments	Amendments Agreed to by all Nedlac Social Partners
	<p><b>11. Appointment of the board</b></p> <p>Community stated that the wording of clause 13 should refer to credible persons with good standing in the Community.</p> <p>Labour stated that the wording should be inclusive of the labour force (i.e. voice of the workers).</p>	<p>Government reworded the clause as follows:</p> <p>(3) In establishing a committee, the Minister must ensure that the committee is constituted with special attention to <b><u>fit and proper, suitably qualified, and experienced persons</u></b> with relevant expertise, race, gender, disability and geographical spread.</p>
	<p><b>11. Appointment of the board</b></p> <p>Clause 4: Business stated that wording which will include people with appropriate competencies to execute their duties on the boards should be added to this clause.</p>	<p>Government reworded the clause as follows:</p> <p>(4) The committee, in making recommendations to the Minister, must consider—</p> <p>(a) the proven skills, knowledge and experience <b><u>and professional registrations</u></b> of an applicant on issues of—</p>

CHAPTERS AS PER THE BILL	Views of Nedlac Social Partners on proposed amendments	Amendments Agreed to by all Nedlac Social Partners
	<p><b>11. Appointment of the board</b></p> <p>Community proposed that an extra clause be added which includes the civil society on the board.</p>	<p>(4) The committee, in making its recommendations, must include members with at least 15 years' experience each, as either—</p> <p>(a) a chief financial officer of a listed company;</p> <p>(b) a senior engineer in a management position in the water sector;</p> <p>(c) an attorney or advocate of the High Court of South Africa with experience in commercial law and the law governing public entities; or</p> <p>(d) a senior representative of organised business with substantial experience of major water-dependent sectors of the economy.</p> <p><b><u>(e) an experienced civil society leader with knowledge and skills in the built environment field with experience in water, sanitation, and civil engineering.</u></b></p>
	<p><b>13. Terms of office and conditions of appointment of non-executive Board members</b></p> <p>Community proposed that the term should not be five years but three years to ensure continuity.</p>	<p>Government reworded the term as follows:</p> <p>A member contemplated in section 8(3)(a)—</p> <p>(a) holds office for a term not exceeding five years on a part-time basis;</p> <p>(b) may be recommended for re-appointment <b><u>for a maximum period of three years</u></b> to ensure continuity, but may not serve for more than two consecutive terms;</p>

CHAPTERS AS PER THE BILL	Views of Nedlac Social Partners on proposed amendments	Amendments Agreed to by all Nedlac Social Partners
Chapter 4 - Executive Officer and Chief Financial Officer	Business stated that the accountability of the CFO should also be specified in the Bill.	<p><b>25. Terms of office and conditions of appointment of Chief Executive Officer (CEO) and Chief Financial Officer (CFO)</b></p> <p>(6) The Chief Executive Officer is accountable to the Board <b><u>and the Chief Financial Officer is accountable to the Chief Executive Officer.</u></b></p>
	<p><b>26. Appointment of person to act as Chief Executive Officer or Chief Financial Officer</b></p> <p>The person appointed to act must be an employee of the Agency not just any person. Government must consider revising clauses (2) and (3) (a)</p>	<p><b>26. Appointment of person to act as Chief Executive Officer or Chief Financial Officer</b></p> <p>(2) If the Chief Executive Officer is absent or is unable to carry out his or her duties or if there is a vacancy in the Office of the Chief Executive Officer, for a period of less than two months, the Board may, without the approval of the Minister, appoint <b><u>a suitable and qualified [any]</u></b> person to act as Chief Executive Officer.</p> <p>(3) (a) If the Chief Financial Officer is absent for a period of more than two months or is unable to carry out her or his duties or if there is a vacancy in the Office of the Chief Financial Officer, the Chief Executive Officer may, with the approval of the Board, appoint <b><u>a suitable and qualified [any]</u></b> person. <b>[who meets the requirements]</b></p>

CHAPTERS AS PER THE BILL	Views of Nedlac Social Partners on proposed amendments	Amendments Agreed to by all Nedlac Social Partners
Chapter 7 - Powers of Minister	<p><b>45. Additional functions</b></p> <p>In clause 2, it was proposed that the word “any” should be removed, to avoid unintended interpretations.</p>	<p><b>Government reworded the clause as follows:</b></p> <p>2) The Agency may perform [any] additional functions if—</p> <p>(a) it does not limit its capacity to perform its functions;</p> <p>(b) it is not to the financial prejudice of the Agency; or</p> <p>(c) it is not likely to detrimentally affect another water management institution or if it is not likely to be to the financial prejudice of its clients or stakeholders.</p>

4.2. The task team agreed on the following sections of the Bill subject to consideration of the comments as follows:

CHAPTERS AS PER THE BILL	Views of social partners	Outcome at Nedlac
Chapter 2- Establishment of the agency	<p><b>3. Establishment of Agency</b></p> <p>The agency should be a Human-centered and Fit for Purpose State Owned Entity that is obligated to serve the developmental priorities of the state.</p> <p>Business emphasised that the role of the agency needed to be clarified so that it does not interfere with the roles of the Department</p> <p>Government confirmed that the role of the agency will be distinguished from that of the Department.</p>	<p>Government agreed that the essence of being a human centred and fit for purpose state owned entity would be included in the preamble to the NWRIA Bill.</p> <p>It was therefore agreed that the agency’s role and the Department’s role would be distinct.</p>



CHAPTERS AS PER THE BILL	Views of social partners	Outcome at Nedlac
	<p><b>6. Objects of Agency</b></p> <p>Business stated:</p> <p><i>Section 6 1(b)</i> meet obligations set out in sections 10, 11, 24, 27(1)(b), and 27(2) of the Constitution and national and regional social and economic objectives of national policy;</p> <p>The abovementioned is an obligation of the state, more specifically the Department of Water and Sanitation. The water right is a shared competency of national, provincial, and local governments. The National Government, through the Department of Water Affairs, is primarily responsible for setting national policy frameworks and standards for service delivery of water services. These responsibilities cannot be transferred to a state entity – the main responsibility to ensure access to water remains with DWS and provincial and local government.</p> <p>Community stated that the proposed objects are silent on the role of the Agency in supporting socio-economic development or developmental objectives of the state (indigent households). They are also silent on social impacts on communities who are affected by the building of reservoirs especially those who have lost the use</p>	<p>Objects of the agency were agreed upon, on condition that Government would consider the comments raised by Constituencies.</p>

CHAPTERS AS PER THE BILL	Views of social partners	Outcome at Nedlac
	<p>of the land. There is a need for a clearly stated policy regarding the Livelihood Restoration of affected communities.</p> <p>Government responded that the national government through the Department will retain primary responsibility for setting national policy frameworks and standards for service delivery of water services. These responsibilities will not be transferred to the Agency. The Department will also retain responsibility for the National Water Resource Strategy and the water &amp; sanitation Master Plan.</p>	
Chapter 3 - Governance of Agency	<p><b>8. Governance and composition of Board</b></p> <p>Social partners requested that individuals with experience are given first priority and to ensure that the board is balanced in terms of gender inclusivity being considered in the nomination process.</p>	It was agreed that Government would ensure that the board consisted of individuals with expertise and the transformation note approved by Cabinet will be implemented in nominating the board
Chapter 5 - Financial Matters, Reporting, and Accountability	<p><b>31. Financing</b></p> <p>Business stated that both the Agency Bill and the National Pricing Strategy need to distinguish between the charges that would be levied by the Agency and those levied by other water institutions.</p> <p>Government responded and stated that TCTA's current funding agreements and arrangements will be transferred into the Agency, subject to the terms mentioned by Business. The</p>	The financing prescripts were agreed

CHAPTERS AS PER THE BILL	Views of social partners	Outcome at Nedlac
	Agency will then develop its own funding plan to fulfil its objectives. These have been drafted into the business plan.	

## 5. AREAS OF DISAGREEMENT

### 5.1. On Chapter 2-Establishment of Agency

#### 5.1.1. Labour raised the following:

5.1.1.1. It was opposed to the creation of Agencies in general as a principle. It believed that Government should be capacitating Departments and not fragmenting the public service or circumventing agreements reached at the Public Service Coordinating Bargaining Council (PSCBC).

5.1.1.2. It however proposed that Government should consider including a clause that will be based on Clauses 16 and 37 (1) (a), (b) and (d) from the Border Management Authority Act regarding the transfer of workers in the NWRIA Bill.

#### 5.1.1.3. The clauses are as follows:

- (a) ***Terms and conditions of employment - Clause 16. (1)*** *Notwithstanding the provisions of section 4, officials are employed subject to the terms and conditions of employment determined by the Minister— (a) in consultation with the Minister of Finance; and (b) in accordance with any collective agreement concluded in the Public Service Co-ordinating Bargaining Council. (2) Subject to the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), a person appointed as an official becomes a member of the Government Employees Pension Fund referred to in section 2 of the*

*Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996). (3) The Commissioner may, after consultation with the Minister, prescribe a framework for the compensation of officials and their dependants when injured or killed in the line of duty, which may include matters such as medical incapacity, disability pension, a disability regime and compulsory life insurance.*

- (b) **Transfers of employees from organ of state to Authority** - Clause 37. (1) *If an employee is transferred from an organ of state to the Authority— (a) the transfer does not interrupt the employee's continuity of service; (b) the employee may not, upon transfer, suffer any reduction in remuneration, pension and retirement benefits or amendment of conditions of service; (d) the transfer must be affected in accordance with fair labour practices. (2) For purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), the Labour Relations Act and the Public Administration Management Act, 2014 (Act No. 11 of 2014), no change of employer must be regarded as having taken place by virtue of the transfer referred to in subsection (1)*

5.1.2. Government disagreed with Labour and stated:

5.1.2.1. The Agency will be established but TCTA will be disestablished. So, there would not be any additional Agencies.

5.1.2.2. Integrated funding, development, operation and maintenance of infrastructure was the overriding objective to establish the Agency, and the country currently has a substantial backlog of water resource infrastructure.

5.1.2.3. Furthermore, Agencies could obtain loans and raise funds outside of the allocation from the National Treasury, therefore establishing an Agency will address the issues that have been neglected.

5.1.2.4. The Department of Water and Sanitation cannot raise funds on capital markets and further reliance on the fiscus (beyond what is explicitly guaranteed), is not possible. It is for this reason that Government is reliant on special purpose vehicles to fund and implement viable economic projects.

5.1.2.5. The conditions of service for employees will be engaged on and included in the transfer agreement and the transfer of staff to the NWRIA will be conducted in line with the provisions of section 197 of the LRA. A transfer agreement will be negotiated in the relevant bargaining structures. Issues such as benefits (e.g. GEPF and GEMS) will be considered during the negotiating processes.

5.1.3. Labour and Government disagreed on the proposed principle of the establishment of an Agency. It was agreed that this area would be recorded as an area of disagreement.

## **6. RECOMMENDATIONS**

6.1. Subsequent to the engagements of the task team the following recommendations were made:

6.1.1. Government should ensure that the transfer of workers does not adversely affect the worker's benefits and their employment. Therefore, conditions of service of employees must be set through the engagements at the Public Services Coordinating Bargaining Council (PSCBC) and not solely determined by the CEO.

6.1.2. Government should ensure that the necessary consequence management is undertaken to ensure that the Agency's efficiency and avoid to be operated like the current State Owned Companies (SOEs's ).

6.1.3. The process and outcome to split infrastructure between the agency and other water institutions needs to be clarified in the operating documents as it affects the split in possible income from water use charges (i.e. clarify the water value chain and responsibilities for all "national" water infrastructure in a transparent manner.)

6.1.4. Government must have a proper change management plan and intercompany agreements when merging the existing water entities into one entity.

## **7. CONCLUSION**

7.1. This Report, therefore, concludes considerations at Nedlac on the National Water Resource Infrastructure Agency (NWRIA) draft Bill. It will be submitted to the relevant Ministers and Portfolio Committee in terms of Section 8 of the Nedlac Act. No 35 of 1994.

**ANNEXURE 1****LIST OF TASK TEAM MEMBERS**

<b>BUSINESS:</b>	<b>LABOUR</b>	<b>GOVERNMENT</b>	<b>COMMUNITY</b>	<b>SECRETARIAT</b>
Annelize Crosby	Matthew Parks	Sibusiso Maseko	Jimmy Gotyana	Busisiwe Milisi-Mngese
Sanelisiwe Jantjies	Boitumelo Molete	Phumzile Mdakane	Lucas Qakaza	Bongani Mahlalela
Chris Campbell	Sipho Ndhlovu	Nchedi Moripe	Siphelele Gavu	
Chris Schmidt	Barry Mitchell	Sebastian Karin	Dudu Ngidi	
Nkopodi Mphahlele	Lawrence Ntuli	Nozipho Mbele	Thandiwe Mfulo	
Loffie Brandt	Jan Mahlangu	Billy Rapelang	Peace Manzini	
Andile Kuzwayo		Bronwyn Naidoo		
Sandra Doyle		Lindiwe Lusenga		
Tsakane Muavha		Zuko Makalima		
Tyson Sibanda		Peter Ramsden		
		Greve Conrad		
		Eustathia Bofilatos		
		Mercy Mosupye		
		Thoko Sigwaza		
		Lynette Milne		
		Paul Nel		
		Phathutshedzo		
		Mabuda		

## DEPARTMENT OF WATER AND SANITATION

NO. 2508

16 September 2022

## DRAFT NATIONAL WATER RESOURCE INFRASTRUCTURE AGENCY BILL: INVITATION FOR PUBLIC COMMENT

1. I, Senzo Mchunu MP, Minister of Water and Sanitation, hereby, publish the draft bill for the establishment of National Water Resource Infrastructure Agency.
2. A copy of the draft Bill can be downloaded on the website of the Department of Water and Sanitation at <http://www.dws.gov.za.legislation.php>.
3. The draft Bill relates to the establishment of the National Water Resource Infrastructure Agency (NWRIA), which will be established as a Schedule 2 Public Finance Management Act 1 of 1999, Major, state-owned entity. The agency envisages undertaking the design planning, financing, development and operation of the national water resource infrastructure, that serves water users. The Bill seeks to ensure a sustainable, equitable and reliable supply of water from national water resources infrastructure; whilst meeting our Constitutional obligations set out in sections 10, 11, 24, 27(1)(b) and 27(2) including the national and regional social and economic objectives of national policy.
4. All interested persons and organisations are invited to submit written comments on the NWRIA draft Bill within ninety (90) days from the date of publication. Written representations received after this time may not be considered. All such comments must be addressed to:

**Director-General**  
**Department of Water and Sanitation**  
**Private Bag X313**  
**PRETORIA**  
**0001**

**For attention: Ms T Masevhe**  
**Email: [nwria@dws.gov.za](mailto:nwria@dws.gov.za)**  
**Tel: 012 336-6795**

5. Kindly provide the name, address, telephone number and email address of the person or organisation submitting the comments. By making submission the commentator agrees that the name of the commentator and the submission may be made public by the Department of Water and Sanitation and the submission will be disclosed if requested in terms of the Promotion of Access to Information Act, 2000.



**MR SENZO MCHUNU, MP**  
**MINISTER OF WATER AND SANITATION**  
**DATE: 5/9/22**

**REPUBLIC OF SOUTH AFRICA**

**SOUTH AFRICAN NATIONAL WATER RESOURCES INFRASTRUCTURE**

**AGENCY SOC LIMITED BILL, 2022**

*(The English text is the official text of the Bill)*

**(MINISTER OF WATER AND SANITATION)**

**[2022]**



**BILL**

**To provide for the incorporation and establishment of the South African National Water Resources Infrastructure Agency Limited as a state-owned company and major public entity owned and controlled by the State to administer, fund, finance, provide, operate, maintain and provide advisory services in respect of national water resources infrastructure in accordance with sections 10, 11, 24, 27(1)(b) and 27(2) of the Constitution and national policy; to provide for the transfer of assets and certain liabilities to the South African National Water Resources Infrastructure Agency Limited from the Department of Water and Sanitation and from the Trans-Caledon Tunnel Authority; to provide for the disestablishment of the Trans-Caledon Tunnel Authority; and to provide for matters connected therewith.**

**PREAMBLE**

**RECOGNISING** that National Government is responsible for and has authority over the nation's water resources and its use;

**ACKNOWLEDGING** that it is necessary to ensure that, in relation to water resources development at national level, the required national water resources infrastructure must be developed, operated and maintained efficiently and effectively in a sustainable, equitable and reliable manner in order to make water available to water users and to water management institutions for further distribution;

that the current water resources infrastructure asset base and associated revenue stream could be better utilised to procure funding for the development, operation and maintenance of water resources infrastructure required for meeting social needs; and

**RECOGNISING** that a juristic person wholly owned by the State to administer, fund, finance, implement, develop, alter, maintain, rehabilitate, refurbish, operate and manage the national water resources infrastructure, to provide advisory services relating to such infrastructure and to do all things necessary to fulfil the functions entrusted to it under this Act, must be established to meet the obligations as set out in sections 10, 11, 24, 27(1)(b) and 27(2) of the Constitution in relation to water,

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:—

## **ARRANGEMENT OF SECTIONS**

### **CHAPTER 1**

#### **DEFINITIONS AND PURPOSE**

1. Definitions and interpretation
2. Purpose of Act

**CHAPTER 2****ESTABLISHMENT OF AGENCY**

3. Establishment of Agency
4. Memorandum and Notice of incorporation of Agency
5. Application of Companies Act to Agency
6. Objects of Agency
7. Functions of Agency

**CHAPTER 3****GOVERNANCE OF AGENCY**

8. Governance and composition of Board
9. Role of Board
10. Principle to guide Board
11. Appointment to Board
12. Chairperson and deputy chairperson
13. Terms of office and conditions of appointment of non-executive Board members
14. Removal and disqualification of Board members
15. Filling of vacancies
16. Shareholder's compact
17. Establishment of committees
18. Fiduciary duties of Board members
19. Disclosure of interest of Board members

20. Recovery of improper profits
21. Validity of decisions
22. Delegation of powers and assignment of functions by Board
23. Meetings of Board

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##### **CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER**

24. Appointment of Chief Executive Officer and Chief Financial Officer
25. Terms of office and conditions of appointment of Chief Executive Officer and Chief Financial Officer
26. Appointment of acting Chief Executive Officer and acting Chief Financial Officer
27. Interim Chief Executive Officer
28. Suspension from office of Chief Executive Officer
29. Delegation by Chief Executive Officer
30. Appointment of employees

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##### **FINANCIAL MATTERS, REPORTING AND ACCOUNTABILITY**

31. Financing
32. Government support to Agency and loans by Agency and subsidiaries
33. Annual budget, long term financial plan and corporate plan
34. Submission of quarterly reports and corporate plans

## 6

35. Financial statements and annual report
36. Application of Public Finance Management Act to Agency
37. Board to notify Minister of significant events

**CHAPTER 6****TRANSFER OF NATIONAL WATER RESOURCES INFRASTRUCTURE AND  
DISESTABLISHMENT OF TCTA**

38. Transfer of national water resources infrastructure
39. Disestablishment of TCTA
40. Registering of real rights
41. Transfer of personal servitudes
42. Disposal and transfer of national water resources infrastructure
43. Acquiring State land

**CHAPTER 7****POWERS OF MINISTER**

44. Delegation by Minister
45. Additional functions
46. Expropriation by Minister
47. Investigation of Agency
48. Intervention by Minister
49. Regulations

**CHAPTER 8**  
**MISCELLANEOUS PROVISIONS**

- 50. Subsidiary company
- 51. Liquidation
- 52. Documents relating to litigation against Agency
- 53. Transitional provisions and savings
- 54. Offences and penalties
- 55. Short title and commencement

**CHAPTER 1**  
**DEFINITIONS AND PURPOSE**

**Definitions and Interpretation**

1. In this Act, unless the context indicates otherwise—

**"Agency"** means the South African National Water Resources Infrastructure Agency SOC Limited established by section 3;

**"Board"** means the Board of the Agency appointed in terms of section 6;

**"Chief Executive Officer"** means the Chief Executive Officer appointed in terms of section 24(1);

**"Chief Financial Officer"** means the Chief Financial Officer appointed in terms of section 24(4);

**"Companies Act"** means the Companies Act, 2008 (Act No. 71 of 2008);

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

**"Department"** means the national government department responsible for water resources management;

**"incorporation date"** means the date of incorporation of the Agency as a state - owned company in terms of section 3;

**"LHWP Treaty"** means the Treaty of the Lesotho Highlands Water Project between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho, signed on 24 October 1986, including any subsequent protocols, annexures, amendments and agreements concluded pursuant thereto;

**"Minister"** means the Minister responsible for water resources management.

**"National Water Act"** means the National Water Act, 1998 (Act No. 36 of 1998);

**"national water resources infrastructure"** means a government waterwork declared by the Minister as national water resource infrastructure in terms of section 38;

**"non- Treaty functions"** means the non-Treaty functions of the TCTA contemplated in clause 24 of the Notice of Establishment, which relates to—

- (a) fulfilling the RSA's financial obligations in terms of or resulting from the Treaty including the raising of money, liability and financial risk management;
- (b) receiving all water delivered at the Designated Delivery Point defined in the Treaty, by the LHDA and releasing such water at the Designated Outlet Point defined in the Treaty, to the Department;
- (c) performing any additional functions incidental to the release of such water to the Department; and
- (d) performing any other functions that the TCTA may be directed by the Minister to perform in terms of section 103(2) of the National Water Act;

**"Notice of Establishment"** means the Notice of Establishment of the TCTA published under Government Notice No. 277 in Government *Gazette* number 21017, dated 24 March 2000, which constitutes its enabling legislation;

**"prescribed"** means prescribed by regulation under this Act;

**"Public Finance Management Act"** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**"regulation"** means any regulation made under this Act;

**"Republic"** means the Republic of South Africa;

**"subsidiary"** means a subsidiary as contemplated in section 3 of the Companies Act;

**"TCTA"** means the Trans-Caledon Tunnel Authority, a major public entity listed in Schedule 2 of the Public Finance Management Act and a body corporate established in terms of the Notice of Establishment, with powers to implement international agreements in terms of section 103 of the National Water Act and perform any additional functions as directed by the Minister in terms of sections 74 and 102 of the National Water Act;

**"TCTA's Treaty functions"** means the functions that the TCTA must perform in terms of clauses 21 to 23 of its Notice of Establishment, which includes appointing an employee as the Head of Operations and Maintenance to perform the functions contemplated in Article 8A of the LHWP Treaty;

**"Water Services Act"** means the Water Services Act 1997 (Act No. 108 of 1997);

**"Water Treaty"** means any international agreement entered into by the South African Government and a foreign government relating to—

- (a) investigating, managing, monitoring and protecting water resources;
- (b) regional co-operation on water resources;



- (c) acquiring, constructing, altering, operating or maintaining a waterwork; or
- (d) the allocation, use and supply of water.

(2) In this Act, where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have, unless the contrary intention appears from the relevant provisions, corresponding meanings.

(3) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the purpose of this Act as stated in section 2, must be preferred over any alternative interpretation which is inconsistent with that purpose.

(4) Explanatory notes, printed in bold italics, at the commencement of Chapters and Parts must not be used in the interpretation of any provision of this Act.

(5) Any directive or notice given in terms of this Act must be in writing, unless otherwise specified in this Act.

### **Purpose of Act**

2. The purpose of this Act is—

- (a) to establish a juristic person under the full ownership and control of the State in order to acquire, dispose of, fund, provide, maintain, operate, manage and secure funding of national water resources infrastructure in an efficient and cost-effective manner to meet the social and economic developmental needs of current and future water users within the framework of national government

policy and in accordance with sections 10, 11, 24, 27(1)(b) and 27(2) of the Constitution.

- (b) to provide for the continued performance of the Treaty and non-Treaty functions currently being performed by the TCTA; and
- (c) to serve and to achieve the development and transformation objectives of government through representation, service delivery and social and economic development.

## CHAPTER 2

### ESTABLISHMENT OF AGENCY

#### Establishment of Agency

3. (1) There is hereby established a juristic person to be known as the South African National Water Resources Infrastructure Agency SOC Limited.

(2) Schedule 2 of the Public Finance Management Act is hereby amended to include the listing of the Agency as a major public entity.

(3) The Minister must take the necessary action for the incorporation of the Agency as a state owned company in terms of the Companies Act and in accordance with national government policy, and take all the necessary steps to form this Agency.

(4) The State is the only shareholder of the Agency upon incorporation and at any time thereafter.

(5) The powers and duties of the State as the sole shareholder of the Agency must be exercised and performed by the Minister subject to any limitations provided for in this Act.

(6) The Minister may not, except as provided for in an Act of Parliament, sell or otherwise dispose of any shareholding of the Agency.

(7) The relationship between the Minister representing the State as the owner, controller, only shareholder of the Agency and the Agency must be defined in a shareholder's compact entered into between the Minister and the Agency in terms of section 16.

(8) The Agency is a water management institution as defined in section 1 of the National Water Act.

(9) The Companies Act and the Public Finance Management Act applies to the Agency.

#### **Memorandum and notice of incorporation of Agency**

4. (1) The memorandum and notice of incorporation of the Agency must be consistent with this Act.

(2) Despite the Companies Act, an amendment to the memorandum or notice of incorporation affecting any provision of this Act does not have any legal force and effect unless and until the relevant provision of this Act has been amended accordingly and has come into effect.

### **Application of Companies Act to Agency**

5. (1) The provisions of the Companies Act apply to the Agency, subject to subsection (2).

(2) Notwithstanding sections 5(4) and 9 of the Companies Act, a provision of the Companies Act does not apply to the Agency in circumstances where because of any special or contrary arrangement made by this Act, such a provision is clearly inappropriate or inapplicable.

### **Objects of Agency**

6. (1) The objects of the Agency are to develop and manage national water resource infrastructure to—

- (a) ensure a sustainable, equitable and reliable supply of water from national water resources infrastructure;
- (b) meet obligations set out in sections 10, 11, 24, 27(1)(b) and 27(2) of the Constitution and national and regional social and economic objectives of national policy;
- (c) utilise its asset base and cash-flow to raise funds to develop national water resource infrastructure for social and economic development purposes;
- (d) provide, operate and maintain the national water resource infrastructure and fund the costs thereof;
- (e) perform the Treaty and non-Treaty functions currently being performed by the TCTA; and

- (f) perform any other functions that the Minister may direct it to perform in terms of section 103(2) of the National Water Act.

### **Functions of Agency**

7. (1) The Agency must, in order to fulfil its objects—
- (a) produce every five years a strategic plan, to provide, operate and maintain national water resources infrastructure that is sustainable, equitable and reliable:
- (i) The strategic plan of the Agency must be consistent with national Policy including the National Water Resource Strategy produced by the Department in terms of Part 1 of Chapter 2 of the National Water Act, and
- (ii) must be approved by the Minister, after consultation with the Department and other key stakeholders.
- (b) provide, operate, maintain national water resources infrastructure in a manner that takes account of national development objectives, including the mitigation of climate change and other risks to a reliable water supply;
- (c) secure funding and, where necessary, the refinancing of national water resources infrastructure;
- (d) collect water use charges due to it in terms of Chapter 5 of the National Water Act and the Pricing Strategy established by the Minister in terms of section 56 of the National Water Act;
- (e) attract, develop and maintain appropriate skills;

- (f) achieve and sustain efficient and effective water supply to all water users that it supplies and the collection of revenue arising therefrom;
- (g) create jobs in the infrastructure development process in compliance with national policy;
- (h) manage an asset inventory and information system associated with the infrastructure;
- (i) ensure the safety of the dams vested in it;
- (j) ensure sustainable, equitable and reliable development of national water resource infrastructure;
- (k) establish compliance, fraud and loss prevention mechanisms to ensure that the integrity of the Agency is maintained;
- (l) enter into agreements with—
  - (i) water users; and
  - (ii) other parties for purposes of maintaining and sustaining reliable water resources infrastructure, where necessary with the approval of the Minister;
- (m) acquire or dispose of, subject to any applicable legislation, any right, title or interest in movable or immovable property as may be necessary for the Agency to fulfil its objects and functions;
- (n) perform legal acts, including the instituting or defending of any legal action or collection;
- (o) obtain by agreement, in writing, the services of any person, including any organ of state for the performance of any specific act, task or assignment for and on behalf of the Agency; and

(p) If it will not prejudice the capacity of the Agency to perform the functions for which it was established, the Agency may, subject to suitable financing arrangements have been made, perform additional functions which may include, but are not limited to, providing national water management institutions and water service authorities or national water service providers as defined in the National Water Act and the Water Services Act with—

- (i) management services;
- (ii) financial services;
- (iii) training; and
- (iv) other support services.

(2) In performing its functions the Agency must—

- (a) be customer-orientated;
- (b) ensure compliance with national policy, including policies on restructuring and the restructuring of assets; and
- (c) act according to its social, economic and constitutional responsibilities in terms of the Constitution.

(3) The Agency must perform the TCTA's LHWP Treaty and non-Treaty functions, requirements, financial and other obligations in accordance with the provisions of the Notice of Establishment, the LHWP Treaty and directives given to the TCTA by the Minister.

(4) The Agency must promote the development of projects that meet social needs and must facilitate suitable financial arrangements for the funding thereof;



(5) The Agency may perform any functions inside or outside of the Republic to implement any Water Treaty subject to suitable financial arrangements having been made.

(6) The Agency may not spend its own funds in performing any function or undertaking any operations in another country but may—

- (a) charge a fee;
- (b) claim costs; and
- (c) claim disbursements, for so performing, from that country.

### CHAPTER 3

#### GOVERNANCE OF AGENCY

##### Governance and composition of Board

8. (1) The Agency acts through its Board.

(2) The Board—

- (a) is the accounting authority of the Agency; and
- (b) is responsible for the strategic direction of the affairs of the Agency.

(3) The Board of the Agency consists of—

- (a) not less than nine and not more than eleven non-executive and executive members appointed by the Minister; and
- (b) the Chief Executive Officer and the Chief Financial Officer, are executive members of the board.

(4) The Chief Executive Officer is an executive member of the Board by virtue of his or her appointment, but may not be the chairperson or the deputy chairperson of the Board or of any committee constituted under section 17.

(5) The Board may co-opt one or more advisers for their technical skill to advise the Board, however such an adviser is not a member of the Board and has no voting rights.

### **Role of Board**

**9.** The Board must—

- (a) retain adequate and effective control over the Agency;
- (b) give consideration to and, where appropriate, approve the strategic plan, policy and systems of the Agency in order to achieve the objects of the Agency;
- (c) monitor and evaluate the implementation of strategy, policy and corporate plans;
- (d) implement and monitor performance management systems for employees of the Agency;
- (e) ensure a transparent and effective communication and stakeholder engagement policy;
- (f) develop a code of conduct for the Board approved by the Minister;
- (g) provide effective and transparent corporate governance;
- (h) ensure compliance with all applicable laws, regulations, agreements and codes of best business practice; and
- (i) report to the Minister.

### Principles to guide Board

10. The Board, as accounting authority of the Agency, is guided by the principles in governance codes of best practice.

### Appointment to Board

11. (1) The Minister must, by notice in two newspapers that have general circulation throughout the Republic of South Africa and by notice in the *Gazette*, invite nominations for members contemplated in section 8(3)(a).

(2) The Minister may establish a committee consisting of the number of persons that the Minister may determine, one of which must be the chairperson of the committee, to make recommendations to the Minister for the appointment of members contemplated in section 8(3)(a) from the nominations received pursuant to the invitation in terms of subsection (1).

(3) In establishing a committee, the Minister must ensure that the committee is constituted with special attention to relevant expertise, race, gender, disability and geographical spread.

(4) The committee, in making recommendations to the Minister, must consider—

- (a) the proven skills, knowledge and experience of an applicant on issues of—
  - (i) audit, legal and risk management;
  - (ii) project finance, treasury management and financial management;

- (iii) water resources infrastructure development, operations and management;
  - (iv) social development and poverty eradication;
  - (v) economic management and development
  - (vi) corporate governance compliance;
  - (vi) operation and maintenance of national water resources infrastructure;
  - (vii) human resource management;
  - (viii) transformation, diversity and equity; and
  - (ix) environmental management and compliance, necessary for the efficient and effective exercising of the Board's powers and performing its duties; and
- (b) the need for representation by previously disadvantaged persons due to past racial, gender and any other form of discrimination.

(4) The committee, in making its recommendations, must include members with at least 15 years' experience each, as either—

- (a) a chief financial officer of a listed company;
- (b) a senior engineer in a management position in the water sector;
- (c) an attorney or advocate of the High Court of South Africa with experience in commercial law and the law governing public entities; or
- (d) a senior representative of organised business with substantial experience of major water-dependent sectors of the economy.

(5) The committee, in making recommendations to the Minister, must recommend no less than 50 percent more than the prospective number of board members required.

(6) One member of the Board must be a senior officer of the Department nominated by the Minister.

(7) The Minister may appoint up to two members not nominated by the committee and in addition to the senior officer of the Department nominated by the Minister.

(8) One member of the Board must be a senior officer of the National Treasury nominated by the Minister of Finance;

(9) The Minister is not obliged to appoint members to the Board after considering the recommendations made by the committee, and may call for further nominations in the manner set out in subsection (1) if—

- (a) an unsuitable person is nominated; or
- (b) the required number of persons is not nominated in terms of subsection (2).

(10) The Minister must, by notice in the *Gazette* and within 30 days after the appointment of the members of the Board, publish the names of members and the date of commencement of their terms of office.

### **Chairperson and deputy chairperson**

**12.** (1) The Minister must appoint, from the members appointed to the Board, a chairperson and a deputy chairperson of the Board.

(2) (a) If the chairperson of the Board is absent or unable to perform any function of the chairperson, the deputy chairperson acts in the chairperson's place.

(b) If both the chairperson and deputy chairperson of the Board are absent or unable to perform any function of the chairperson, the Board

may designate any other member contemplated in section 8(3)(a) to act as chairperson during such absence or incapacity.

**Terms of office and conditions of appointment of non-executive Board members**

- 13.** A member contemplated in section 8(3)(a)—
- (a) holds office for a term not exceeding three years on a part-time basis;
  - (b) may be recommended for re-appointment to ensure continuity, but may not serve for more than two consecutive terms;
  - (c) are appointed upon such terms and conditions as the Minister may determine
  - (d) must be paid from the revenues of the Agency an amount of remuneration and allowances in accordance with a level of remuneration approved by the Minister in consultation with the Minister of Finance;
  - (e) Notwithstanding paragraph (a), a member of the Board may, with the authority of the Minister, remain in office after completion of his or her term of office until his or her successor takes office.
  - (f) The extended term of office contemplated in paragraph (e) may not exceed six months.”.

**Removal and disqualification of Board member**

- 14.** (1) A member contemplated in section 8(3)(a) must cease to be a Board member if the member—

- (a) is removed from office in terms of subsection (3);
- (b) is disqualified in terms of the Companies Act;
- (c) is convicted of an offence involving dishonesty;
- (d) is declared to be of unsound mind by a competent court;
- (e) is declared insolvent or is an unrehabilitated insolvent;
- (f) is absent from two or more meetings in one calendar year;
- (g) has acted inappropriately and such conduct brings the Agency into disrepute;
- (h) has been removed from an office or position of trust; or
- (i) resigns after giving at least 30 days' written notice of resignation to the chairperson.

(2) The chairperson and deputy chairperson must give 30 days' notice of resignation, in writing, to the Minister.

(3) The Minister may remove a member of the Board contemplated in section 8(3)(a) from office on sound and compelling grounds.

(4) Subject to the Labour Relations Act, 1995 (Act No. 66 of 1995), the Minister may suspend any member of the Board during any investigation into misconduct or during a misconduct hearing against that member.

### **Filling of vacancies**

**15.** Any vacancy on the Board must be filled in the same manner in which the member who vacates the office was appointed.

**Shareholder's compact**

**16.** (1) The Minister and the Board must conclude the first shareholder's compact within six months of the appointment of the Board, and must conclude subsequent shareholder's compacts at least 60 working days before the beginning of any financial year of the Agency.

(2) The shareholder's compact must—

- (a) include the operation and performance indicators against which the performance of the Agency must be measured;
- (b) give direction with regard to the utilisation of any surplus revenue;
- (c) set procedures for reporting to the Minister;
- (d) contain such other detail as the Minister may require, including matters to be referred to Minister for approval; and
- (e) *provide for the relationship between the Minister and the Agency.*

(3) The Minister must table in Parliament the shareholders compact of the Agency and its subsidiaries—

- (a) within 14 days after agreeing to the shareholder's compact, if Parliament is in session; or
- (b) if Parliament is not in session, within 14 days after the commencement of the next Parliamentary session.



**Establishment of committees**

17. (1) The Board must establish at least the following committees to support the effective functioning of the Board:

- (a) Social and Ethics; and
- (b) Audit and Risk.

(2) The Board must—

- (a) assign members of the Board to serve on a committee, based on their knowledge and skills;
- (b) determine the—
  - (i) terms of reference of a committee;
  - (ii) composition of members of a committee;
  - (iii) tenure of members of a committee;
  - (iv) reporting mechanisms for a committee to the Board; and
  - (v) removal of any member appointed to a committee.

(3) Non-executive members contemplated in section 8(3)(a) must be in the majority on any committee.

(4) The composition of members on no two committees may overlap completely.

(5) The Board may procure specialists for technical support to a committee.

(6) Unless specially delegated by the Board, a committee has no decision-making powers and may only make recommendations for consideration by the Board.

(7) A committee must meet as often as is necessary to perform its functions and in accordance with such procedure as the committee may decide.

(8) A non-executive member contemplated in section 8(3)(a) must be appointed as the chairperson of a committee.

(9) For committee members who are not Board members, remuneration and allowances as set out in section 13(d) apply.

### **Fiduciary duties of Board members**

**18.** (1) A Board member must at all times exercise the utmost duty of care and diligence in performing his or her functions, and in furtherance of this duty, without limiting its scope, must—

- (a) take reasonable steps to inform himself or herself about the Agency, its business and activities and the circumstances in which it operates;
- (b) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions;
- (c) regularly attend all meetings; and
- (d) exercise an active and independent discretion in respect of all matters to be decided by the Board.

(2) A Board member must exercise due diligence in relation to the business of, preparation for and attendance at meetings of, the Board and of any committee to which the Board member concerned is appointed.

(3) A Board member must not exceed the powers provided for in this Act or the articles and memorandum of association of the Agency.

(4) When a member determines the degree of care and diligence required to be exercised by a Board member, as contemplated in subsection (1), regard must be had to the skills, knowledge or insight required in the circumstances and possessed by that member, and to the degree of risk involved in any particular circumstances.

(5) A Board member may not disclose any information with regard to any matter which may come to his or her knowledge in the performance of any function in terms of this Act by virtue of the office held by him or her except—

- (a) in so far as the Constitution, this Act, or any other law requires or provides for access to information relating to such matter;
- (b) subject to paragraph (a), in so far as may be necessary for the due and proper performance of any function in terms of this Act or
- (c) when so ordered by a competent court of law.

(6) This section must be interpreted as adding to, and not deviating from, any law relating to the criminal or civil liability of a member of a governing body of a corporate body, and it does not prevent any criminal or civil proceedings being instituted in respect of such liability.

(7) A member who contravenes these provisions is guilty of misconduct and may be found guilty of committing an offence in terms of clause 54(g).

#### **Disclosure of interest of Board members**

**19.** (1) A Board member must, upon appointment, disclose to the Minister by way of a written statement, and at each Board Meeting disclose to the

Board, any interest which may reasonably compromise the Board in the performance of its functions.

(2) If the Board member is present at a meeting of the Board at which the matter referred to in subsection (1) is to be considered, the Board member must disclose the nature of his or her interest to the meeting immediately before the matter is considered.

(3) If the Board member is aware that the matter is to be considered at a meeting of the Board at which the Board member does not intend to be present, the Board member must disclose the nature of his or her interest to the chairperson before the meeting is held.

(4) The Board or committee member with an interest contemplated in subsection (1) must withdraw from any further involvement in the discussion of the matter where the member has such an interest.

(5) Any disclosure made under this section must be noted in the minutes of the relevant meeting of the Board.

### **Recovery of improper profits**

**20.** If a Board member contravenes section 19, the Agency or the Minister may, in addition to laying criminal charges, recover from the Board member, through a competent court or by agreement or consent of persons concerned, an amount, paid to that Board member or any other person, which is equivalent to—

- (a) if a Board member or any other person received a benefit either directly or indirectly as a result of the Board member's actions, an amount equal to that benefit; or

- (b) if the Agency has suffered loss or damage as a result of the contravention of section 19, an amount equal to that loss or damage.

### **Validity of decisions**

**21.** (1) An act or decision of the Board is not invalid merely because of—

- (a) a defect or irregularity in, or in connection with, the appointment of a Board member; or
- (b) a vacancy in the membership of the Board, including a vacancy resulting from the failure to appoint an original Board member.

(2) Anything done by or in relation to a person purporting to act as chairperson or as a Board member is not invalid merely because—

- (a) an occasion for the person to act had not arisen or had ceased;
- (b) there was a defect or irregularity in relation to the appointment; or
- (c) the appointment had ceased to have effect.

### **Delegation of powers and assignment of functions by Board**

**22.** (1) Subject to subsections (2) and (3), the Board may, by special resolution, delegate any power or assign any function entrusted to it under this Act to—

- (a) the Chief Executive Officer;
- (b) a Board member; or
- (c) a committee established under section 17.

(2) Any power delegated or function assigned must be exercised or performed subject to such conditions as the Board considers necessary.

(3) The Board may not delegate—

- (a) any power conferred in terms of section 66(3) of the Public Finance Management Act to borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind the Agency to any future financial commitment without the authority of the Minister of Finance;
- (b) the power to appoint an adviser to the Board;
- (c) the power to recommend the Chief Executive Officer;
- (d) the power to approve the appointment of the Chief Financial Officer;
- (e) the conclusion of the shareholder's compact; and
- (f) the adoption of the Agency's corporate plan.

(4) A delegation by the Board—

- (a) must be in writing; and
- (b) does not prohibit the Board from exercising the power or performing the duty that is delegated.

### **Meetings of Board**

**23.** (1) The Board may determine its own operational proceedings for meetings, but must hold at least four meetings in any financial year.

(2) A quorum for Board meetings is two thirds of the members of the Board.

**CHAPTER 4****CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER****Appointment and functions of Chief Executive Officer and Chief Financial Officer**

**24.** (1) (a) The Board must recommend no less than two persons for the appointment of Chief Executive Officer.

(b) The Minister must, after considering the recommendations of the Board, appoint a Chief Executive Officer within six months of the appointment of the Board to ensure that the Agency meets its objects.

(c) The Minister may call for further recommendations from the Board—

- (i) if the recruitment process did not meet the requirements set out in subsection (2)(a);
- (ii) if, in the opinion of the Minister, the persons recommended by the Board are not suitable for appointment.

(2) The Chief Executive Officer must—

- (a) be appointed after an open and transparent recruitment process;
- (b) be a fit and proper person with appropriate qualifications and experience to carry out the functions of Chief Executive Officer; and
- (c) not be disqualified in terms of the Companies Act for appointment as a director.

(3) The Chief Executive Officer must—

- (a) manage the affairs and day-to-day business of the Agency;
- (b) implement the policies and strategies and carry out the decisions of the Board;
- (c) recruit and manage the employees of the Agency;
- (d) develop an efficient and cost-effective administration; and
- (e) act subject to the general specific instructions and directives that the Board may issue.

(4) The Chief Executive Officer must, with the approval of the Board, appoint a Chief Financial Officer.

(5) The Chief Financial Officer must—

- (a) ensure that risk management policies and procedures of the Agency are in place;
- (b) assist the Board to comply with its responsibilities in terms of the Public Finance Management Act;
- (c) ensure that all money payable to the Agency is properly collected;
- (d) ensure that all money spent by the Agency is properly spent and authorised;
- (e) ensure that there is adequate control over all assets acquired for the purposes of the Agency;
- (f) ensure that all liabilities incurred on behalf of the Agency are properly authorised;
- (g) ensure the efficiency and economy of operations and avoidance of fruitless and wasteful expenditure;
- (h) ensure that the financial system is in line with generally accepted accounting practices and procedures; and
- (i) ensure that an adequate budgeting and financial system is in place.



### **Terms of office and conditions of appointment of Chief Executive Officer and Chief Financial Officer**

**25.** (1) The Chief Executive Officer and the Chief Financial Officer are appointed on a full-time basis for a term not exceeding five years.

(2) The Chief Executive Officer may be re-appointed at the discretion of the Minister, on the recommendation of the Board.

(3) The Chief Financial Officer may be re-appointed at the discretion of the Chief Executive Officer, with the approval of the Board.

(4) (a) The Chief Executive Officer holds office on the terms and conditions, including those relating to remuneration and allowances, as the Minister, after considering the recommendations of the Board, may determine in writing.

(b) The Chief Financial Officer holds office on the terms and conditions determined by the Chief Executive Officer with the approval of the Board.

(5) The Board must enter into an annual performance agreement with the Chief Executive Officer and the Chief Executive Officer must enter into an annual performance agreement with the Chief Financial Officer, stipulating measurable objectives relating to the performance of that officer's functions under this Act.

(6) The Chief Executive Officer is accountable to the Board.

(7) Subject to the Labour Relations Act, 1995 (Act No. 66 of 1995), the Minister may on recommendation of the Board terminate the services of the Chief Executive Officer—

(a) for any sound and compelling reason;

- (b) in accordance with fair labour practice; and
- (c) in terms of his or her contract of employment.

### **Appointment of person to act as Chief Executive Officer or Chief Financial Officer**

26. (1) If the Chief Executive Officer is absent or is unable to carry out her or his duties, or if a vacancy in the office of the Chief Executive Officer exists for a period of more than two months, the Board may, with the approval of the Minister, appoint any person who meets the requirements, determined in subsection 24(2), to act as Chief Executive Officer until the Chief Executive Officer is able to resume those functions or until the vacant position of Chief Executive Officer is filled.

(2) If the Chief Executive Officer is absent or is unable to carry out his or her duties or if there is a vacancy in the Office of the Chief Executive Officer, for a period of less than two months, the Board may, without the approval of the Minister, appoint any person to act as Chief Executive Officer.

(3) (a) If the Chief Financial Officer is absent for a period of more than two months or is unable to carry out her or his duties or if there is a vacancy in the Office of the Chief Financial Officer, the Chief Executive Officer may, with the approval of the Board, appoint any person who meets the requirements determined in section 24 to act as Chief Financial Officer until the Chief Financial Officer is able to resume the duties.

(b) An acting Chief Executive Officer or Chief Financial Officer may exercise all the powers and must perform all the duties of the Chief Executive Officer or Chief Financial Officer, as the case may be.

**Interim Chief Executive Officer**

- 27.** The Minister may appoint an interim Chief Executive Officer—
- (a) until such appointment as contemplated in section 24(1)(a) is executed; or
  - (b) when the Chief Executive Officer is suspended as contemplated in section 28.

**Suspension from office of Chief Executive Officer**

**28.** Subject to the Labour Relations Act, 1995 (Act No. 66 of 1995), the Minister may, on the recommendation of the Board, suspend the Chief Executive Officer from office during any investigation into misconduct against the Chief Executive Officer.

**Delegation by Chief Executive Officer**

**29.** (1) The Chief Executive Officer may delegate to an employee of the Agency any function entrusted to that office under this Act.

- (2) A delegation contemplated in subsection (1)—
- (a) must be in writing;
  - (b) does not prohibit the holder of the office that made the delegation from performing that function; and
  - (c) may at any time be withdrawn or amended, in writing.

**Appointment of employees**

**30.** (1) Subject to the general or special directions of the Board, the Chief Executive Officer may appoint staff for the Agency to perform the work necessary for or arising from the performance of the Agency's functions in terms of this Act.

(2) An employee is employed subject to the terms and conditions determined by the Chief Executive Officer in accordance with labour legislation and any directions set out in subsection (1).

**CHAPTER 5****FINANCIAL MATTERS, REPORTING AND ACCOUNTABILITY****Financing**

- 31** (1) The funds of the Agency consist of—
- (a) the capital and infrastructure vested in the Agency, as contemplated in Chapter 6;
  - (b) monies appropriated by Parliament;
  - (c) revenue from water use charges due to the Agency, as contemplated in Chapter 5 of the National Water Act, and the Pricing Strategy established by the Minister in terms of section 56 of the National Water Act;
  - (d) loans raised;
  - (e) income derived by it on investments in terms of subsection (3);
  - (f) income derived by it in the performance of its functions;

- (g) income generated through developing, leasing out or otherwise managing its assets within the scope of this Act;
- (h) income earned from the Agency's participation in joint ventures with water services institutions as contemplated by section 19 of the Water Services Act;
- (i) income derived from the sale of the Agency's assets;
- (j) fines payable by persons as penalty on their conviction of offences created by this Act, and all civil fines or penalties payable by persons for contravening of this Act;
- (k) grants or donations received by the Agency; and
- (l) contributions of water users towards water resource infrastructure.

(2) The Agency must utilise—

- (a) its funds to cover costs in connection with the performance of its functions in terms of this Act, as well as any additional functions that may be assigned or delegated to it by the Minister from time to time;
- (b) any donation or contribution in accordance with any conditions that may be imposed, provided it is not inconsistent with the purpose of this Act; and
- (c) any money appropriated by Parliament with the prior approval of the Minister for the purpose for which it was granted.

(3) The Agency may invest any of its funds not immediately required by the Agency, with such directions as the Minister and the Minister of Finance may determine.

(4) The Agency must distribute to other water management institutions such revenues that it may collect on their behalf in terms of any billing and collection agreements, either with the Minister or with other water management

institutions, less any fees or commissions that the Agency may charge for these services in terms of these agreements.

### **Government support to Agency and loans by Agency and subsidiaries**

**32.** (1) Parliament may fund the normal expenditure of the Agency out of money appropriated for the purpose.

(2) A request for financial support must be prepared by the Agency by a date determined by the Minister in order for it to be subjected to the evaluation process for inclusion in the annual compilation and exposition of the government's expenditure proposal for appropriation purposes.

(3) The payment of financial support is subject to the appropriation made by Parliament and must be for such purposes and periods, and subject to such conditions, as the Minister may determine, after consultation with the Minister of Finance.

(4) (a) The Agency and its subsidiaries may not borrow money without the prior written approval of the Minister, granted after consultation with the Minister of Finance.

(b) Any decision to borrow money taken without the approval contemplated in paragraph (a) is of no force and effect.

**Annual budget, long term financial plan and corporate plan**

**33.** (1) The annual budget, long term financial plan and corporate plan of the Agency must be submitted to the Minister, as the shareholder and executive authority, for approval.

(2) The financial year of the Agency is for the period 1 April to 31 March in the following year, except that the first financial year of the Agency begins on the incorporation date and ends on 31 March.

(3) The corporate plan must, in addition to the matters specified in the Public Finance Management Act, contain—

- (a) financial and performance indicators and targets considered by the Board to be appropriate, based on indicators and targets contained in the shareholder compact;
- (b) any other information that the Board considers necessary; and
- (c) such information as may be directed by the Minister.

(4) In preparing or revising a financial and performance indicator and target referred to in subsection (3), the Board must have regard to—

- (a) the shareholder's compact entered into with the Minister;
- (b) the need to maintain the Agency's financial viability;
- (c) the need to maintain reserves, at a level determined by the Minister from time to time, especially to provide for—
  - (i) the development of water resources infrastructure as instructed by the Minister;
  - (ii) any estimated future demand for the services of the Agency; and

- (iii) any need to improve the accessibility of, and performance standards for, the services provided by the Agency;
- (d) the need to meet the developmental objectives of government and in accordance with section 27(1)(b) of the Constitution; and
- (e) any other matter determined by the Minister.

### **Submission of quarterly reports and corporate plans**

- 34.** (1) The Board must submit quarterly reports to the Minister—
- (a) not later than 60 working days after each quarter; and
  - (b) which must illustrate how national government policy is complied with.
- (2) The Board must revise its corporate plan annually, and must—
- (a) take national policy into consideration; and
  - (b) at least 30 working days before the beginning of each financial year, make a copy of the corporate plan available to the Minister.
- (3) The Minister may—
- (a) within 60 working days after receiving a copy of a prepared plan; or
  - (b) within 30 working days after receiving a copy of a revised plan,
- make comments on the plan to the Board.
- (4) The Board must consult in good faith with the Minister, following communication to it of the Minister's comments, and must make any changes to the corporate plan that are agreed upon by the Minister and the Board.
- (5) The Minister may, from time to time, direct the Board to include in, or omit from, a corporate plan, any matter, including a financial matter.



(6) Before giving a directive under this section, the Minister must consult with the Board as to any matter to be included or omitted in the directive.

(7) The Board must comply with a directive given under this section, unless adequate financial arrangements cannot be made to fund the implementation of the directive.

### **Financial statements and annual report**

**35.** (1) The Board must prepare and submit financial statements to the Minister in accordance with established accounting practice, principles and procedures, comprising—

- (a) a statement reflecting, with suitable and sufficient particulars, the income and expenditure of the Agency during the preceding financial year;
- (b) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year.

(2) Within five months after the end of each financial year of the Agency, the Board must prepare and submit to the Minister an annual report and financial statements in the prescribed form.

(3) Where required, the financial records must indicate separate activities or projects of the Agency.

(4) The Agency must publish its annual report and financial statements and make copies available at the offices of the Agency for inspection.

**Application of Public Finance Management Act to Agency**

**36.** (1) The Board must ensure that the provisions of the Public Finance Management Act, in particular sections 52 and 55, are duly complied with.

(2) (a) The Minister must table in Parliament the annual report and financial statements of the Agency and its subsidiaries, contemplated in section 55 of the Public Finance Management Act—

- (i) within 14 days after receiving the report, if Parliament is in session; or
- (ii) if Parliament is not in session, within 14 days after the commencement of the next Parliamentary session.

(b) The annual report and financial statements must clearly differentiate between the annual report and financial statements of the Agency and those of its subsidiaries.

(3) The Board must submit such other accounts, reports and statements as the Minister or the Minister of Finance, or both, may require.

**Board to notify Minister of significant events**

**37.** If any matter arises that might prevent or materially affect the achievement of the objects of the Agency in terms of the corporate plan or financial targets contained in the corporate plan, the Board must immediately notify the Minister of the existence of such matter.

**CHAPTER 6**  
**TRANSFER OF NATIONAL WATER RESOURCES INFRASTRUCTURE AND**  
**DISESTABLISHMENT OF TCTA**

**Transfer of national water resources infrastructure**

**38.** (1) (a) Section 115(1) and (2) of the National Water Act applies, in respect of the transfer of a government waterwork, to the Agency.

(b) The Minister may declare, by notice in the *Gazette*, which government waterworks are deemed to be national water resources infrastructure and are to be vested in the Agency, and may determine, from time to time, which infrastructure is no longer national water infrastructure and to which water management institution it should be transferred.

(2) Subject to subsection (1), the Minister must, in consultation with the Agency, determine by notice in the *Gazette* a date within a period of 12 months after the incorporation date on which date the Minister shall transfer the national water resources infrastructure, which is at that time vested in the Department, to the Agency.

(3) A transfer contemplated in subsection (1) includes—

- (a) all assets and associated liabilities;
- (b) all water user agreements, contractual and non-contractual rights and obligations, functions, directives and duties associated with the National Water Resource Infrastructure;

- (c) all operation and maintenance responsibilities of the waterworks;
- (d) all financial and treasury advisory services, including systems for the billing and collection of revenue payable for water use from the national water infrastructure; and
- (e) the transfer of employees and officials of the Department associated with the national water resource infrastructure.

(4) The Minister must, either by way of a written directive or in the shareholder's compact, give direction in respect of the utilisation of any surplus revenue, if any, towards capital improvements or social projects of the asset being transferred.

(5) Subject to the State Land Disposal Act, 1961 (Act No. 48 of 1961), the Minister acts on behalf of the State for the transfer of all assets, land and rights that are transferred to the Agency.

(6) The Minister must, by notice in the *Gazette*, determine a date within a period of 12 months after the incorporation date and subject to subsection (10), on which date the Minister shall transfer to the Agency—

- (a) the whole of the commercial enterprise of the TCTA, including all assets, liabilities, rights and obligations of whatsoever nature and howsoever arising, who acquires such enterprise as a going concern;
- (b) the TCTA's treaty functions, rights and obligations in accordance with the Articles of the Treaty;
- (c) the TCTA's non-Treaty functions executed by the TCTA in terms of directives issued by the Minister in terms of section 103(2) of the National Water Act;

(7) By virtue of the transfer referred to in sub-section 6, the Agency becomes the owner of all moveable and immoveable property, which immediately prior to the date determined by the Minister in subsection (6)—

- (a) was registered in the asset registers of the TCTA;
  - (b) fell under the control or custody of the TCTA;
  - (c) was possessed, occupied or used by the TCTA as if it was the owner thereof;
- and
- (d) was registered with any Registrar of Deeds in the name of the TCTA;

(8) In all pending litigation, including arbitration, the Agency must be substituted as a litigating party for the TCTA, as if the Agency was a litigant from the commencement thereof;

(9) In all contracts to which the TCTA is a party, the Agency must substitute the TCTA as contracting party, as if the Agency had been a contracting party from the negotiation and conclusion thereof.

(10) In all guarantees issued in respect of the financial obligations of the TCTA, including any guarantees issued under section 66 or 70 of the Public Finance Management Act, the Agency must substitute, and hereby substitutes, the TCTA as a contracting party, as if the Agency had been the entity guaranteed from the beginning.

(11) All existing financial instruments of the TCTA must be regarded as having been issued by the Agency.

(12) Despite any law to the contrary, any reference to the TCTA or a representative of the TCTA in any law, contract, register or record created in terms of a statute, contract or other legal document, must, with effect from the incorporation date, be regarded as being a reference to the Agency or a representative thereof.

- (13) The Minister may not determine the date contemplated in subsection (6) until such time as—
- (a) the Government of Lesotho has been consulted on the transfer of the powers, rights and obligations vesting in the TCTA in terms of the Treaty to the Agency, and an arrangement has been made for such transfer to the satisfaction of the Lesotho Highlands Water Commission and the Government of Lesotho;
  - (b) an arrangement has been made with the TCTA's primary creditors, to the satisfaction of the Minister of Finance;
  - (c) an arrangement has been made for the transfer of personnel employed by the TCTA to the Agency in terms of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995);

### **Disestablishment of TCTA**

**39.** (1) Subject to section 38, the Minister must disestablish the TCTA as a statutory body after the date determined by the Minister in terms of section 38(6), and may take steps to wind up the TCTA.

(2) Disestablishment of the TCTA must be by notice in the *Gazette*, after consultation with the Minister of Finance, the Board of the TCTA, the Board of the Agency and all other applicable parties.

(3) Clause 30 of Government Notice No. 277, published in *Gazette* No. 21017 of 24 March 2000, is hereby repealed.

(4) The Minister may direct the transfer of any function or service of the TCTA prior to its disestablishment to the Agency.

(5) Any guarantee or indemnity expressed or implied by the State in favour of any contractual obligation or associated liability by the TCTA remains valid, binding and enforceable.

### **Registering of real rights**

40. The relevant Registrar of Deeds must make the necessary entries in the register in terms of the Deeds Registration Act, 1937 (Act No. 47 of 1937), when a real right of the State has passed to or becomes vested in the Agency.

### **Transfer of personal servitude**

41. (1) Despite any law to the contrary, a personal servitude, whether registered or not, held by the Minister or a water management institution, may be transferred from—

- (a) the Minister to the Agency; or
- (b) a water management institution to the Agency.

(2) The relevant Registrar of Deeds must register a notarially executed deed of cession to transfer a registered personal servitude in terms of subsection (1).

### **Disposal and transfer of national water resources infrastructure**

42. National water resources infrastructure may not be transferred or disposed of by the Agency without the approval of the Minister if its value exceeds

an amount determined from time to time by the Minister by notice in the *Gazette* with the approval of the Minister of Finance.

### **Acquiring State land**

**43.** (1) Upon request by the Agency, in consultation with the Minister and the Ministers responsible for Public Works or Land Affairs, as the case may be, land may be made available by the State for transfer or registration of a servitude over any State land for the performance of any function by the Agency under this Act.

(2) Any transfer or disposal of a national water resources infrastructure under section 41 or section 42, or an acquisition under this section, must be in compliance with national policy.

## **CHAPTER 7**

### **POWERS OF MINISTER**

#### **Delegation by Minister**

**44.** (1) The Minister may, in writing and subject to such conditions as the Minister may consider necessary, delegate a function entrusted to the Minister in terms of this Act to the Director-General of the Department.

(2) The Minister may not delegate the power—

- (a) to make a regulation;
- (b) to appoint a member of the Board;



(c) to determine performance objectives and the strategic direction for the Agency; and

(d) to approve annual reports and financial statements.

(3) The Minister is not relieved of any function that is delegated in terms of subsection (1).

(4) A delegation—

(a) does not prohibit the Minister from performing the function so delegated; and

(b) may at any time be withdrawn or amended, in writing, by the Minister.

(5) The Minister may give a directive to the Director-General in relation to the delegation contemplated in subsection (1).

(6) The Director-General must give effect to the directive.

### **Additional functions**

**45.** (1) (a) The Minister may request the Agency, in writing, to plan, design and construct national water resources infrastructure or to maintain or rehabilitate any particular national water infrastructure, despite the fact that such a project has not been budgeted for by the Agency and is not included in its corporate plan.

(b) The Minister must identify the source of the funding of a project referred to in subsection (1)(a).

(2) The Agency may perform any additional function if—

(a) it does not limit its capacity to perform its functions;

(b) it is not to the financial prejudice of the Agency; or

(c) it is not likely to detrimentally affect another water management institution or if it is not likely to be to the financial prejudice of its clients or stakeholders.

(3) The Minister may, in consultation with the Minister of Finance and after consultation with the Ministers for Public Enterprises and of Trade and Industry, request or authorise the Agency to perform its functions outside of the Republic of South Africa.

### **Expropriation by Minister**

**46.** (1) (a) Subject to section 25 of the Constitution, the Minister may, if satisfied that the Agency requires—

- (i) land for national water resources infrastructure or other purposes connected with a national water resources infrastructure, request the Minister responsible for Public Works or Land Affairs to expropriate that land for the Agency or to delegate the right to expropriate the land to the Agency;
- (ii) the right to use land temporarily for any of the purposes which the Minister of Public Works is competent to expropriate land under subparagraph (i), expropriate that land for the Agency; and
- (iii) gravel, stone, sand, clay, water or any other material or substance on or in the land required for the construction of national water resources infrastructure or for any waterwork or any other purposes referred to in subparagraph (i), expropriate such gravel, stone, sand, clay, water or any other material or substance for the Agency.

(b) Where the Minister expropriates any land for the Agency in terms of paragraph (a), the Agency becomes the owner thereof on the date of such expropriation.

(c) The Expropriation Act, 1975 (Act No. 63 of 1975), applies to any expropriation required in terms of this Act.

### **Investigation of Agency**

**47.** (1) The Minister may appoint a person to investigate the affairs or financial position of the Agency and compliance by the Agency with this Act, and may recover from the Agency the fees and disbursements incurred by that person during the investigation.

(2) The Agency or an employee of the Agency must, for the purposes of subsection (1), provide the Minister or a person authorised by the Minister with such data, information, books, accounts, documents and assets of the Agency as the Minister or the authorised person may require.

### **Intervention by Minister**

**48.** (1) Subject to subsection (2), the Minister may direct the Agency to take any action specified by the Minister, including the removal of a Board member, if the Agency—

- (a) has failed to comply with any law or any policy envisaged in this Act;
- (b) is in financial difficulty or is being mismanaged;
- (c) has failed to perform its functions effectively;

- (d) has failed to comply with any directive given by the Minister under this Act; or
- (e) has obstructed the Minister, or a person authorised by the Minister, in performing a function in terms of this Act.

(2) A directive contemplated in subsection (1) must—

- (a) be in writing;
- (b) state the nature of the deficiency;
- (b) state the steps that must be taken to remedy the situation; and
- (c) specify a reasonable period within which those steps must be taken.

(3) If the Agency fails to remedy the situation within the period specified in the directive contemplated in subsection (2), the Minister, with the approval of the Minister of Finance, may appoint an administrator—

- (a) after having given the Agency a reasonable opportunity to be heard; and
- (b) after having afforded the Agency a hearing on any submissions received.

(4) If the Minister appoints an administrator—

- (a) the administrator may do anything that the Agency is authorised or required to do in terms of this Act, to the exclusion of the Agency;
- (b) the Board may not, while the administrator performs any function, perform that function;
- (c) an employee or a contractor of the Agency must comply with a directive given by the Minister or the administrator; and
- (e) the Minister or the administrator may recover from the Agency all reasonable costs incurred in terms of this section.

(5) The Minister must—

- (a) review the performance of the Agency regularly whilst it is under administration; and

(b) within six months of appointing the administrator, table a report on his or her findings in the National Assembly.

(6) Once the Minister is satisfied that the Agency is able to perform its functions effectively, the Minister must terminate the appointment of the administrator.

(7) (a) Despite anything contained in this Act, but subject to paragraph (b), the Minister may dissolve the Board if the Minister, on good cause shown, loses confidence in the ability of the Board to perform its functions effectively and efficiently.

(b) The Minister may dissolve the Board only—

- (i) after having given the Board a reasonable opportunity to be heard; and
- (ii) after having afforded the Board a hearing on any submissions received.

(c) If the Minister dissolves the Board, the Minister—

- (i) may appoint an administrator to take over the functions of the Board and to do anything which the Board might otherwise be empowered or required to do by or under this Act, subject to such conditions as the Minister may determine; and
- (ii) must, as soon as it is feasible but not later than three months after the dissolution of the Board, replace the members of the Board in the same way as the way in which they were appointed.

(8) (a) The costs associated with the appointment of an administrator shall be for the account of the Agency.

(b) The appointment of the administrator terminates when the Board members have been replaced.

(9) Despite this section, the Minister retains the right at any time to approach a competent court for relief in any matter that he or she considers appropriate in furtherance of the objects of this Act.

### **Regulations**

**49.** (1) The Minister may make regulations regarding any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Any regulation that has financial implications may only be made in consultation with the Minister of Finance.

## **CHAPTER 8**

### **MISCELLANEOUS PROVISIONS**

#### **Subsidiary company**

**50.** The Agency may only establish a subsidiary company in terms of the Companies Act—

- (a) by a special resolution of the Board; and
- (b) in consultation with the Minister, the Minister for the Public Service and Administration and the Minister of Finance.

### **Liquidation**

**51.** Despite any other law, the Agency or any subsidiary company, as the case may be, may not be placed under judicial management or in liquidation, except on the authority of an Act of Parliament adopted specifically for that purpose.

### **Documents relating to litigation against Agency**

**52.** The Agency must provide the Minister with copies of all summonses and applications in its possession relating to any legal proceedings brought against the Agency.

### **Transitional provisions and savings**

**53.** Anything done under the National Water Act and which is still valid at the commencement of this Act, remains in force—

- (a) to the extent that it is consistent with this Act; and
- (b) until anything done under this Act overrides it.

### **Offences and penalties**

**54.** Any person who—

- (a) fails to provide access to any book, account, document or asset when required to do so under this Act;

- (b) fails to comply with a directive issued under this Act;
- (c) fails or refuses to give data or information, or gives false or misleading data or information, when required to give information under this Act;
- (d) refuses to perform a duty, or obstructs any person in the performance of any of that person's functions, in terms of this Act;
- (e) makes personal gains or accepts any unauthorised fee or reward, either directly or indirectly, as a result of his or her position with the Agency;
- (f) uses the Agency's name, logo or design without authority to do so;
- (g) contravenes any provision of this Act,

may be found guilty of an offence and is liable, upon conviction, to a fine or to imprisonment or to both a fine and such imprisonment for a period not exceeding five years.

#### **Short title and commencement**

**55.** This Act is called the South African National Water Resources Infrastructure Agency SOC Limited Act, 2022, and comes into effect on a date determined by the President by Proclamation in the *Gazette*.





**THE PRESIDENCY**

**REPUBLIC OF SOUTH AFRICA**



**SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)**

**REVISED (2020): FINAL IMPACT ASSESSMENT TEMPLATE –PHASE 2**

**NAME OF THE PROPOSAL: NATIONAL WATER RESOURCES INFRASTRUCTURE  
AGENCY BILL (NWRIA)**

1. Please DO NOT ALTER the template and questionnaire
2. Date must be clearly indicated
3. Draft SEIAS report should have a watermark word DRAFT indicating the version and should be accompanied by the supporting documents (draft proposal, M&E plan and pieces of research work)
4. FINAL report will be in PDF format and will be inclusive of the sign-off
5. FINAL report will have the approval stamp of the Presidency on the front cover and will include the signoff
6. Sign off forms are only valid for a period of six months.
7. Bills and Regulations that introduce permitting, licensing and registration system must be accompanied by a streamlined process map and indicate the proposed turnaround time for processing of such.

## **PART ONE: ANALYSIS FOR FINAL SEIAS REPORT**

*Please keep your answers as short as possible. Do not copy directly from any other document.*

### **1. Conceptual Framework, Problem Statement, Aims and Theory of Change**

#### 1.1. What socio-economic problem does the proposal aim to resolve?

The inadequacy of water supply for both social and economic needs curtail the livelihoods of many South Africans while contributing to unsustainability in meeting current and future demands. According to the Statistics South Africa (SSA)'s General Household Survey; the country has shown to have improved by 3,8 % of households with access to tap water in their dwellings both off-site or on-site in 2019. Despite these notable improvements, access to water declined in five provinces between 2002 and 2019. The largest declined was observed in Mpumalanga (-5,3 percentage points), Limpopo (-3,8 percentage points) and Free State (-3,7 percentage points). The declines were reported to have been because many more households were provided with water in 2019 than eighteen years earlier. Moreover, the General Household Survey (2019) has further reported that the alternative sources of drinking water were used by households that experienced water interruptions that were reported to have lasted for two days or longer during the that year.

The South African water landscape is characterised by a heavy reliance upon infrastructure to convey water to where it is needed, inequality of access, an elevated vulnerability to climate change, a historical and predominant reliance upon a surface water system which is now fully allocated, a vulnerable tariff revenue stream and misaligned, weakened water governance institutions. The macro-economic challenges and constrained fiscus of recent years become clear that the water sector, and in particular the water infrastructure domain, is facing a vast challenge to prevent water scarcity from becoming a constraint on economic growth and social development.

Fragmentation of national water resources infrastructure asset management functions such as operations and maintenance which results in functioning at a sub-optimal level were considered among others, the major contributor to the deterioration of the water supply in the country.

Currently there are two institutions involved in performing the functions related to national water resources infrastructure: The Trans-Caledon Tunnel Authority (TCTA) and the National Water Resources Infrastructure Branch (NWRI) of the Department of Water and Sanitation.

As a result, the Department of Water and Sanitation (DWS) cannot raise capital directly on the financial markets, and is reliant on special purpose vehicles, such as the Trans Caledon Tunnel Authority (TCTA), to finance and implement commercially viable economic projects. However, this is not an optimal situation as it introduces an institutional split between the infrastructure manager and project implementer. It also results in a division of responsibility between revenue management (linked to DWS infrastructure operations) and debt management by the financing agency, placing the ultimate risk on the operator and therefore an implicit guarantee of the loan by government.

Recently, the maintenance of South Africa’s water resources infrastructure assets has not been adequate and poses a public safety risk in parts of the country. This is largely due to constraints on strategic and budget planning, reallocation of funds to other perceived priorities, and the inability of DWS to carry charges collected for depreciation and return on assets (ROA) over between years, resulting in inadequate human and financial resources being allocated to infrastructure maintenance and refurbishment.

Therefore, the above background necessitate the need for the development of the National Water Resources Infrastructure Asset Bill which will provide for the incorporation and establishment of the South African National Water Resources Infrastructure Agency Limited as a state owned company and major public entity owned and controlled by the State to administer, fund, finance, provide, operate, maintain and provide advisory services in respect of national water resources infrastructure in accordance with sections 10, 11, 24, 27(1)(b) and 27(2) of the Constitution and national policy. The proposal will further bridge the gap of inadequate water supply that both the Department and the country is facing and contribute greatly in meeting the demands of the citizens both currently and in future while achieving the National Development Plan (NDP) by 2030 and beyond as well as contributing to the achievement of the Sustainable Development Goals (SDGs).

1.2. What are the main root causes of the problem identified above?

<b>What socio-economic problem does the proposal aim to resolve</b>	<b>What are the main roots or causes of the problem</b>
The supply of water for both social and economic needs in the country is inadequate and unsustainable in meeting current and future demands. The Statistics south Africa, General Household Survey (2019) reported the alternative sources of drinking water used by households that experienced water interruptions that lasted two days or longer during	Fragmentation of national water resources infrastructure asset management functions such as operations and maintenance which results in functioning at a sub-optimal level  Sub-optimal and/or delayed investment in infrastructure development to support socio-economic development and job creation in South Africa as there is a need to construct a

What socio-economic problem does the proposal aim to resolve	What are the main roots or causes of the problem
<p>the previous year. Nationally, 32,1% of households used water from tankers or vendors while 10,5% used water from <i>springs, wells, dams, pools or from rivers and streams</i>. Rainwater tanks (4,7%) and boreholes (3,8%) were also relatively common. Almost a quarter (24,3%) stored water, while 13,7% <b>did not have backup plans</b>. The use of water vendors was highest in Limpopo (41,0%) and North West (22,0%), while water carriers were most common in KwaZulu-Natal (30,9%) and Free State (26,8%). Drawing water from dams, pools, rivers or streams was most common in Eastern Cape (19,1%), KwaZulu-Natal (17,0%) and Mpumalanga (9,3%).</p>	<p>significant amount of infrastructure over the next 20 years which requires capital investments not available from the national fiscus.</p>
	<p>Asset management functions, are divided between the DWS and the TCTA.</p>
	<p>Poor alignment between DWS and TCTA at the level of infrastructure planning and decision-making and dependence on annual budget allocations for projects implemented by DWS</p>
	<p>DWS cannot raise capital on the financial markets, and is reliant on special purpose vehicles, such as the Trans Caledon Tunnel Authority (TCTA), to finance and implement commercially viable economic projects. TCTA has developed significant capacity and experience in the financing and development of water infrastructure through the Lesotho Highlands Water Project and Berg River Project, amongst others.</p>
	<p>Lack of paying attention/response to the linkages of social and economic and water resources management dimensions. The social and economic dimensions of water resources management are fundamentally linked, the financing and development of large-scale water resources infrastructure is primarily driven by the requirements for social and economic use, which can be used to leverage supply for social purposes.</p>
<p>Inability to fund major infrastructure projects 'off budget'. An important objective is thus to fund major infrastructure projects 'off budget' which enables the Government's limited capital resources to be directed towards infrastructure that meets social objectives.</p>	

What socio-economic problem does the proposal aim to resolve	What are the main roots or causes of the problem
	<p>Lack of integrated risk management and strategic asset management in the operation and maintenance of the infrastructure, thereby ensuring effective and efficient service delivery. Disconnection in the development of new water resource infrastructure and the existing infrastructure needs to be effectively operated, maintained, refurbished and improved (“betterment”) in order to ensure that the value of this national asset is maintained to minimize the risk to customers (in terms of reliability of supply in dry periods) and the general public (in term of flood management).</p> <p>Lack of attention and response to the emerging needs of infrastructure development and asset management, dissatisfaction of the considerable interest in National Government’s Economic Cluster about the way in which DWS intends to manage water resources infrastructure to contribute to the country’s economic development priorities.</p>

1.3. Summarise the **aims** of the proposal and **how** it will address the problem in no more than five sentences.

The development of the National Water Resources Infrastructure Agency legislation aims at the following:

- To provide for the incorporation and establishment of the South African National Water Resources Infrastructure Agency Limited as a state-owned company and major public entity owned and controlled by the State to administer, fund, finance, provide, operate, maintain and provide advisory services in respect of national water resources infrastructure in accordance with sections 10, 11, 24, 27(1)(b) and 27(2) of the Constitution and national policy;

- To provide for the transfer of assets and certain liabilities to the South African National Water Resources Infrastructure Agency Limited from the Department of Water and Sanitation and from the Trans-Caledon Tunnel Authority;
- To provide for the disestablishment of the Trans-Caledon Tunnel Authority; and to provide for matters connected therewith.

1

The legislation provides for the establishment of an Agency which will combine functions related to infrastructure building, financing, operations and maintenance, and advisory services thereby allowing off-budget financing of economic infrastructure, together with the development of social infrastructure. This will improve the overall efficiency of national water resources infrastructure management and contribute to the addressing the socio-economic issues that the country is currently facing.

1.4. How is this proposal contributing to the following national priorities?

National Priority	Impact
1. Building a capable, ethical and developmental state	Stronger culture of accountability and mission focus will be possible in a corporatized institutional form.
2. Economic transformation and job creation	Ensuring water resource security for large strategic supply systems, Greater assurance to economic water users and investors and support off-budget infrastructure funding.
3. Education, skills and health	Ensuring water resource security for large strategic supply systems, will permit a more targeted response to current challenges in the provision of water services and the local management of water resources to both health and education institutions which will also enhance greater opportunities for formal development of technical skills.
4. Consolidating the social wage through reliable and quality basic services	Greater assurance of water resource supplies for basic water services thus contributing to the rural livelihoods, healthy lives and the overall water security.
5. Spatial integration, human settlements, and local government	More resilient and sustainable development in many cities and towns
6. Social cohesion and safe communities	Water security due to large strategic supply systems will contribute to better economy and services will contribute to social cohesion and

National Priority	Impact
	safety which will enhance more options for securing livelihoods and the overall quality of life.
7. A better Africa and world.	Better management of shared rivers will strengthen relationships and contribute to water security to many citizens while recognizing both the national and international prescripts (Sustainable Development Goal 6).

1.5. Please describe how the problem identified could be addressed if this proposal is not adopted. At least one of the options should involve no legal or policy changes, but rather rely on changes in existing programmes or resource allocation.

<b>Option 1.</b>	<b>Legislative Development</b> - The problem identified requires the legislative development and the Republic is under legal obligation to develop the legislation. The main objective of the development is to introduce the legislative framework which provides for the incorporation and establishment of the South African National Water Resources Infrastructure Agency Limited as a state-owned company and major public entity owned and controlled by the State to administer, fund, finance, provide, operate, maintain and provide advisory services in respect of national water resources infrastructure. The agency will integrate the national water resources infrastructure asset management functions such as operations and maintenance while investment in infrastructure development to support socio-economic development in the country.
<b>Option 2.</b>	<b>Status Quo</b> - This option may improve the management of infrastructure in DWS; however, it will not allow the DWS to raise off-budget funding for major water resource investment projects. While PPP type arrangements have been suggested, these are seldom possible with water resource projects. These projects have lengthy implementation times and face unpredictable and difficult to manage environmental risks which are not attractive to private investors. In addition, operational horizons are long term in nature and annual revenues vary greatly because of climate variation which adds to uncertainty for private investors. It is thus likely that continued off-budget funding will continue to require an institution

	such as the TCTA to mobilise funding and manage project implementation. The weaknesses due to the fragmentation of functions between DWS and the TCTA will therefore continue.
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**PART TWO: IMPACT ASSESSMENT**

**2. Policy/Legislative alignment with other departments, behaviours, consultations with stakeholders, social/economic groups affected, assessment of costs and benefits and monitoring and evaluation.**

2.1. Are other government laws or regulations linked to this proposal? If so, who are the custodian departments? Add more rows if required.

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
TCTA notice of establishment	Department of Water and Sanitation	The TCTA was initially established to implement and operate South Africa’s portion of the Lesotho Highlands Water Project, and then to fund and manage associated project debt. Subsequently, TCTA has been mandated to fund and implement commercially viable infrastructure projects, by directly raising finance from the capital markets.	The TCTA operates as a Special Purpose Vehicle which develops infrastructure projects and hands them over to DWS for operation. Commercial loans raised for these projects are underpinned by water supply agreements with users, from whom revenue is collected by DWS and paid to TCTA to reimburse the loans. TCTA is thus not able to raise funds against its own balance sheet and income.

2.2. Proposals inevitably seek to change behaviour in order to achieve a desired outcome.

Describe (a) the behaviour that must be changed, and (b) the main mechanisms to bring about those changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.

a) What and whose behaviour does the proposal seek to change? How does the behaviour contribute to the socio-economic problem addressed?

The development of the South African Water Resources Agency Bill seeks to change with the behaviours such as among other the fragmentation of national water resources infrastructure asset management functions such as operations and maintenance which results in functioning at a sub-optimal level and the sub-optimal and/or delayed investment in infrastructure development to support socio-economic development and job creation in South Africa.

These behaviours are mostly associated with the institutional arrangements which are legacy from pre-1994 (a period in which public finance was available for large infrastructure investments because only limited allocations were made for services to most of the population) and they contribute to inadequacy of the water supply to the South African Citizens for both social and economic needs. Currently there are two bodies responsible for national water resources infrastructure: The Trans-Caledon Tunnel Authority (TCTA) and Department of Water and Sanitation (DWS) by National Water Resources Infrastructure Branch (NWRIB) and Water Trading Account and TCTA was initially established to implement and operate South Africa's portion of the Lesotho Highlands Water Project, and then to fund and manage associated project debt.

As a result, this contributes to the division of responsibility between revenue management (linked to DWS infrastructure operations) and debt management by the financing agency, placing the ultimate risk on the operator (therefore an implicit guarantee of the loan by government) and infrastructure deterioration which hampers the overall access to water resources by all the South African Citizens.

b) How does the proposal aim to bring about the desired behavioural change?

The development of the legislation for the NWRIB provides for the establishment of an agency which will ensure the development and management of water resources infrastructure to achieve government's economic, social and water resources management objectives would combine functions related to infrastructure financing, development, operations, and maintenance, thereby allowing off-budget financing of economic infrastructure, together with the development of social infrastructure. This would address many of the issues raised above and improve the overall efficiency of national water resources infrastructure management while enabling the countries'

citizen to have access to water resources and thus sustainable future for all. This would involve the integration of the functions of the DWS Infrastructure Branch and the TCTA.

### 2.3. Consultations

- a) Who has been consulted inside of government and outside of it? Please identify major functional groups (e.g. business; labour; specific government departments or provinces; etc.); you can provide a list of individual entities and individuals as an annexure if you want.

#### Consulted Government Departments, Agencies and Other Organs of State

The consultation comments matrix is attached as **Annexure A**.

Department's name	What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs</u> and <u>risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section?
National Treasury and		Yes		Yes
Trans-Caledon Tunnel Authority (TCTA)		Yes		Yes
Department of Forestry, Fisheries and Environment.		Yes		Yes
Department of Cooperative and Governance.		Yes		Yes
Water Research Commission		Yes		Yes
Department of Traditional Affairs		Yes		Yes
Department of Human Settlement		Yes		Yes
Department of Agriculture, Land Reform and Rural		Yes		Yes

Department of Economic Development		Yes		Yes
Department of Public Service and Administration		Yes		Yes
Department of Public Enterprises		Yes		Yes
Department of Public Works and Infrastructure		Yes		Yes
Department of Planning, Monitoring and Evaluation		Yes		

**Consulted stakeholders outside government**

Stakeholders outside government will be consulted when the Bill is gazetted for ninety (90) days public consultation.

Name of Stakeholder	What do they see as main <u>benefits, Implementation/ Compliance costs and risks?</u>	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal?

- b) Summarise and evaluate the main disagreements about the proposal arising out of discussions with stakeholders and experts inside and outside of government. Do not give details on each input, but rather group them into key points, indicating the main areas of contestation and the strength of support or opposition for each position

2.4. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their role in the economy or in society. Note: No law or regulation will benefit everyone equally so do not claim that it will. Rather indicate which groups will be expected to bear some cost as well as which will benefit. Please be as precise as possible in identifying who will win and who will lose from your proposal. Think of the vulnerable groups (disabled, youth, women, SMME), but not limited to other groups.

<b>List of beneficiaries (groups that will benefit)</b>	<b>How will they benefit?</b>
Consumers/ public (poor and most vulnerable Women, Youth, Children, People with Disabilities)	Access to water resources and thus sustainable livelihoods, improved health and education.
<b>Economic sector</b> – mining, Power generation (Eskom), commercial agriculture, Local government, tourisms, construction, Industries as well commerce in large urban settlements that depend on the national water infrastructure	Improved access to water resources which will contribute to the maximum production, increased job creation, and maximum contribution to the Gross Domestic Product (GDP), increased investor confidence.
<b>Social sector</b> - small scale farmers, historically disadvantaged individuals, communities at rural areas	Access to water resources and continued farming, job creation, poverty alleviation and thus sustainable livelihoods, improved health and education
<b>Domestic water users</b> in large urban settlements who are dependent on large systems for their water supplies.	Access to water resources
<b>Researchers/ Academia</b>	Opportunity to conduct pilot projects
<b>Private businesses</b>	<ul style="list-style-type: none"> <li>- Restored confidence for business operations</li> <li>- Improved relations with public institutions</li> </ul>

List of cost bearers (groups that will bear the cost)	How will they incur / bear the cost
Water Trading Entity (WTE)	<p>There will be some costs for establishment of the Agency and the WTE has set aside R20 million per year for the next three years to cater for these costs. The intention of the establishment of the Agency is that all water users will benefit from the improved performance of national water resources infrastructure.</p> <p>DWS is in the process of planning and implementing a range of major projects to augment national bulk water resource infrastructure which will fall within the scope of National Water Resource Infrastructure Agency (NWRIA) to finance and implement the large-scale investments in national water resource infrastructure that are required to ensure that South Africa has sufficient bulk water supply now and in future. The following two charges will be applicable: Capital Cost, comprising:</p> <ul style="list-style-type: none"> <li>• Depreciation component for the purposes of funding refurbishment cost</li> <li>• Return on assets component for the purposes of funding development and betterment waterworks</li> </ul> <p>Operations and Maintenance (O &amp; M) for the running of the schemes.</p>

2.5. Describe the costs and benefits of implementing the proposal to each of the groups identified above, using the following chart. Please do not leave out any of the groups mentioned, but you may add more groups if desirable. Quantify the costs and benefits as far as possible and appropriate. Add more lines to the chart if required.

Note: "Implementation costs" refer to the burden of setting up new systems or other actions to comply with new legal requirements, for instance new registration or reporting requirements or by initiating changed behaviour. "Compliance costs" refers to on-going costs that may arise thereafter, for instance providing annual reports or other administrative actions. The costs and benefits from achieving the desired outcomes

relate to whether the particular group is expected to gain or lose from the solution of the problem.

For instance, when the UIF was extended to domestic workers:

- The implementation costs were that employers and the UIF had to set up new systems to register domestic workers.
- The compliance costs were that employers had to pay regularly through the defined systems, and the UIF had to register the payments.
- To understand the inherent costs requires understanding the problem being resolved. In the case of UIF for domestic workers, the main problem is that retrenchment by employers imposes costs on domestic workers and their families and on the state. The costs and benefits from the desired outcome are therefore: (a) domestic workers benefit from payments if they are retrenched, but pay part of the cost through levies; (b) employers pay for levies but benefit from greater social cohesion and reduced resistance to retrenchment since workers have a cushion; and (c) the state benefits because it does not have to pay itself for a safety net for retrenched workers and their families.

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
<p><b>Government (Department of Water and Sanitation, treasury)</b></p>	<p>Establishment of the Water Resources Assets Management Agency</p> <p>Appointment or placing of the existing human resources</p>	<p>Abide by South African Water Resources Infrastructure Agency legislation</p>	<p>Ability of the Water Resource Infrastructure Agency (NWRIA) to raise capital directly on the financial markets.</p> <p>Effective and efficient planning.</p> <p>Ability to provide, operate, maintain national water resources infrastructure in a manner that takes account of national development objectives, including the mitigation of climate change and other risks to a reliable water supply.</p> <p>Ability to collect water use charges due to it in terms of Chapter 5 of the National Water Act and the Pricing Strategy established by the Minister in terms of section 56 of the National Water Act.</p> <p>Ensure sustainable, equitable and reliable development of infrastructure</p> <p>Creation of jobs in the infrastructure</p>	<p>Reaffirm the constitutional rights for all south Africans and provide mechanisms for the achievement of the National Development Plan and the Sustainable Development Goal 6</p>



<p>Consumers/ public (poor and most vulnerable Women, Youth, Children, People with Disabilities)</p>	<p>Capacitation of the public on South African Water Resources Agency legislation</p>	<p>Abide by South African Water Resources Agency legislation</p>	<p>Access to water resources which will enable healthy lives</p>	<p>Reaffirm the constitutional rights for all south Africans and provide mechanisms for the achievement of the National Development Plan and the Sustainable Development Goal 6</p>
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<p>Economic sector – mining, Power generation (Eskom), commercial agriculture, Local government, tourisms, construction, Industries as well commerce in large urban settlements that depend on the national water infrastructure</p>	<p>Capacitation of the private businesses on the operation of the agency and the South African Water Resources Agency Bill</p>	<p>Abide by the provisions of the South African Water Resources Agency Bill</p>	<p>Access to water resources that will enable more production  Increased job creation  Increased confidence in investment  Contribution to the Gross domestic product (GDP)</p>	<p>Reaffirm the constitutional rights for all south Africans and provide mechanisms for the achievement of the National Development Plan and the Sustainable Development Goal 6</p>
<p><b>Social sector-</b> small scale farmers, communities historically disadvantaged individuals</p>	<p>Capacitation of the private businesses on the operation of the agency and the South African Water Resources Agency Bill</p>	<p>Abide by the provisions of the South African Water Resources Agency Bill</p>	<p>Access to water resources for farming and improvement of the livelihoods, therefore healthy lives, and improved education  First time access to water resources</p>	<p>Reaffirm the constitutional rights for all south Africans and provide mechanisms for the achievement of the National Development Plan and the Sustainable Development Goal 6</p>
<p><b>Vulnerable group</b> which includes women children and people with disabilities.</p>	<p>Capacitation of the private businesses on the operation of the agency and the South African Water Resources Agency Bill</p>	<p>Abide by the provisions of the South African Water Resources Agency Bill.</p>	<p>Improved access to water resources contributing to sustainable livelihoods</p>	<p>Reaffirm the constitutional rights for all south Africans and provide mechanisms</p>

	Resources Agency Bill.			for the achievement of the National Development Plan and the Sustainable Development Goal 6
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2.6 Cost to government: Describe changes that the proposal will require and identify where the affected agencies will need additional resources.

a) Budgets, has it been included in the relevant Medium Term Expenditure Framework (MTEF) and

Yes – the Budgets, has been included in the relevant Medium-Term Expenditure Framework (MTEF). An amount of R20 million has been budgeted per year over the MTEF.

**Fiscal transfers: provisions for 2022-2025**

The DWS/NWRIB's approved budget and future MTEF allocations illustrate the streams of fiscal support currently received, elements of which would continue to be required by the NWRIA.

- Allocations for refurbishment is between R1.2bn to R1.3bn per annum. R5.5bn has been prioritised on a risk-management basis to address the priority backlog refurbishment estimated at about R19 bn.
- Operation and maintenance allocations currently total between R2.4bn to R2.7bn per annum of which 37% is for salaries and only about 3% to 9% is for maintenance. Under-funding of maintenance is the main reason for the refurbishment backlog and needs to be reinstated to routine maintenance.
- 'Augmentation Projects', the social component of new capital works, are funded from fiscal allocations rising from R1.1bn to R1.7bn annually based on the capital programme and phase of construction.
- The TCTA allocation includes the repayment of borrowings and royalties paid for the LHWP, which is funded from WTE revenue, augmented by transfers from other line function allocations, specifically maintenance, when collections are inadequate.

- b) Staffing and organisation in the government agencies that have to implement it (including the courts and police, where relevant). Has it been included in the relevant Human Resource Plan (HRP).

Key to the success of the NWRIA will be the implementation of robust, fair and transformative human resource processes during the establishment of the organisation. The aspects set out below should not be seen as sequential. Rather, some will be implemented simultaneously, whilst others, like the communication process, will be ongoing throughout the establishment and transfer process.

A particular challenge that will need to be addressed is the merging of two different institutional cultures and HR systems into one: those of the infrastructure branch of DWS and those of the TCTA. This will require a focused and structured change management programme over a period of time. Staff will be transferred into the NWRIA according to Section 197 of the Labour Relations Act (1995) under which an individual is obliged to transfer to the new employer provided there are substantively similar conditions of service.

Recruitment processes are underway to fill some of the critical posts that became vacant due to natural attrition in the current financial year, and this is anticipated to be completed at the start of the 2022 23 FY. In these processes, priority is given to the core engineering functions, i.e Civil, Mechanical Electrical Engineering required for the optimal operation of infrastructure and implementation of the Departmental maintenance plan.

Some of the operation of other infrastructure within the WMA areas has been delegated to other institutions such as the Water Users Associations who fulfil the staff function through O&M agreements.

*Note: You MUST provide some estimate of the immediate fiscal and personnel implications of the proposal, although you can note where it might be offset by reduced costs in other areas or absorbed by existing budgets. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.*

2.7 Describe how the proposal minimises implementation and compliance costs for the affected groups both inside and outside of government.

**For groups outside of government (add more lines if required)**

<b>Group</b>	<b>Nature of cost (from question 2.6)</b>	<b>What has been done to minimise the cost?</b>
Government: Department of Water and Sanitation (DWS) and Trans-Caledon Tunnel Authority (TCTA)	Establishment of the NWRIA	Utilization of the existing buildings
	Fund, finance, provide, operate, maintain and provide advisory services in respect of National Water Resources Infrastructure in accordance with sections 10, 11, 24, 27(1)(b) and 27(2) of the Constitution and national policy	Most of the advisory services are already in place between DWS and TCTA
Construction companies	Cost of construction	Take over the full obligation and contracts on the same terms and conditions
Consulting Engineers	Fees	Take over the full obligation and contracts on the same terms and conditions
Financiers	Debt servicing	Take over the full obligation and contracts on the same terms and conditions. MCWAP and Lesotho Highland Water Projects will continue to be covered by explicit government guarantees. Measures need to be considered to mitigate the removal of the existing implied guarantee, which fall away.
Government of Lesotho	Royalties	Take over the full obligation and contracts on the same terms and conditions

Group	Nature of cost (from question 2.6)	What has been done to minimise the cost?
LHDA	Operating costs	Take over the full obligation and contracts on the same terms and conditions

**For government agencies and institutions:**

Agency/institution	Nature of cost (from question 2.6)	What has been done to minimise the cost?
NWRIA	Costs for establishment of the Agency	Internal resources will be utilised to minimise the cost of establishment
Water Boards	Water tariff income	Apply the existing water pricing strategy Non-payment and slow payment would need to be dealt with more effectively
Municipalities and metros	Water tariff income	Apply the existing water pricing strategy Non-payment and slow payment would need to be dealt with more effectively

## 2.8 Managing Risk and Potential Dispute

- a) Describe the main risks to the achievement of the desired outcomes of the proposal and/or to national aims that could arise from implementation of the proposal. Add more lines if required.

*Note: It is inevitable that change will always come with risks. Risks may arise from (a) unanticipated costs; (b) opposition from stakeholders; and/or (c) ineffective implementation co-ordination between state agencies. Please consider each area of risk to identify potential challenges.*

- Organised labour unhappy with corporatisation - Opposition from organized labour has been identified and may be required to be addressed from political level downwards.
- Financial uncertainty amongst lenders and revenue risks under new arrangements- Financial partners' uncertainty could undermine objectives if not properly managed to ensure that vision and process is clearly understood.

- Implementation risks- such as failures of financial or administrative systems are being identified.

b) Describe measures taken to manage the identified risks. Add more rows if necessary.

*Mitigation measures means interventions designed to reduce the likelihood that the risk actually takes place.*

Identified risk	Mitigation measures
<ul style="list-style-type: none"> <li>• Organised labour unhappy with corporatisation.</li> </ul>	<ul style="list-style-type: none"> <li>• Effective consultation and responses to concerns.</li> </ul>
<ul style="list-style-type: none"> <li>• Financial uncertainty amongst lenders and revenue risks under new arrangements</li> </ul>	<ul style="list-style-type: none"> <li>• Transition designed to provide certainty to lenders. Careful attention to revenue collection systems</li> </ul>
<ul style="list-style-type: none"> <li>• Implementation risks</li> </ul>	<ul style="list-style-type: none"> <li>• Structured establishment and implementation programme with strong board and CEO appointed</li> </ul>

c) What kinds of dispute might arise in the course of implementing the proposal, whether (a) between government departments and government agencies/parastatals, (b) between government agencies/parastatals and non-state actors, or (c) between non-state actors? Please provide as complete a list as possible. What dispute-resolution mechanisms are expected to resolve the disputes? Please include all of the possible areas of dispute identified above. Add more lines if required.

*Note: Disputes arising from regulations and legislation represent a risk to both government and non-state actors in terms of delays, capacity requirements and expenses. It is therefore important to anticipate the nature of disputes and, where possible, identify fast and low-cost mechanisms to address them.*

Nature of possible dispute (from sub-section above)	Stakeholders involved	Proposed Dispute-resolution mechanism
Decline of or limitations in water use licensing as this	Private businesses	Appeal functions to be aligned with best practice and other

Nature of possible dispute (from sub-section above)	Stakeholders involved	Proposed Dispute-resolution mechanism
policy provisions prioritise equity in water allocation. Withdrawal or revoking of water use licences.		<p>appeal mechanisms as stipulated in the National Water Act, with the focus on alternate dispute resolution and reduce possible litigation will be created to make sure that there is procedural fairness in all allocation decisions and the development of appropriate dispute resolution mechanisms will make sure that the new system meets all the requirements of administrative justice.</p> <p>In line with best practice, the process of speedily, cheaply and Transparently resolving difference or disagreements will be mediation.</p>

## 2.9 Monitoring and Evaluation

*Note: Sound implementation of policy and legislation is due to seamless monitoring and evaluation integration during the policy development phase. Policies and legislation that are proficiently written yet unable to report on implementation outcomes are often a result of the absence of an M&E framework at the policy and legislative planning phase. It is therefore imperative to state what guides your policy or legislation implementation monitoring.*

2.9.1 Develop a detailed Monitoring and Evaluation Plan, in collaboration with your departmental M&E unit which should include among others the following:

2.9.1.1 Provide clear and measurable policy or legislative objectives

2.9.1.2 Provide a Theory of Change clearly describing the following components:

- Impact: the organisational, community, social and systemic changes that result from the policy or legislation;
- Outcomes: the specific changes in participants (i.e. beneficiaries) behaviour, knowledge, skills, status and capacity;
- Outputs: the amount, type of degree of service(s) the policy or legislation provides to its beneficiaries;



- Activities: the identified actions to be implemented
- Input: departmental resources used in order to achieve policy or legislative goals i.e. personnel, time, funds, etc.
- External conditions: the current environment in which there's an aspiration to achieve impact. This includes the factors beyond control of the policy or legislation (economic, political, social, cultural, etc.) that will influence results and outcomes.
- Assumptions: the facts, state of affairs and situations that are assumed and will be necessary considerations in achieving success

<b>Impact</b>	<b>Outcomes</b>	<b>Outputs</b>	<b>Activities</b>	<b>Input</b>	<b>External conditions</b>	<b>Assumptions</b>
Improved livelihoods Improved health and education Booming businesses Job creations Contribution to the Gross Domestic Product (GDP)	Improved access to water resources.	Established water resources agency.  Combined functions related to infrastructure financing, development, operations, and maintenance, thereby allowing off-budget financing of economic infrastructure	Financing of the agency, Development of the infrastructure, Operation and maintenance, The arrangement of workshops and awareness campaigns on the functioning of the agency etc.	Financial resources  DWS human resources	Lack of the legislation which provides for the establishment of the agency	Adoption of the South African water resources Bill will contribute to the allowance of the off-budget financing of economic infrastructure, together with the development of social infrastructure contribute to sustainable access to water resources by all South African Citizens.

2.9.1.3 Provide a comprehensive Logical Framework (LogFrame) aligned to the policy or legislative objectives and the Theory of Change. The LogFrame should contain the following components:

- Results (Impact, Outcomes and Output)
- Activities and Input

- Indicators (A measure designed to assess the performance of an intervention. It is a quantitative or qualitative factor or variable that provides a simple and reliable means to measure achievement, to reflect the changes connected to an intervention, or to help assess the performance of a development actor)
- Baseline (the situation before the policy or legislation is implemented)
- Targets (a specified objective that indicates the number, timing and location of that which is to be realised)

<b>Results: (Impact, Outcomes and Outputs)</b>	<b>Activities and Input</b>	<b>Indicators</b>	<b>Baseline</b>	<b>Targets</b>
Increased access to water resources through establishment of the agency that combines functions related to infrastructure financing, development, operations, and maintenance, thereby allowing off-budget financing of economic infrastructure, together with the development of social infrastructure	Financing of the agency, Development of the infrastructure, Operation and maintenance, Provision of the advisory services The arrangement of workshops and awareness campaigns on the functioning of the agency etc.	Improved quality of life statistics. Decreased migration statistics Booming businesses	National Water Resources Agency Business Case.	The country that has improved access to water resources through the development of the legislation that provides for the establishment of the agency that combines functions related to infrastructure financing, development, operations, and maintenance for the achievement of the NDP by 2030 and beyond in order for sustainability.

2.9.1.4 Provide an overview of the planned Evaluation, briefly describing the following:

- Timeframe: when it the evaluation be conducted  
Periodically as and when required in addition to the standard annual and quarterly performance reports, including the Annual Report for submission to Parliament.

Type: What type of evaluation is planned (formative, implementation or summative) – the selection of evaluation type is informed by the policy owners objective (what it is you want to know about your policy or legislation. Implementation evaluation.

Cascading commitments from the Medium-Term Strategic Framework with reference to the NDP and National Water Resources Master Plan. These would be aligned with the Corporate Plan, the Strategic Plan and Annual Performance Plan. A shareholder's compact will be developed by the NWRIA and signed by the Minister. Elements that will be included in the Shareholder's Compact are:

- Strategic Intent
- Policies
- Business, transformation and social objectives, reflecting Government's priorities
- Governance issues
- Roles and Responsibilities of the Minister
  - directives, regulation, etc.
  - reconciliation and augmentation planning'
  - monitoring and water quality objectives
- Roles and Responsibilities of the NWRIA
  - functions, legislative compliance, reporting
  - water resource infrastructure use charges
- Performance management
  - Rewards / Penalties
- Undertakings by the Minister
- Undertakings by the NWRIA
- Operating and performance indicators, including financial indicators
- Medium term budget
- Capital programme
- Risk assessment and management
- Stakeholder matrix and plan
- Legislative compliance
- Mechanisms and structures for interaction between Minister, DWS and NWRIA
  - alignment in strategic planning processes
- Water use pricing
  - Non-compliance

2.9.1.5 Provide a straightforward Communication Plan (Note: a common assumption is that the target group will be aware of, and understand how

to comply with a policy or legislation come implementation. However, increases in the complexity and volume of new or amendment policy or legislation render this assumption false. Hence, the need for a communication plan to guide information and awareness campaigns to ensure that all stakeholders (including beneficiaries) are informed.

Detailed communication plan has been developed and will be provided once the Bill is approved for external consultations. This is being used to inform both internal and external stakeholders about the establishment of the NWRIA and to keep them updated on progress. This plan will continue to evolve as communication with key stakeholders become more granular. In this plan, the detail of the stakeholder groups which are targeted, are specified.

2.10 Please identify areas where additional research would improve understanding of then costs, benefit and/or of the legislation.

Continual development of detailed understanding is an integral part of the current process and will provide greater certainty around costs with Dedicated work stream developing best suited Financial model best suited and benefits.

In term of “Comparison of the South African approach to water resources management and planning with four international countries”. **The research compared the South African approach to water resources management with four international countries, namely: Australia (New South Wales), Brazil, England, and the USA (California).** The overall objective was to determine whether South Africa can learn from other countries with similar water resources issues and improve the current methodologies, approaches and techniques based on their experiences. This is carried out using the following areas of comparison: Legislative framework; Required documentation and typical studies carried out; Institutional arrangements; and Modelling techniques.

In terms of Comparisons overall summary of selected data for the countries assessed. When comparing, it becomes evident why Australia and the USA have selected to manage their water resources on a State-by-State basis due to the large size of the States. South Africa is the driest in terms of mean annual rainfall across the country. Brazil has by far the highest runoff, with New South Wales lower than South Africa’s. The following are the areas of comparison namely:

- a) **Legislation:** The legislative approaches for the five countries that were compared tend to be similar. South Africa and Australia’s Acts are very similar, with many common threads. Brazil did not completely rewrite their legislation, but rather chose to add to it. One of the significant changes to Brazil’s legislation was to recognize the need for equality amongst the different water user sectors. South

Africa's legislation also highlights the need for equality; however, this is more related to demographics and the previously disadvantaged than it is amongst user sectors. Hence the National Water Resource Agency prosed establishment.

- b) **Typical studies and Documentation:** South Africa's planning horizon of 25 years (up till 2040) appears in line with the others, with England using 25 years, California 20 years and Australia 10 years. In California there is a need for urban water suppliers to do long term planning. It appears there is a strong guidance and support basis to develop the required plans. This should be learned from in South Africa. National Water Resource Agency will be able to build on such strength.
- c) **Institutional Arrangement:** While it appears necessary to manage the countries on a State level due to their large sizes, New South Wales in Australia, California in the USA and Brazil all struggle with management relating to State versus Federal governments. The States are usually given the mandate to manage, however, they still need to adhere to federal rules. In addition, there appears to be a major issue of governing boundaries not being the same as catchment boundaries. In South Africa the approach to manage per Water Management Area is sound as it eliminates this issue. National Water Resource Agency will be able to build and complement on such strength
- d) **Modelling techniques:** Literature on water resources modelling in Australia makes mention of a Modelling Community and places a strong emphasis on the requirement to exchange issues, ideas and suggestions for users. South Africa is considered weak in this regard, and, while it was previously set up and maintained, this has all but stagnated to date. The ad hoc exchange of 64 ideas does take place, however, there is a need to build on this and allow for more users to participate and share information. California mentioned the backup support for the use of their main model CALSIM i.e. The Water Resource Integrated Modelling System (WRIMS model engine or WRIMS) (formally named CALSIM) also lacks and should be improved. They state that there is a need for a well-publicized user group. The South African models have many similarities to CALSIM used in California. Overall, in terms of the models used, it is evident that South Africa is up to standard in terms of the model capabilities, however, appears to now lag in the graphics capabilities and GIS functionality. Improvements can be made to the maintenance and enhancement approach and utilizing the benefits of open-source software should be investigated.

The general deduction is that South Africa, though for many still considered a developing country, currently maintains a very high standard in managing its water resources and is comparable to some of the most developed countries in the world. **It appears that, when comparing management approaches, South Africa was, for many years, leading the group.** However, it appears that in recent years, a stagnation of further maintenance and development of the techniques used has allowed others to catch up and possibly even

move past. It is believed that South Africa can learn from the other countries when it comes to model development, though the actual modelling approach and methodology (risk based) used are still very highly rated.

Whilst in terms of study on *“Water resource management: on Integrated Water resource management (IWRM) strategies for improved water management. A systematic review of case studies of East, West and Southern Africa”*. The purpose of the research aimed at review sought to unveil the innovative IWRM strategy approach by critically examining its genesis, implementation, adoption and the main drivers in East, Southern and West Africa. Secondary to this, the study endeavoured to determine whether the IWRM implementation has been a success or failure. As a laboratory of IWRM revealed a varied aggregated outcome. The outcomes were directly linked to various national socio-economic development agendas; thus, the IWRM policy took a multiplicity of paths. In East Africa, Kenya is still recovering from the devolved system of government to the County system which created new transboundary sectors with the country.

Water scarcity, trans-boundary water resource and donor aid played a critical role in driving the IWRM policy approach in the three regions. Southern Africa’s IWRM experience has been fraught with policy **clashes between the water and land reforms**. Similar to Africa, the transboundary issue in Europe and Asia and the subsequent management is a major buy-in for formulating water resources strategies **that are people centric and ecologically friendly**. Global water scarcity created fertile grounds for IWRM adoption in Asia, specifically India. Thus, we postulate that some of the drivers that influenced the uptake and diffusion in Africa are not only unique to the continent.

## PART THREE: SUMMARY AND CONCLUSIONS

1. Briefly summarise the proposal in terms of (a) the problem being addressed and its main causes and (b) the measures proposed to resolve the problem.

The inadequacy of water supply for both social and economic needs curtail the livelihoods of many South Africans while contributing to unsustainability in meeting current and future demands. Fragmentation of national water resources infrastructure asset management functions such as operations and maintenance which results in functioning at a sub-optimal level were considered among others, the major contributor to the deterioration of the water supply in the country. Currently there are two institutions involved in performing the functions related to national water resources infrastructure: The Trans-Caledon Tunnel Authority (TCTA) and the National Water Resources Infrastructure Branch (NWRIB) of the Department of Water and Sanitation.

As a result, the Department of Water and Sanitation (DWS) cannot raise capital directly on the financial markets, and is reliant on special purpose vehicles, such as the Trans Caledon Tunnel Authority (TCTA), to finance and implement commercially viable economic projects. However, this is not an optimal situation as it introduces an institutional split between the infrastructure manager and project implementer. It also results in a division of responsibility between revenue management (linked to DWS infrastructure operations) and debt management by the financing agency, placing the ultimate risk on the operator and therefore an implicit guarantee of the loan by government.

Therefore, this necessitates the need for the development of the National Water Resources Infrastructure Asset Bill which will provide for the incorporation and establishment of the South African National Water Resources Infrastructure Agency Limited. The proposal will further bridge the gap of inadequate water supply that both the Department and the country is facing and contribute greatly in meeting the demands of the citizens both currently and in future while achieving the National Development Plan (NDP) by 2030 and beyond as well as contributing to the achievement of the Sustainable Development Goals (SDGs).

The base case for the establishment of the NWRIA is **financially viable** and **operationally justifiable**. The NWRIA will require ongoing fiscal support to address the substantial refurbishment and renewal backlogs occasioned by years of inadequate maintenance expenditure. In this regard, the 'social' policy purposes of the non-core GWSs should be recognised and appropriately supported either within the NWRIA or by transfer to other institutions. Without adequate provision, cashflow projections show that surpluses adequate to address the full backlogs will only be generated after **2040**. In addition to fiscal transfers, it is also recommended that high priority be given to improved revenue collection and tariff

adjustments over the first 3 years in order to ensure that prioritised refurbishment is addressed in 10 years. It is anticipated that the current pricing strategy will be aligned to meet the needs of building, operating and maintaining raw water infrastructure effectively.

2. Identify the social groups that would benefit and those that would bear a cost, and describe how they would be affected. Add rows if required.

<b>Groups</b>	<b>How they would be affected</b>
<b>Beneficiaries</b>	
1. Consumers/ public (poor and most vulnerable Women, Youth, Children, People with Disabilities)	Access to water resources and thus sustainable livelihoods, improved health and education.
2. Economic sector – mining, Power generation (Eskom), commercial agriculture, Local government, tourisms, construction, Industries as well commerce in large urban settlements that depend on the national water infrastructure	Improved access to water resources which will contribute to the maximum production, increased job creation, and maximum contribution to the Gross Domestic Product (GDP), increased investor confidence.
3. Social sector: small scale farmers, communities and Historically Disadvantaged Individuals (HDIs)	Access to water resources and continued farming, job creation, poverty alleviation and thus sustainable livelihoods, improved health and education
4. <b>Domestic water users</b> in large urban settlements who are dependent on large systems for their water supplies.	Access to water resources
5. <b>SMME</b>	Business development and opportunities through the procurement spend
6. <b>Communities</b>	Decent jobs for women, youth and persons with disabilities
7. <b>Construction and engineering sectors</b>	Work directly related to the business of the Agency



<b>Groups</b>	<b>How they would be affected</b>
8. <b>Industry</b>	Assembly and/or manufacturing of components and provision of materials/services.
9. <b>Financiers</b>	Provision of funding for the business of the Agency
10. Private businesses	- Restored confidence for business operations - Improved relations with public institutions
<b>Cost bearers</b>	
1. Water Trading Entity	There will be some costs for establishment of the Agency and the WTE has set aside R20 million per year for the next three years to cater for these costs. The intention of the establishment of the Agency is that all water users will benefit from the improved performance of national water resources infrastructure.

3. What are the main risks from the proposal in terms of (a) undesired costs, (b) opposition by specified social groups, and (b) inadequate coordination between state agencies?
  - Organised labour unhappy with corporatisation - Opposition from organized labour has been identified and may be required to be addressed from political level downwards.
  - Financial uncertainty amongst lenders and revenue risks under new arrangements- Financial partners' uncertainty could undermine objectives if not properly managed to ensure that vision and process is clearly understood.
  - Implementation risks- such as failures of financial or administrative systems are being identified.
  
4. Summarise the cost to government in terms of (a) budgetary outlays and (b) institutional capacity. The earmarked amounts per the 2022 MTEF Vote 41 allocated to the Water Trading Entity will accrue to the NWRIA Agency once established.
  
5. Given the assessment of the costs, benefits, and risks in the proposal, why should it be adopted?

The National Water Resources Infrastructure Asset Bill has considered all the principles of SEIAS such as the cost-benefit analysis, risks that might arise during the implementation of the Bill and the mitigation measures are in place, therefore this renders the Bill to be adopted.

6. Please provide two other options for resolving the problems identified if this proposal were not adopted.

<p><b>Option 1.</b></p>	<p>Legislative Development - The problem identified requires the legislative development and the Republic is under legal obligation to develop the legislation. The main objective of the development is to introduce the legislative framework which provides for the incorporation and establishment of the South African National Water Resources Infrastructure Agency Limited as a state-owned company and major public entity owned and controlled by the State to administer, fund, finance, provide, operate, maintain and provide advisory services in respect of national water resources infrastructure. The agency will integrate the national water resources infrastructure asset management functions such as operations and maintenance while investment in infrastructure development to support socio-economic development in the country.</p>
<p><b>Option 2.</b></p>	<p>Status Quo - This option may improve the management of infrastructure in DWS; however, it will not allow the DWS to raise off-budget funding for major water resource investment projects. While PPP type arrangements have been suggested, these are seldom possible with water resource projects. These projects have lengthy implementation times and face unpredictable and difficult to manage environmental risks which are not attractive to private investors. In addition, operational horizons are long term in nature and annual revenues vary greatly because of climate variation which adds to uncertainty for private investors. It is thus likely that continued off-budget funding will continue to require an institution such as the TCTA to mobilise funding and manage project implementation. The weaknesses due to the fragmentation of functions between DWS and the TCTA will therefore continue.</p>

7. What measures are proposed to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation?

The cost-benefit analysis is proposed as a measure to deal with the implementation costs that might become visible during the implementation of the legislation. As a result, the following will be prioritized:

- Expanding the existing human resource capacity within the sanitation function
- Fostering Public-Private Partnership

- Enhanced governance: Governance is a means to an end, and the type of governance should match the level of risk or the magnitude of the problem to fit policies to places.

Governance needs to be adaptive, context-dependent, and place-based in order to take into account historical and territorial specificities and challenges. Governance is much broader than government as it also seeks to include the private sector, civil society and a wide range of stakeholders with a stake in water use and management (OECD,2001). Policy responses to water challenges will only be viable if they are coherent and integrated; if stakeholders are properly engaged; if well-designed regulatory frameworks are in place; if there is adequate and accessible information; and if there is sufficient capacity, integrity and transparency.

8. Is the proposal (mark one; answer all questions)

	Yes	No
a. Constitutional?	Yes-Awaiting State Law Advisor (SLA)certification (comments from SLA) attached as <b>Annexure B)</b>	
b. Necessary to achieve the priorities of the state?	Yes	
c. As cost-effective as possible?	Yes	
d. Agreed and supported by the affected departments?	Yes	

9. What is the impact of the Proposal to the following National Priorities?

National Priority	Impact
1. Building a capable, ethical and developmental state	Stronger culture of accountability and mission focus will be possible in a corporatized institutional form.
2. Economic transformation and job creation	Ensuring water resource security for large strategic supply systems, Greater assurance to economic water users and investors and support off-budget infrastructure funding.
3. Education, skills and health	Ensuring water resource security for large strategic supply systems, will permit a more targeted response to current challenges in the provision of water services and the local

National Priority	Impact
	management of water resources to both health and education institutions which will also enhance greater opportunities for formal development of technical skills.
4. Consolidating the social wage through reliable and quality basic services	Greater assurance of water resource supplies for basic water services thus contributing to the rural livelihoods, healthy lives and the overall water security.
5. Spatial integration, human settlements and local government	More resilient and sustainable development in many cities and towns
6. Social cohesion and safe communities	Water security due to large strategic supply systems will contribute to better economy and services will contribute to social cohesion and safety which will enhance more options for securing livelihoods and the overall quality of life.
7. A better Africa and world.	Better management of shared rivers will strengthen relationships and contribute to water security to many citizens while recognizing both the national and international prescripts (Sustainable Development Goal 6).

***For the purpose of building a SEIAS body of knowledge please complete the following:***

<b><i>Name of Official/s</i></b>	Ms Thoko Sigwaza
<b><i>Designation</i></b>	Chief Director
<b><i>Unit</i></b>	Water Institutions Management
<b><i>Contact Details</i></b>	060 559-7672
<b><i>Email address</i></b>	<a href="mailto:sigwazat@dws.gov.za">sigwazat@dws.gov.za</a>



**water & sanitation**

Department:  
Water and Sanitation  
REPUBLIC OF SOUTH AFRICA

# **Business Case for the Establishment of a National Water Resources Infrastructure Agency**

**Draft: Version 9.0**

**May 2022**

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## Acronyms

CMA	Catchment Management Agency
CUC	Capital Unit Charge
DEP	Depreciation charge
DWS	Department of Water and Sanitation
FBIC	Future Infrastructure Build Charge
MTEF	Medium-term Expenditure Framework
MTSF	Medium-term Strategy Framework
NDO	National Development Plan
NWRIA	National Water Resources Infrastructure Agency
NWRIB	National Water Resources Infrastructure Branch
O&M	Operations and Maintenance
ROA	Return on Assets
SOE	State-owned Entity
TCTA	Trans Caledon Tunnel Authority
WTE	Water Trading Entity
WUA	Water User Association



## Summary

This Business Case sets out the rationale, proposed corporate form, financial viability, and pathway to the establishment of a National Water Resources Infrastructure Agency (NWRIA), which will be tasked with the options analysis, development, management, and financing of national water resources infrastructure. It will bring together the relevant functions in this regard carried out by the Department of Water and Sanitation (DWS) and the functions of the Trans Caledon Tunnel Authority (TCTA). The process will see a new agency arising from the combination of the TCTA and the DWS NWRIB and Water Trading Entity (WTE).

The establishment of the NWRIA will remove the current inefficiencies of have two organisations involved in the funding, development, operation and maintenance of national water resources infrastructure. National water resources infrastructure is critical for the economic development of South Africa, particularly in the face of climate change and variability, and it is important to ensure the most effective institutional arrangements for the future. Setting up the NWRIA will also enable the leveraging of the revenue from all national water resource infrastructure for further development of infrastructure.

The NWRIA will be established through its own legislation, the South African National Water Resources Infrastructure Agency SOC Act. A draft Bill is attached to this Business Case (Appendix C).

Once the NWRIA has been established legally, the Board and CEO will be appointed and the relevant functions, staff, liabilities and assets will be migrated, as-is, into it from DWS and the TCTA. This will include all infrastructure and projects of the national water resources infrastructure branch (NWRIB) of DWS including that non-national infrastructure currently managed by DWS. The latter will, on a case-by-case basis, be devolved to appropriate institutions such as Water User Associations and/or Water Boards. The Construction Unit will not be transferred to the NWRIA, but will remain in DWS. From DWS, the Water Trading Entity (WTE), the NWRIB branch (NWRIB) (excluding the construction unit staff), the Options Analysis staff and any relevant human resource, finance and/or admin staff will be transferred to the NWRIA. All of the functions, projects, staff and agreements of the TCTA will be transfer to the NWRIA. Once this has taken place, the TCTA will be dis-established.

The Board and CEO will be responsible for overseeing the organisational design of the NWRIA and the restructuring of components transferred into the NWRIA. This will include the development of job grading and remuneration packages and aligning conditions of service across the organisation. This will take place after the establishment of the NWRIA. The Board and CEO will also be responsible for the development of plans, budgets and any other PFMA related requirements, for overseeing the development of necessary systems and other procedural requirements for the NWRIA.

### **Vision, institutional format and mandate of the NWRIA**

The NWRIA will be established as a statutory corporation with a PFMA Schedule 2 status, mandated for the options analysis, financing, development and operational management of all national water resources infrastructure, both social and economic in nature, through a separate founding act. The founding legislation will clearly reflect the mandate of the NWRIA to serve the developmental priorities of the state: it will have the obligation to develop infrastructure for social needs and in support of economic advancement in under-developed areas, as well as for commercially viable infrastructure, within a framework of ecological sustainability.

Economic infrastructure supports mainly economic activities and generates sufficient financial returns from its operations to cover the costs of building, operating and maintaining the infrastructure while social infrastructure provides important social, environmental and/or development benefits and may require a public subsidy to cover some or all of the initial capital and ongoing O&M costs.

Oversight of the NWRIA will take place through DWS, Parliamentary committees and the Minister, with governance through a Board exercising its fiduciary duties and oversight of management through the appropriate committees. Performance of the NWRIA will be governed by a Shareholder Compact, and it will take overall guidance from the National Water Resources Strategy, the National Water and Sanitation Master Plan and the National Development Plan.

In terms of planning, DWS will retain the mandate for national water resources planning, and hence overall water security, while the NWRIA will take on the mandate for option analysis (in consultation with DWS) and project planning.

### Financial viability

The base case for the establishment of the NWRIA indicates that it **is financially viable** and **operationally justifiable**.

The NWRIA will collect revenue from the sale of water as its primary source of income, which could be augmented by ancillary commercial activity and by fiscal support for social projects. Commercial funding will be raised on the strength of a combination of its balance sheet, unencumbered cash flows and sovereign guarantees; funding may no longer be project-based, as is currently the case with TCTA, but instead be supported by the entire water infrastructure asset base and revenue stream. This should enable a system-wide tariff approach, and reduce the cost of financing.

The NWRIA will require ongoing fiscal support to address the substantial refurbishment and renewal backlogs occasioned by years of inadequate maintenance expenditure. In this regard, the 'social' policy purposes of the non-core GWSs should be recognised and appropriately supported either within the NWRIA or by transfer to other institutions.

### Transitional arrangements

The following diagram summarises the high level timeframes for the establishment of the NWRIA. The Business Case will be submitted to National Treasury in the first half of 2022, and the NWRIA Bill will be submitted to Cabinet to be approved for public consultation. Since this matter deals only with a national function, there is no need for the Bill to be tabled in the National Council of Provinces.

Once the Bill has been approved by the National Assembly, the legal establishment of the NWRIA can begin, intended to be in 2023, with the NWRIA becoming fully operational as from the middle of the 2023/24 financial year. A high level summary of the proposed timeframes are given in Figure 1. Further details of the planned establishment process and transfer of staff, assets and functions are given in the Transition Plan in section 9.



**Figure 1: Timeframe for the National Water Resources Infrastructure Agency establishment**



## 1. Purpose

The purpose of this document is to provide a business case on the preferred institutional arrangements for the development and management of national water resources infrastructure. It provides a detailed assessment of the proposed establishment of a National Water Resources Infrastructure Agency (NRWIA) as the preferred institutional option for the future.

This document sets out the rationale for the establishment on the NRWIA, addresses its functions, financial viability, proposed corporate form and legal status and the human resource implications of its establishment.

## 2. Context

### 2.1 Introduction

The 2012 Presidential Review of State Owned Enterprises is clear that SoEs, as instruments of the State, are obligated and well placed to assist in achieving the developmental objectives of the state. The proposed NRWIA fits this description well, in terms of the financing, development and management of water infrastructure to support economic and social development in a water scarce country with a high degree of rainfall variability, and the challenges of climate change. The ability of the NRWIA to finance commercial infrastructure off-budget and to enter into public private partnerships will also enable the more effective use of fiscal resources to address issues of poverty eradication and social development. While the social and economic dimensions of water resources management are fundamentally linked, the financing and development of large-scale water resources infrastructure is primarily driven by the requirements for economic use, which can be used to leverage supply for social purposes.

There is widespread recognition, in South Africa and internationally, of the importance of a strong public sector in key areas of infrastructure development to support socio-economic development. There is a need for efficient development and effective management of water resources infrastructure, in line with the development and transformation objectives of the State.

In October 2020, President Ramaphosa told a joint sitting of Parliament that infrastructure would be key to SA's economic reconstruction and recovery plan, which is aimed at enabling SA to come back from the economic and social devastation arising from the Covid-19 pandemic. The national programme aims to unlock more than R1-trillion in infrastructure investment over four years, to attract investors to support off-budget financing of commercial infrastructure and to improve the confidence of investors in doing business in South Africa.

In February 2022, in the State of the Nation Address, President Ramaphosa stated that "Legislation has been prepared for the establishment of the National Water Resources Infrastructure Agency, and will be published for public comment ..."

The importance of water for socio-economic development has been a high priority of government since 1994, as reflected in relevant policy and legislation. The importance of timeous development and effective management of water resources infrastructure as an element of South Africa's economic infrastructure has also been increasingly recognised, as the economic consequences of drought and water restrictions on the economy have been experienced in different parts of the country. The 'day zero' crisis in Cape Town was a stark lesson of the huge social and economic costs arising from delays in investments in water resources infrastructure. The development of water resources to support a developing economy in a country such as South Africa where the extremely variable climate, limited water resources and the impacts of climate change makes it difficult to ensure reliable supplies, requires coherent strategic decision making driven by the correct triggers and optimal utilisation of the country's human and financial resources.

The ability to effectively manage the country's water resources has been facilitated by the designation of water resources management (including the management of water resources infrastructure) as a national competency. Decentralised stakeholder involvement in decision making about the way in which resources should be protected, allocated, developed, utilised and managed is being enabled through the establishment of Catchment Management Agencies under the National Water Act. While it is possible for CMAs to develop and operate infrastructure, this may detract from their core management responsibilities and few of them are unlikely to be able to raise capital at competitive rates.

Currently there are two bodies responsible for national water resources infrastructure. The NWRIB in DWS, established in 2006, manages a range of water infrastructure, including integrated and standalone schemes. The latter are largely government water works found primarily in the former homeland areas. The WTE is used for the revenue collected from users under the raw water pricing strategy.

The TCTA was initially established to implement and operate South Africa's portion of the Lesotho Highlands Water Project, and then to fund and manage associated project debt. Subsequently, the TCTA has been mandated to fund and implement commercially viable infrastructure projects by directly raising finance from capital markets. The TCTA operates as an implementing agent on behalf of the Minister of Water and Sanitation. More detail on the NWRIB and TCTA are given in sections 2.3.1 and 2.3.2)

It must be noted that the current context of frequent droughts and floods in South Africa, and of increasing demands on limited water sources, is being exacerbated by climate change. By 2050, climate change is likely to impact on water availability across most of South Africa, with increased intensity of droughts and floods and increased temperatures which will affect water use. Regions with small, localised water resource management systems will be particularly at risk. South Africa's national water supply system, which is planned at a scale that links different river systems can provide some resilience against current climate variability and future climate change impacts. However, this requires that it continues to be well-managed and that sufficient investment is made into new infrastructure and its planned and strategic operation. Currently, DWS is facing financial, administrative and capacity constraints that threaten to undermine this water supply system. To address the increasing water demand combined with the impacts of climate change, continued investments in water resources infrastructure is needed – and the NWRIA will be a critical tool in ensuring that this takes place effectively.

Local government, constitutionally mandated to provide water services within the framework provided by national government, and water boards, mandated to provide bulk water supplies to municipalities, both have some water resources management functions, but not at the national level. Water boards, for example, may operate and maintain local and inter-municipal water resources infrastructure primarily for water services purposes, but they are not the appropriate institution to take responsibility for water resources infrastructure of national interest serving multiple water use sectors.

The context requires that water resources be developed and utilized more equitably, effectively and efficiently than in the past. The development of water resources infrastructure for economic purposes should be driven by clear indicators of the requirement for the development, together with offtake agreements from major users of the infrastructure and a willingness on the part of commercial users to pay for the costs of development. In this context, the financial market is an appropriate mechanism for financing commercially viable infrastructure development and assessing viability of the investment.

Taking economically viable infrastructure off the national budget enables the targeting of government's limited capital resources towards infrastructure that meets the objectives of social development and job creation. In this light, the development of water resources infrastructure to meet social and long-term development imperatives should primarily be motivated through the governmental political process and funded by allocation of public money, in competition with other

government investment priorities. However, in many cases the infrastructure requirement for social purposes represents a small part of a larger economic project, and may be enabled through effective economic financing of the project.

In addition to the development of new water resource infrastructure, existing infrastructure needs to be effectively operated, maintained, refurbished and improved (“betterment”) in order to ensure that the value of this national asset is maintained and to minimize the risk to customers (in terms of reliability of supply) and the general public (in term of flood management). This requires a focus on integrated risk management and strategic asset management in the operation and maintenance of the infrastructure, thereby ensuring effective and efficient service delivery.

Currently DWS cannot raise capital directly on the financial markets, and is reliant on special purpose vehicles, such as the TCTA, to finance and implement commercially viable economic projects. TCTA has developed significant capacity and experience in the financing of water infrastructure through the Lesotho Highlands Water Project and Berg River Project, amongst others. However, this is not an optimal situation as it introduces an institutional split between the infrastructure manager and project implementer. It also results in a division of responsibility between revenue management (linked to DWS infrastructure operations) and debt management by the financing agency, placing the ultimate risk on the operator.

There have also been concerns raised by the Auditor General and National Treasury about the financial management associated with charges collected from water users for the operation, maintenance and refurbishment of water resources. Similar concerns have been raised by the major water user groups about the transparency and approach to budgeting, setting charges and allocating recovered funds for infrastructure management, as part of the Pricing Strategy review process.

Over the past decades, the maintenance of South Africa’s water resources infrastructure assets has not been adequate and poses a public safety risk in parts of the country. This is largely due to constraints on strategic and budget planning, and reallocation of funds to other perceived priorities, resulting in inadequate human and financial resources being allocated to infrastructure operations, maintenance and refurbishment. This, combined with poor revenue collection, and the lack of consequence management for maintenance failures has resulted in a backlog in maintenance and development and a significant funding gap that needs to be addressed. The funding gap is significantly exacerbated by the issue of rising debt in the sector - in 2021, R37 billion was owed to the WTE and water boards, two out of three municipalities were in financial distress, and in four of the metros, the water services function is in financial difficulties.

The preceding discussion suggests the need to establish a single entity to fund, develop, operate and maintain South Africa’s national water resources infrastructure assets, effectively and efficiently in the national interest. DWS has established an internal branch that has ring-fenced the infrastructure management functions while the TCTA has progressively become the de facto agency for financing and developing off-budget water resources infrastructure. Together the NWRIB, WTE and TCTA represent the national water resources infrastructure management function in South Africa. While this has gone some way towards addressing the above issues and managing the risk associated with infrastructure management, it does not unify the treasury and infrastructure management functions, reduce duplication for the more effective use of limited resources, and does not enable the existing revenue base to be used to leverage the funding of new projects.

The establishment of an agency for the development and management of water resources infrastructure to achieve government’s economic, social and water resources management objectives would combine functions related to infrastructure financing, development, operations and maintenance, thereby allowing off-budget financing of economic infrastructure, together with the development of social infrastructure. This would address many of the issues raised above and improve the overall efficiency of national water resources infrastructure management. This would involve the integration of the functions of the NWRIB, WTE and the TCTA.

Establishing the NWRIA would also have the advantage of institutionally separating the policy development, national water resources planning, and regulatory responsibilities of DWS as the custodian of the national water resources, from the development and implementation responsibilities for infrastructure management. It would also enable the NWRIA to collect its own revenue, thus incentivizing better revenue collection than is currently the case with TCTA revenue being collected by DWS.

Finally, the transfer of the national water resources infrastructure assets and associated income stream would enable the NWRIA to leverage the revenue from these assets to raise further capital for infrastructure development at competitive rates, thereby making the existing assets “work” to meet specified government economic and social development imperatives.

## **2.2 Policy context and institutional reviews**

The 1997 *White Paper on a National Water Policy for South Africa* and the National Water Act (Act 36 of 1998) set out a fundamental restructuring of the institutional arrangements for water resources management in South Africa. The intention was that DWS would focus on policy and regulatory oversight, and national water resources planning, while implementation functions would be delegated and/or decentralised into water management institutions acting as agents for national government.

As a result, six Catchment Management Agencies are currently either established or being established to enable more localised decision making about the management of water resources through involvement of local stakeholders and water users. Water User Associations, municipalities and Water Boards have the responsibility for operating and maintaining most local schemes that serve their specific needs (there are still some local government water schemes that are operated by DWS, which are addressed in this Business Case).

What still needs to be addressed is the optimal institutional arrangements for developing and managing national water resources infrastructure. This has been a long-standing point of debate in the water resources sector.

As early as 1997, the *White Paper on National Water Policy for South Africa* considered the establishment of a “Utility” for the *development and operation of the national water infrastructure which links regional catchments and systems*. The National Water Act of 1998 allows for the establishment of such a utility, but does not require it.

Several studies have been conducted over the past 20 years to investigate the feasibility and financial viability of such an entity, including in 1999 and 2002, the second being part of a broader investigation into the restructuring of the water resources sector as a whole. The 2002 study proposed the establishment of a single public entity, with regionally based business units, as the preferred option, which was approved by the Minister in 2003. This study did not determine a suitable corporate form for the entity, other than to state that the Body could be in the form of Public Business Enterprise or a Public Company with a Board of Directors and a Chief Executive Officer.

In late 2004, the Minister approved the establishment of a ring-fenced Branch within (then) DWAF for the management of water resources infrastructure. The Minister also approved a study for the development of a business case on the establishment of an NWRIA. A memo was submitted to Cabinet informing them of the study, with the intention of presenting the outcome of the process and draft legislation to Cabinet in June 2005. In 2005, Cabinet approved in principle the establishment of a National Water Resources Infrastructure Agency that would bring together the infrastructure functions of the (then) DWAF and the TCTA. In 2007 Cabinet approved the South African National Water Resources Infrastructure Agency Limited Bill for tabling in Parliament. This bill was certified by the Chief State Law Advisor in 2008. The legislation did not progress beyond Nedlac, due to concerns raised by organised labour about the implications of the establishment of the agency for relevant DWS staff, in both the short and the longer term and the concern that the establishment of

the NWRIA was the first step towards privatisation of the functions. As a result, the establishment of a National Water Resources Infrastructure Agency was put on hold.

In 2012/13, under an Institutional Reform and Realignment project of DWS further work was done on the options for the appropriate institutional arrangements for managing national water resources infrastructure looking at either a government component or a public entity.

The National Development Plan (2013), whose vision for water states the following, supported the NWRIA establishment: “large investments in regional systems could be undertaken by a specialised public Authority – a national water resources infrastructure Authority, perhaps modelled on the South African National Roads Authority. This Authority would build on the foundation provided by the Trans-Caledon Tunnel Authority, which is already supporting the implementation of several large projects. However, the national Department of Water and Sanitation should continue to lead the planning process, reviewing and updating these programmes every five years to ensure coordination with other long-term planning processes in economic and infrastructure sectors”<sup>1</sup>.

In 2017 a high level due diligence on the NWRIA was conducted by Deloitte and Touche (see Appendix D). In 2019 the national Master Plan for Water and Sanitation prioritized the establishment of the NWRIA and set out timeframes for its establishment. In 2020, work was done by the sector stabilization committee appointed by the Director General and a technical steering committee that included representatives of the technical steering committee, DWS and the TCTA, and which produced a high-level roadmap.

In 2020, the Advisory Committee on the Governance and Management of the Nation’s Water Resources, Water Services and Sanitation (COMEX) appointed by Minister Sisulu, engaged with the matter of the establishment of the NWRIA. Under their leadership, a new implementation plan was developed, with the intention of the NWRIA becoming operative on 1 April 2023. A series of Working Groups were set up under the leadership of COMEX to drive the process forward. This Business Case is informed by the work done by these Working Groups.

This Business Case sets out the required consideration for the establishment of the NWRIA. It covers all of the elements required by the 2001 Cabinet Guideline for the establishment of State Owned Enterprises, as well as the draft guidelines of National Treasury and DPSA. It also takes into account the findings of the Presidential Review of State Owned Entities which recognised, amongst other things, that SOEs are critical in attaining the objectives of the Developmental State.

## **2.3 Current institutional arrangements for national water resources infrastructure**

### **2.3.1 The National Water Resources Infrastructure Branch (NWRIB)**

The National Water Resources Infrastructure Branch, established in 2004 as a ring-fenced branch within the Department, manages a range of water resources infrastructure, including national, regional and local. The accumulated cost of the infrastructure is R109bn, with a Net Book Value (NBV) of R93bn which includes intangible assets in Lesotho and Eswatini of R17bn.

Two thirds of this infrastructure may be classified as national infrastructure. The national infrastructure is largely accounted for in Trading Account 2, although some national infrastructure is also currently allocated to Trading Account 3.

Other “non-national” water resource infrastructure represents the balance of Trading Account 3. The responsibility for operating and maintaining water resources schemes that are of regional or local importance, or which mainly serve one user sector, such as agriculture or a single municipality, are being transferred to the appropriate water user associations and water services institutions. In the case of agricultural schemes, DWS has transferred operation and maintenance of five schemes to

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<sup>1</sup> National Planning Commission: National Development Plan page 167



WUAs and 14 to Irrigation Boards. There are a further 12 schemes that will be transferred subject to the establishment of WUAs that can receive transfer of the schemes.

The Infrastructure Branch consists of four chief directorates: Construction, Engineering services, Infrastructure development and Operations management. Operations management is divided into four management clusters (northern, southern, eastern and central).

The NWRIB performs the following functions:

- Detailed design and feasibility studies of new infrastructure: design, project management, funding, construction and commissioning of water resources infrastructure;
- Asset management of national water resources infrastructure, including ensuring that the safety of dams and related infrastructure is maintained; ensuring security of the water resources infrastructure;
- Facilitation of public and private partnerships and contractual agreements for the utilization of infrastructure for commercial purposes, including recreational use, and generation of hydropower.
- Maintenance, operation rehabilitation and refurbishment of water resources infrastructure;
- Construction of new water resources infrastructure to meet social water needs and to facilitate economic growth and development; ensuring the procurement, operation, maintenance, rebuilding and disposal of construction equipment, the manufacture and refurbishment of mechanical equipment and providing construction management support services.

To perform these functions, the branch has the following capacity:

**Operational Clusters** which ensure effective operation of infrastructure according to operating rules, maintenance, dam surveillance, rehabilitation of infrastructure, and, development of system operating rules.

**Strategic Asset Management** provides Technical Support Services (Operations, Mechanical, Electrical and Civil Engineering) for the operation, maintenance, refurbishment and rehabilitation of existing bulk water resource infrastructure.

**Engineering Services** provides engineering, environmental services and support through the implementation of mandated projects for existing and new water resources infrastructure. This includes civil, mechanical, electrical, hydrological and environmental services.

**Infrastructure Development** which promotes business principles in the management of infrastructure, which includes managing risks associated with infrastructure implementation, and the management of business risk.

### **2.3.2 Trans-Caledon Tunnel Authority (TCTA)**

The TCTA was created in 1986 as a result of a Treaty signed between RSA and Lesotho on the implementation of the Lesotho Highlands Water Project (LHWP). TCTA was established in terms of Government Notice in 1986 (revised by Government Gazette 21017 in 2000) and promulgated in terms of Chapter 10 of the National Water Act. TCTA is a public entity listed in Schedule 2 of the Public Finance Management Act (PFMA).

In terms of the Treaty, TCTA is responsible to implement, operate and maintain that part of LHWP Phase 1 located within South Africa, as well as any other function the Minister directs. TCTA was later given the responsibility to fulfill South Africa's financial obligations for LHWP, particularly to manage the funding of the water transfer element and manage the R16.2 billion liability of the project. TCTA mainly operates in the domestic capital and money markets, although there is R1.1 billion in foreign funding.

In 2002 TCTA was directed to manage the financing and implementation of the R1.4 billion Berg Water Project. Since then it has also taken on the funding of several other commercially viable projects (Olifants River Water Resources Development Project, Mokolo and Crocodile River (West) Water Augmentation Project, Groot Letaba Water Augmentation Project, Olifants Doorn River Water Resources Project (raising of Clanwilliam Dam), raising of Hazelmere Dam, MooiMgeni Transfer Scheme, Mzimvubu Water Projects, Mvoti river iSithundu dam, lower Orange River Vioolsdrift Dam, Zalu Dam, Voëlvlei Supplement Scheme, Mzimkulu river Ncwabeni off-channel storage, Smithfield Dam.

The TCTA has also moved into the management of water quality in large systems through its implementation of acid mine drainage (AMD) projects designed to protect the quantity of water in the Integrated Vaal River System (IVRS). This is an appropriate function for the NWRIA, but it must be distinguished from 'traditional' municipal wastewater treatment which is the function of municipalities.

The TCTA can only fund projects for which water supply agreements have been concluded with the intended raw water users or for which government has guaranteed an income stream.

## **2.4 Current financing arrangements**

Investment in water resources infrastructure is either funded off-budget, through the TCTA which raises the capital from the financial markets, or through parliamentary appropriations to the DWS budget. Operation and maintenance costs are paid from revenues raised through user charges, levied by DWS. DWS, as billing agent, collects the portion of user charges that is due to the TCTA to repay the capital loans they have taken out. DWS does this through the Water Trading Entity, and pays this amount to TCTA.

The effective operation of the Water Trading Entity and of revenue generation and management is critical to the sustainable operation, maintenance and refurbishment of the national water resources infrastructure. Currently the WTE is facing high levels of debt arising largely from the failure of municipalities to pay water use charges.

The impact that the establishment of the NWRIA will have on the funding of national water resources infrastructure, and the detailed financial analysis is provided in section 7.

## **3. Problem statement**

### **3.1 Duplication of functions**

As a result of a failure to act on the earlier decision to establish an infrastructure agency, the *de facto* situation is that two infrastructure structures are operating in parallel, the NWRIB/WTE, and the TCTA. Due to the number of projects now being implemented by the TCTA, their changing role, and the lack of capacity in DWS, the TCTA has extended its functions to include operations and maintenance, and options analysis and planning. This has resulted in a duplication of functions between DWS and the TCTA, and the inability to achieve synergy and economies of scale between the two institutions. It has also resulted in a dual demand for scarce technical resources. The running of two infrastructure centres like this also results in a duplication of overhead costs without additional value being added.

In addition, performance with respect to the management of water resources infrastructure has continued to be weak in important respects:

- Procurement delays for outsourced maintenance contracts have compromised the maintenance of strategic water resources assets
- The financial management of the water trading account (the water trading entity) has been weak
- There is a significant and growing backlog in maintenance and refurbishment of national water resources infrastructure

- Poor administration of revenue collection has compromised the ability of DWS to raise the necessary revenue to manage and maintain the infrastructure, and maintenance funds have been diverted for other purposes. This also puts the TCTA potentially at risk.

The South African Institute of Civil Engineers Infrastructure Report Card for South Africa (2017) gave a D- for bulk water resources, arguing that:

- “The unchanged low grade belies the further deterioration in the ageing bulk water infrastructure portfolio as a result of insufficient maintenance and neglect of renewal, partly due to funding shortfalls. A serious depletion of skilled personnel and officials at senior levels in the DWS (and generally in the water sector) hinders decisive planning and development to avoid shortages. Systems are in general operated too close to failure.
- Major projects are critically behind schedule, notably Phase II of the Lesotho Highlands Water Project. In most major systems even small drought perturbations are already creating substantial service disruptions. Growing water shortages mean that alternative sources, such as water re-use, aquifer exploration and desalination, some of which are energy-intensive and expensive, must enter the water mix.
- Budgeting and spending on maintenance, rehabilitation and expansion remains inadequate for water supply in all areas. Damage caused by increased service delivery protests in urban and rural areas diverts funding from maintenance and expansion budgets. Consequently, given continually growing demands, communities face increasing risk of supply failures.”

The current general under-recovery of funds for depreciation and refurbishment (in all regions other than Western Cape and Gauteng), together with inadequate ring-fencing of budgets, poses a significant challenge to infrastructure management and has contributed to a refurbishment, renewal and maintenance backlog of R36bn comprising:

- A refurbishment backlog of R12.5bn caused primarily by inadequate maintenance; and
- A renewal backlog of aged infrastructure of about R23bn, mostly related to the relining of canals, the renewal of mechanical equipment in dams and pump stations and the relining or replacement of selected pipelines.

The increased operation and maintenance budget requirements of the proposed infrastructure further highlights this issue. As increased infrastructure is constructed, and as existing infrastructure ages, the maintenance and refurbishment costs increase substantially. The long term resilience of the South African water economy and society depends upon functioning infrastructure, which requires rectification of this challenge.

As a result, the current status quo is not tenable and change is necessary to ensure the effective and sustainable development, operation, maintenance and management of national water resources infrastructure.

### **3.2 Addressing the challenges**

Over past decades there has been recognition both within South Africa and internationally of the importance of a strong public sector in key areas of infrastructure development, operation and maintenance, to support economic development.

Equally, the importance of water for social development has been a high priority of government since 1994, to achieve government’s strategic objectives of poverty eradication and sustainable and equitable development. This led to the strong orientation towards equitable allocation and access to water underlying the Water Services Act and National Water Act, together with the focus on redress and efficient use.

The importance of water resources infrastructure as an element of South Africa’s economic infrastructure has also been increasingly recognised over the past years, as the economic consequences of drought and water restrictions on the economy have been experienced in different parts of the country. The development of water resources to support a developing economy in a

water scarce country such as South Africa, requires coherent strategic decision making driven by the correct triggers and optimal utilisation of the country's human and financial resources. This must consider water resources infrastructure development and operation to achieve the aspirations of people that have been socially and economically disadvantaged by South Africa's history.

The ability to effectively manage national water resources has been facilitated by the designation of water resources management (including the management of water resources infrastructure) as a national competency. Decentralised stakeholder involvement in decision making about the way in which resources should be protected, allocated, developed, utilised and managed is being enabled through the establishment of Catchment Management Agencies under the National Water Act. It is not appropriate for CMAs to develop and operate infrastructure, because this represents a conflict of interest with their regulatory role. In addition, this function is likely to detract from their core management responsibilities and they are unlikely to be able to raise capital at competitive rates.

Water boards, which have a mandate to provide bulk water supply of potable water, may operate and maintain local water resources infrastructure primarily for water services purposes, but they are not the appropriate institution to take responsibility for water resources infrastructure of national interest serving multiple water use sectors.

While the social and economic dimensions of water resources management are fundamentally linked, the financing and development of large-scale water resources infrastructure is primarily driven by the requirements for economic use, which can be used to leverage supply for social purposes.

Taken together, the preceding context requires that water resources be developed and utilized more equitably, effectively and efficiently than in the past. In line with international good practice, therefore, the development of water resources infrastructure for economic purposes must be responsive to demand and a willingness on the part of the users to pay for the costs of development. In this context, the financial market is an appropriate mechanism for funding infrastructure development and assessing the viability of the investment.

One option, therefore, is to move economically viable projects off the National Budget. This enables Government to use its limited capital resources in a more targeted and effective way to invest in infrastructure that meets the objectives of social development and job creation. This has already been done to a large extent. In parallel with this, the development of water resources infrastructure to meet social and long-term development imperatives should primarily be motivated through the governmental political process and funded by allocation of public money, in competition with other government investment priorities. However, in many cases the infrastructure requirement for social purposes represents a small part of a larger economic project, and can therefore be enabled through effective economic financing of the project.

In addition to the development of new water resources infrastructure, the existing infrastructure needs to be effectively operated, maintained, refurbished and improved ("betterment") to ensure that the value of this national asset is maintained to minimize the risk to customers (in terms of reliability of supply) and the public (in term of flood management). This requires a focus on integrated risk management and strategic asset management in the operation and maintenance of the infrastructure, thereby ensuring effective and efficient service delivery.

DWS cannot raise capital directly on the financial markets, and is reliant on special purpose vehicles, such as the TCTA, to finance and implement commercially viable economic projects. The TCTA has developed significant capacity and experience in the financing and development of water infrastructure through the Lesotho Highlands Water Project and the Berg River Project, amongst others. However, this is not an optimal situation as it introduces an institutional split between the infrastructure manager and project implementer. It also results in a division of responsibility between revenue management (linked to the DWS Water Trading Entity) and debt management by the financing agency, placing the ultimate risk on the operator and therefore an implicit guarantee of the loan by government.

There have also been concerns raised by the Auditor General and National Treasury about the financial management associated with charges collected from water users for the operation, maintenance and refurbishment of water resources. Similar concerns have been raised by the major water user groups about the transparency and approach to budgeting, setting charges and allocating recovered funds for infrastructure management, as part of the Pricing Strategy review process.

Over the past two decades, the maintenance of South Africa's water resources infrastructure assets has not been adequate and poses a water security risk in parts of the country. This is largely due to constraints on strategic and budget planning and the reallocation of funds to other perceived priorities. This has been exacerbated by an inability in DWS to recruit technically skilled people to the infrastructure function, particularly in relation to the recruitment of black engineers. In addition to this, a range of capital projects need to be implemented in the short to medium term that will facilitate security of supply to meet the nation's water requirements. This will place additional demands on an already stressed institutional environment.

There are, thus, significant technical and financial challenges in the current institutional arrangements for infrastructure development, operation and maintenance that must be addressed.

## **4. Options to address the problem**

### **4.1 Options considered**

The preceding discussion highlights the weaknesses of the current arrangements and the challenges of having two institutions involved in water resources infrastructure development and management.

The NWRIB has been established to ring-fence infrastructure management within DWS in terms of both organisational and financial arrangements. The TCTA has become the de facto agency for financing and developing off-budget water resources infrastructure. Together the NWRIB and the TCTA represent the totality of the national water resources infrastructure management function in South Africa. While this has gone some way towards addressing some of the challenges and managing the risk associated with infrastructure management, it does not unify the treasury and infrastructure management functions, does not provide for funds raised by DWS in one year to be accumulated for later investment, and does not enable the revenue from the existing DWS asset base to be used to leverage funding for new projects.

In order to address the above challenges and to eliminate the current duplication of functions, it is proposed to rationalise the current arrangements by having just one institution for the management of national water resources infrastructure to achieve government's economic, social and water resources management objectives. This would combine the functions related to infrastructure financing, development, operations and maintenance, thereby allowing off-budget financing of economic infrastructure, together with the development of social infrastructure. This would address many of the issues raised above and would essentially involve the integration of functions of the NWRIB, the relevant sections of the Water Trading Entity<sup>2</sup> and the TCTA.

In order to support the ability of such an institution to raise funds, a public entity model would be the most appropriate. It would also have the advantage of institutionally separating the development and operational responsibilities for water resources infrastructure from DWA's core mandate policy and regulation.

Finally, the transfer of the national water resources infrastructure assets and associated income stream to a public entity would enable the entity to leverage the revenue from these assets to raise further capital for infrastructure development at competitive rates, thereby making the existing assets "work harder and better" to meet government's economic and social development imperatives.

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<sup>2</sup> CMAs will bill the WRMC separately from the infrastructure charge to be billed by the infrastructure entity

In conducting an analysis of the appropriate institutional model for the development, management and financing of national water resources infrastructure, two potential institutional models were identified:

**Option 1: Government Component within DWS and continued TCTA (evolved Status Quo)**

Option 1 represents an evolution of the status quo. DWS has established an infrastructure branch (described above). This involved the establishment of a distinct business unit within DWS managed through appropriate delegations and customised systems and procedures. This unit could evolve into a Government Component in terms of the National Treasury/DPSA public sector governance framework. TCTA would continue as the agency for financing and developing off-budget water resources infrastructure projects. Together the Government Component and the TCTA would carry out the national water resources infrastructure management functions in South Africa.

Government policy (Public Service Amendment Act, 2007, operationalised 1 April 2008, with the publication of Chapter 6 of the PSR) allows for the establishment of government components inside a government department. These components have functions conferred, assigned, or delegated to them, subject to approval by Parliament. They report to the head of the department in which they are located to enable that head to advise the Minister on performance, policy implementation, integrated planning, budgeting and service delivery, any administrative or operational matter. The government component may establish an advisory board to assist them. It can be a separate entity from a department, and the Head of the Component is the Accounting Officer. A government component must be provided with its own administrative resources e.g. HR, financial, and other resources, and can address its own corporate services if required. It allows for administrative and operational arrangements that can be customized to suit a particular service delivery environment as well as improved governance through direct accountability and decision-making as close as possible to the point of service delivery. It introduces direct control and influence by executive authorities over service delivery outcomes without the need to create institutions outside the public service such as public entities.

**Option 2: Single Public Entity**

The second option entails a single public entity that would combine functions related to infrastructure options analysis, financing, development, operations and maintenance, thereby allowing off-budget financing of economic infrastructure, together with the development of social infrastructure to achieve government's economic, social and water resources management objectives.

This would involve the integration of the current functions carried by the NWRIB/WTE with functions carried out by TCTA. It would see the national water resources management strategic planning functions remaining in DWS, with any requisite national infrastructure responses falling under the public entity. Effective integrated management of water resources would require cooperation between DWS and the public entity around the planning and operation of systems to achieve allocation and resource protection objectives.

There are two paths to achieving the establishment of an infrastructure agency. The first would see the merging of the NWRIB/WTE into the TCTA, while the second would see the establishment of a new public entity into which the TCTA and the NWRIB would both be merged.

The first path would require amendments to TCTA's founding legislation, while the second path would require a new piece of legislation (such as the draft South African National Water Resources Infrastructure Agency Bill attached to this Business Case).

Under either option there are several challenges that would have to be addressed:

- There are significant cultural differences between the two units that would have to be addressed through a major change management programme. In understanding this, it is worth remembering that the NWRIB employs significantly more people than the TCTA;
- Financing for the TCTA infrastructure is project based and ring-fenced by projects, while this is not true for the NWRI infrastructure. Issues of revenues streams from the various elements

- of infrastructure will, therefore, have to be addressed, as well as the movement away from project based financing towards entity wide financing;
- The transition period from one set of institutional arrangements to the new arrangements should be driven as fast as possible to ensure sufficient momentum to reach completion of the process and to avoid the interrupted reform processes that have characterised the water resources sector to date;
  - A significant debt management programme will be required to address the issue of increasing debt arising from failures of payment by municipalities and water boards.

## 4.2 Analysis of the two options

National Treasury and DPSA outline nine reasons for the devolution of functions to an external entity of which two are particularly relevant to this business case and the motivation for its establishment: that the function should be able access investment markets directly, and that government needs to be involved for strategic reasons in the absence of an effective market mechanism. Both factors apply to the national water resources infrastructure function. As has been discussed, an agency would be able to access investment markets to provide financing for economic infrastructure, as has been done, to date, through the TCTA, thus enabling this infrastructure to be taken off budget. However, government still needs to be involved in the function as the provision of national water resources infrastructure is a strategic function underpinning national economic and social development.

Three other reasons may be presented as secondary motivation:

- Government needs to access specialised skills that it would not be able to access through departments.
- The government wishes to promote public confidence in the objectivity of the decision making and
- Government wishes to separate policy from implementation functions.

The national water resources infrastructure function requires significant specialised skills, in infrastructure planning (including options analysis and feasibility studies), development and management, but also in infrastructure financing. These skills are difficult to recruit into government departments. In a survey conducted by SAICE in 2021, 68% of surveyed engineering professionals indicated their willingness to work in the public sector. However, they also identified specific issues that prevent them from joining the public sector: over-politicisation of infrastructure departments, diminished decision making roles for engineers and technical specialists, lack of systems, processes and structures for effective administration, poor training, development and career paths, and undue interference of human resources and finance sections in infrastructure functions.

Water made available through water resources infrastructure is clearly a strategic resource, with both economic and social characteristics, which must inherently be provided on a monopoly basis. The NWRIA would have an exclusive right to sell this water and would be primarily dependent upon the sale of water through the national infrastructure for its income. Furthermore, it must be enabled to access financiers directly on the strength of its balance sheets and operational cash flows.

The two institutional options for the development, operation and financing of national water resources infrastructure, and the current institutional arrangements, have been assessed against a set of criteria that provide a reasonable and defensible indicative basis for comparison and selection. These criteria are:

- Separation of regulator and implementer
- Effective use of financial resources including funding of social projects
- Effective development, operation and management of infrastructure
- Human resources management
- Dam safety risk management

A summarised assessment of three options (as is, government component and public entity) is captured in the table below:

**Table 1: Assessment of different corporate forms (red = weak; orange = sufficient; green = good)**

	<b>As-is (DWS NWRI+WTE, TCTA)</b>	<b>Government component (GC) +TCTA</b>	<b>Single public entity</b>
Legitimacy (across sectors, water users, lenders)	DWS suffers from significant lack of legitimacy amongst water users, which will be difficult to rebuild	Establishment of a GC may go some way to addressing the current lack of trust in DWS	There has been considerable failure of PEs, largely due to corruption and state capture. A new PE will need to be able to show a strong anti-corruption capacity.
Good governance (transparency and accountability, protection of rights, responsibilities and participation, corruption risk management)	DWS has shown significant weakness in good governance, such as holding staff accountable for poor performance, ensuring effective management of financial resources, avoiding undue ministerial interference, and implementing plans. Turning this culture around is possible but will require significant time and effort	A GC has the potential to improve governance of the infrastructure functions through being in control of its own financial management, human resources and procurement	A new PE will be able to put in place good governance practices in line with international good practice, and, due to engagement with the financing sector will have to put in place strong risk management systems
Effectiveness (addressing key social, environmental and economic needs)	The current model has can address key social, environmental and economic needs, but the two separate entities reduces the effectiveness of this	The current model has can address key social, environmental and economic needs, but the two separate entities reduces the effectiveness of this	A PE has the potential to leverage the revenue derived from all national water resources infrastructure in order to effectively fund and finance social and economic infrastructure
Efficiency (transaction costs, operational costs)	Efficiency is undermined by two separate bodies operating in the same arena, and the need to engage and work across two separate entities	Efficiency is undermined by two separate bodies operating in the same arena, and the need to engage and work across two separate entities	One PE performing all of the relevant tasks will be more efficient that the previous two models. In addition, a PE built around best business practice has the potential to considerably enhance efficiency. A PE has the potential to leverage the revenue across all national water resources infrastructure for funding/financing



	<b>As-is (DWS NWRI+WTE, TCTA)</b>	<b>Government component (GC) +TCTA</b>	<b>Single public entity</b>
			social and economic infrastructure development, operation and maintenance
Equity (supporting equitable access to water resources)	The split between two entities reduces the ability to leverage infrastructure revenues effectively to support social water resources infrastructure development in the interests of equity and poverty reduction	The split between two entities reduces the ability to leverage infrastructure revenues effectively to support social water resources infrastructure development in the interests of equity and poverty reduction	A PE has the potential to leverage the revenue across all national water resources infrastructure for the funding/financing of social infrastructure
Effective use of financial resources including funding of social projects	TCTA currently runs on a project-based funding approach and receives revenue collected by the WTE. The NWRI/WTE is funded through the fiscus and through revenue generation. The separation between DWS and the TCTA limits the ability to use the revenue stream most effectively across the country to develop and maintain both economic and social infrastructure. The TCTA is not responsible for the collection of the revenue on which it depends for repayment of loans.	Same as As-is situation since the Government Component and the TCTA would still have separate budgets	A PE will be in a position to collect water use infrastructure charges itself. The combination of all national infrastructure in one organisation will enable a move away from the current project based approach of the TCTA to a programmatic approach where cross-subsidisation between economic and social projects and the reduction of high consumer costs for new infrastructure can be more effectively managed.
Effective development, operation and management of infrastructure	Split between two organisations resulting in duplication of functions resulting in inefficiencies and additional costs	Split between two organisations resulting in duplication of functions Split between two organisations resulting in duplication of functions resulting in inefficiencies and additional costs	Functions housed in one organisation removing duplication of functions and resulting inefficiencies and costs
Human resources management	Difficulty in recruiting appropriate skilled technical staff;	Difficulty in recruiting appropriate skilled technical staff;	Better working conditions and remuneration means

	<b>As-is (DWS NWRI+WTE, TCTA)</b>	<b>Government component (GC) +TCTA</b>	<b>Single public entity</b>
			improved potential for recruiting skilled and experienced technical and financial staff
Dam safety risk management	DWS is responsible for dam safety risk regulation and operation on its own dams, resulting in poor dam safety regulation	The setting up of a government component would enable some separation between dam safety regulation and operation	Dam safety regulation and operation would be entirely separated

The above table indicates that the government component is slightly better than the as-is option, but that the preferred option for the development, financing and management of national water resources infrastructure is through a single public entity. The preferred option will also enable:

- The separation of policy and regulatory functions (including the regulation of dam safety) from the infrastructure implementation functions. Currently, inter alia, the department must regulate itself regarding dam safety, which provides for a potential conflict of interest and possible threats to public safety;
- The leveraging of the revenue from the national water resources infrastructure assets to raise further capital for economic and social infrastructure development at competitive rates, thereby making the existing assets “work harder and more effectively” to meet government’s economic and social development imperatives;
- The management of the full infrastructure function on sound business principles;
- A stronger platform for the attraction and retention of scarce technical skills, particularly regarding black professionals;
- A more agile and flexible institution that can respond to the challenges and issues in the sector more effectively;
- The adoption of more efficient procurement processes.

It is proposed that the NWRIA be incorporated as a state-owned company in terms of the Companies Act and listed as a major public entity in Schedule 2 of the Public Finance Management Act. Schedule 2 entities are major public entities which are intended to generate profits and may be required to declare dividends. These entities operate and are run in accordance with general business principles and are expected to perform a dual commercial and developmental mandate. In terms of section 66(3)(a) of the PFMA, schedule 2 public entities may also borrow money through the accounting authority of that entity, which implies that they have extensive borrowing powers.

The attributes of this corporate form are most closely aligned to the required characteristics of the proposed NWRIA: it will be created through an Act of Parliament with defined powers and functions; be financially independent with clear control over a specified area of commercial activity; have extensive borrowing powers. In addition, the TCTA is currently listed as a Schedule 2 entity and has extensive loans that will be transferred to the NWRIA, and it makes sense for the NWRIA to continue with this scheduling status.

### 4.3 Additional benefits of setting up one public entity

The motivation for the preferred option has become more compelling over time. Capital is scarce in relation to large financing needs and it is imperative that the ability of the sector to raise its own capital is optimised. At the same time, the financial management performance of DWS has been

weak, comprising the ability of the state to meet its economic and social objectives. The preferred option provides a solution to both of these challenges.

The review of State-owned Entities (SOE) was partly driven by the sense that SOEs were not contributing effectively to the achievement of national development objectives. A concern has also been raised regarding the proliferation of SOEs and the ability to effectively regulate these institutions.

In this regard, bring the TCTA and the NWRIB together into one NWRIA avoids the creation of an additional public entity while achieving the benefits of one institution responsible for the financing, development, operation and maintenance of national water resources infrastructure.

The proposal for the establishment of an NWRIA is thus premised on the improvement of service delivery in terms of the more effective and efficient use of limited financial and human resources, that will arise from its establishment. The establishment of the NWRIA will provide an opportunity to change the paradigm of infrastructure management, including:

- Adopting a sustainable and financially viable business approach to managing and financing WR infrastructure including through
  - using the existing revenue stream from existing infrastructure assets to support development of future infrastructure;
  - procuring capital for infrastructure development;
  - transparently and efficiently managing revenue for infrastructure, using operation and maintenance, depreciation and capital charges for the purposes for which they were collected (under the Raw Water Pricing Strategy);
  - identifying and effectively managing risks associated with infrastructure management;
  - improving business processes to deal effectively with both commercially viable infrastructure and socially necessary infrastructure;
  - conducting clear and transparent multi-year planning and consulting with key water use sectors on the setting of infrastructure charges; and
  - creating an identity of excellence through exceptional human resource capabilities for infrastructure management within government and the private sector.
- Providing better value service to water users and institutions supplied from state-owned water resources infrastructure and paying more attention to the needs of customers and stakeholders.
- Meeting the transformation objectives of government in relation to representivity, service delivery and broad-based black economic empowerment and addressing social and environmental impacts directly through infrastructure development and operation, including in relation to communities affected by infrastructure development and those in the vicinity of infrastructure facilities.

In addition, the NWRIA will contribute to the achievement of government objectives of the Medium-Term Strategic Framework which the objective of the NDP 2030 to address the triple challenges of unemployment, inequality and poverty. These are central to the transformation that underpins the national development agenda. Of the seven priorities set out in the MTSF, the establishment of the NWRIA is most relevant to the following:

*Priority 1: Capable, Ethical and Developmental State*

A capable, ethical and developmental state underpins all seven priorities of the MTSF. It is a vision of strong leadership, a focus on people and improved implementation capability through a more functional and integrated government, capacitated with professional, responsive and meritocratic public servants. The establishment of the NWRIA will enable the effective and efficient development and management of critical national water resources infrastructure, and the employment of the critical engineering skills necessary to support this activity.

*Priority 2: Economic Transformation and Job Creation*

The South African economy is fundamentally dependent on the development and management of national water resources infrastructure. South Africa receives around half the world average rainfall, and suffers from significant rainfall variability that is being exacerbated by climate change. Economic growth will only be possible with the ongoing development and effective management of national water resources infrastructure to store water and to move it to where it is needed. This makes the NWRIA a critical element of the proposed economic growth of 2 – 3 % per annum and to enable the creation of jobs and the transformation of the economy. It will also create a better enabling environment for investment in the water resources infrastructure sector.

## 5. Proposed Role and Functions of the NWRIA

### 5.1 Primary Role

The primary role of the NWRIA will be to *finance, plan, develop, operate and maintain national water resources infrastructure in an efficient and effective manner to meet the social and economic development needs of current and future users, while achieving the objectives of integrated water resources management.*

The NWRIA will also be required, in the interim, to manage other water resources infrastructure of a non-national nature that is currently being managed by DWS, pending its transfer to other water management or services institutions such as Water Boards, water user associations or municipalities.

The NWRIA will also undertake tasks that are related to its primary function, which are specifically delegated to it by the Minister and for which budget exists. These tasks may, for example, include the development of public benefit water resource projects or dam safety rehabilitation in support of other institutions, or projects that further the goals of development support in Africa.

#### 5.1.1 Interpretation of National Infrastructure

The distinction of national infrastructure requires the classification of existing infrastructure into national and other infrastructure. The National Water Resources Strategy (NWRS) (2004) defines national infrastructure as *"schemes that are of wider importance (than local schemes) because they transfer water across national boundaries or between water management areas, serve multiple user sectors or large geographic areas, comprise several interconnected catchments, or serve a strategic purpose, such as the generation of electricity for the national grid"*.

The following types of infrastructure may be identified, namely:

- Infrastructure of national importance largely accounted for on Trading Account 2, and some infrastructure that is currently in Trading Account 3. This infrastructure will be operated by the NWRIA in the long term, and includes:
  - Systems and schemes of strategic importance (supplying strategic water users),
  - Systems which transfer water across provincial or international boundaries,
  - Systems that transfer water between river basins or WMAs, and
  - Systems supplying competing user groups such as towns, mines and agriculture.
- Other bulk water resource infrastructure, representing the balance on Trading Account 3. This infrastructure is earmarked for transfer to water management institutions (such as water user associations) and water services institutions (local government or water boards), and will only be operated by the NWRIA until such time as transfer to a capable institution can be arranged.
- Water resources related infrastructure which is associated with water services schemes and has been allocated to Trading Account 4. This will either be transferred to local government, or may

be reclassified as water resources infrastructure of national or regional importance where appropriate.

- Water quality management related water resources infrastructure (such as Brugspruit water treatment works), which is of national importance in that it generally serves the interests of multiple downstream users.

## **5.2 Mandate of the NWRIA**

The mandate of the NWRIA will be to administer, fund, finance, design, provide, operate, maintain and provide advisory services in respect of national water resources infrastructure in accordance with sections 24(b)(iii) and 27(1)(b) of the Constitution and national policy.

The objects of the NWRIA are to develop and manage infrastructure to—

- (a) ensure a sustainable, equitable and reliable supply of water from national water resources infrastructure;
- (b) where appropriate, contribute to the management of water pollution through infrastructure development
- (c) where appropriate provide support to other water services and water management institutions to reduce water losses and non-revenue water
- (d) meet obligations set out in section 27(1)(b) of the Constitution and national and regional social and economic objectives of government policy;
- (e) utilise its asset base and cash-flow to raise financing to develop infrastructure for social and economic development purposes; and
- (f) recover in full or in part the costs of infrastructure development, operation and maintenance of the NWRIA by means of water tariffs and water use charges in alignment with Part 1 of Chapter 5 of the National Water Act.

### **5.2.1 Transformation and Development Imperatives**

Government is clear about the goals of transformation in and by the public sector. An element of the establishment of the NWRIA is to ensure that water resources infrastructure contributes to the Economic Reconstruction and Recovery Plan<sup>3</sup>. A key objective is accessing sufficient funds for the large infrastructure challenges that lie ahead and to achieve the planned 3% economic growth over the next 10 years. Of critical importance in this recovery plan will be national water security and drought resilience which will prevent a repeat of the Cape Town Day Zero crisis. In order to protect national water security, the National Water and Sanitation Master Plan has identified the need for substantial investment in water resources infrastructure.

One of the aims of the Economic Reconstruction and Recovery Plan is to speed up the time taken to decide on and deliver important projects. The NWRIA will be well placed to contribute to this speedy and effective delivery of major water resources projects, moving away from the current departmental challenges in this regard where several major projects are well behind schedule and moving away from the challenges of co-ordination between two separate entities (DWS and the TCTA) in order to achieve delivery of projects.

The NWRIA will also be well placed to harness the opportunities of blended finance with a combination of off-budget funding for the commercial elements of infrastructure and on-budget funding (where needed) for the social elements of the infrastructure. This will enable limited state funds to be focused on social needs. The NWRIA will enable the water sector to structure economic infrastructure management better to serve the needs of the country and to promote economic recovery and development.

Furthermore, due consideration must be given to the challenges of socio-economic transformation. Transformation in the Public Sector is largely driven by policy and legislation including:

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<sup>3</sup> Presidency, South African Economic Reconstruction and Recovery Plan, 2020

- White Paper on Transformation of the Public Service
- White Paper on Transforming Public Service Delivery
- Employment Equity Act
- Codes of Good Practice for Broad-based Black Economic Empowerment
- Broad-Based Black Economic Empowerment Act (53 of 2003).

These policies and Acts provide a robust framework within which all government departments align themselves. Consequently, it is required that the establishment of the NWRIA complies with the legislation and policy guidelines. Indeed, there is an opportunity to leverage transformation opportunities in the NWRIA establishment process.

The White Paper on Transformation of the Public Service outlines a strategic framework for change, by specifying policy objectives, guidelines and instruments to carry the transformation process forward in the following priority areas:

- Rationalisation and restructuring the public service
- Institution building and management
- Representativeness and affirmative action
- Transforming service delivery
- Democratising the state

More specifically, the NWRIA would need to ensure that:

- Representivity, particularly in technical functional areas is achieved appropriately recognising scarcity of resources in certain disciplines
- Service delivery is effective and efficient
- An appropriate performance-based culture is established to achieve the goals of the organisation
- Appropriate human resource capacity is developed
- A BBEE Policy and Strategy is operationalised.

### **5.2.2 Environmental mandate**

The NWRIA will operate within the framework of environmental legislation and the requirements of the National Water Act to protect the ecological reserve. The requirements of the reserve and of resource classification will guide the design, development and operation of infrastructure by the NWRIA. In addition, in ensuring the effectiveness of the infrastructure that it manages in ensuring reliable water supplies of an appropriate quality, the NWRIA may invest in nature-based solutions in the upstream catchment, such as land restoration, ecosystem restoration or the removal of alien vegetation.

## **5.3 Functions of the NWRIA**

In order to fulfil this mandate, the NWRIA will perform the following functions.

- Develop and manage national water resources infrastructure
  - Plan and design augmentation options as identified through water resources planning processes within DWS
  - Develop and operate national water resources infrastructure with both social and economic characteristics;
  - Conduct planned maintenance and refurbishment on national water resources infrastructure and ensure that such infrastructure is compliant with national dam safety regulations
- Ensure the financially sustainable management and development of national water resources infrastructure
  - Generate revenue from the sale of water as its primary source of income
  - Develop options to increase revenue sources

- Access commercial funding directly on the strength of its balance sheet and operational cash flows (actual and projected) for infrastructure development
- Implement nature based solutions in upstream catchments where this will improve water reliability or water quality
- Develop appropriate capacity for the effective functioning of the NWRIA and
- Contribute to the economic development and transformation of South Africa as set out in national policy and the National Development Plan.

A more detailed breakdown of these functions is provided here:

### **5.3.1 Develop National Water Resources Infrastructure**

- DWS will retain the mandate for national water resources planning, and hence overall water security, while the NWRIA will have the mandate for option analysis and project planning for augmentation options in line with the national water resources planning requirements, and taking account of environmental and social requirements and obligations
- Construct infrastructure according to design specifications and/or ensure the construction by contractors
- ✚ Implement capital improvements (betterments) on existing infrastructure, involving:
  - Plan and design capital improvements to existing infrastructure
  - Construct betterments according to design specifications
- ✚ Promote and manage identified infrastructure investment projects.
  - Coordinate water users', institutions' and stakeholders' input to investment decisions, including negotiating agreements with water users
  - Identify and manage project risk
  - Project manage technical, environmental and stakeholder inputs to the project development
- ✚ Fulfill the above functions in relation to or water quality infrastructure where appropriate to contribute to the management of water pollution through infrastructure development
- ✚ Support other initiatives in Africa as required by the Minister where funding/financing is available for such developments and such actions will not impact negatively on the fulfillment of functions in South Africa.

### **5.3.2 Operate and Maintain Water Resources Infrastructure**

- ✚ Operate and maintain WR infrastructure, involving:
  - Optimise system operation within the framework/rules provided by DWS, including considering the requirements for hydropower generation where relevant
  - Operate water resources infrastructure according to operating rules, including routine control, supervision and surveillance of structural performance
  - Plan and implement routine maintenance to prevent deterioration of civil, mechanical, electrical and control systems
  - Conduct agreed monitoring of hydrology
- ✚ Refurbish WR infrastructure to meet dam safety and operating requirements.
  - Address backlog over 10 years to rehabilitate (and improve) the infrastructure that has deteriorated and meet dam safety requirements
  - Conduct ongoing refurbishment associated with depreciation
- ✚ Ensure dam safety and public safety requirements are met for DWS infrastructure.
- ✚ Manage the asset, facility and land portfolios associated with the infrastructure.
- ✚ Manage non-national infrastructure at the Minister's direction, including operation, maintenance, refurbishment, betterment and possibly development where the funding is made available for such activities.
- ✚ Ensure that other institutions adequately perform operation and maintenance, refurbishment and dam safety functions for DWS national infrastructure where this responsibility has been transferred or contracted out.

- ✚ Jointly manage infrastructure related disasters (particularly floods) through formulation of emergency preparedness plans and implementing joint flood management decisions (with DWS).
- ✚ Jointly plan and manage response to droughts, through restrictions by DWS or emergency interventions.
- ✚ Provide support to other water services and water management institutions to reduce water loss through improved operation and maintenance of infrastructure
- ✚ Implement nature based solutions in upstream catchments where this will improve water reliability or quality related to national water resources infrastructure.

### **5.3.3 Finance Infrastructure Management**

6. Procure finance for infrastructure investment from local and international capital markets, including maintaining effective relationships with the financial markets, credit rating agencies and National Treasury.
7. Ensure compliance with the PFMA to ensure appropriate approvals for borrowing, guarantees and procurement. This includes ongoing compliance, monitoring and reporting.
8. Ensure funding for social and economic infrastructure primarily through public funds and revenue generated from the sale of water.
9. Facilitate partnerships with the private sector for water resource infrastructure, where appropriate and feasible.
10. Manage redemption and reserve portfolios to support investments and debt management objectives, in a transparent and robust manner.
11. Actively manage outstanding debt and revenue collection and drive debtors-days-outstanding to reasonable levels.
12. Ensure loan covenance and monitoring including, debt repayments and debt servicing.
13. Negotiate bulk water supply agreements with authorised water users.
14. Implement effective systems and controls to facilitate the timely, accurate and complete billing and collection of water revenue in accordance with the Water Pricing Strategy.
15. Negotiate and secure an appropriate cost reflective tariff<sup>4</sup> with the Regulator which balances affordability, effective operations and maintenance of assets, facilitates the building of appropriate infrastructure to deliver water for social and economic requirements, and address backlogs in 10 years.
16. Implement effective systems and controls to manage all assets to ensure effective recording, condition and location of the assets, and that all assets are properly resourced, operated and maintained.
17. Manage the systems to support the Department in long-term preparation and planning of water augmentation projects and the life extension of strategic infrastructure to ensure a smooth, transparent and affordable capital until unit charge.

### **5.3.4 Manage Social and Environmental Requirements**

- ✚ Ensure environmental requirements are met and social development opportunities are optimised.
  - Promote opportunities for community development initiatives associated with water resources infrastructure development
  - Monitor beneficiation, compensation and the impact of instream flow releases
- ✚ Manage reservoir surface and surrounds (and water weed control), including cooperation agreements with other government departments and institutions.
  - Develop opportunities for local communities to directly benefit from the water resources infrastructure and facilities, through sustainable utilisation plans, local empowerment and eco-tourism PPPs

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<sup>4</sup> This would need to be balanced with existing agreements with end users which secured a capital unit charge to complete the existing build programme and amounts needed to support social infrastructure.



- ✚ Promote good relations with stakeholders (water users, affected persons and other institutions)

### 5.3.5 Monitoring of water resources

- ✚ Conduct water resources monitoring (quantity and quality) in relation to infrastructure that it manages to support effective infrastructure operation
- ✚ Provide monitoring data to DWS for the national information monitoring system

### 5.3.6 Provide Technical Services

- ✚ Provide related ancillary functions, including survey services and geotechnical drilling services.
- ✚ Ensure / manage adequate research and development on infrastructure management to ensure best practice and compliance with international trends.
- ✚ Provide technical services to other institutions (including DWS) – on contract.
- ✚ Provide financial management services to other water management institutions where requested by the Minister and where such services are adequately funded
- ✚ Perform corporate services and financial management support functions.
  - Promote government transformation objectives through appointments and infrastructure development approaches and options
  - Leverage BBEE and women empowerment opportunities through procurement

## 5.4 Institutional Relationships

The NWRIA will be established within an existing institutional environment, with a number of role-players. The relationships between these institutions and the NWRIA, once established, can be clearly defined as below.

*Minister and Parliament:* The NWRIA is established by legislation and is accountable to Parliament through the Minister of W&S as the Executive Authority), in terms of the Shareholder's Compact.

*Department of Water and Sanitation:* DWS plays an important regulatory role for the NWRIA, ensuring that it complies with relevant legislation, and that it fulfils its water resources management obligations in terms of water policy, strategy and legislation. The NWRIA is required to perform its functions within a water resources management framework provided by DWS, primarily but not exclusively through the National Water Resources Strategy. DWS will also remain responsible for national water resources planning<sup>5</sup>, which will give rise to the reconciliation requirements to be addressed by the NWRIA, and for the allocation of water between catchments and between water users including through water use licences. The following DWS roles are particularly relevant for infrastructure management:

- *National Water Resources Planning*
  - DWS will conduct reconciliation and augmentation planning' for water resources, in terms of the national planning required to close a deficit arising from a reconciliation exercise, encompassing both supply and demand-side measures.
  - DWS will conduct water quality planning in relation to the management of water resources to appropriate quality standards
  - DWS will establish the framework / rules for reservoir system operation to meet DWS's WRM objectives.
- *Water Use Allocation and Authorisation*

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<sup>5</sup> The national water resources planning function is primarily responsible for developing national strategies and procedures for the reconciliation of water availability (and resource quality) and requirements to meet national social and economic development objectives, including strategic requirements, resource quality objectives and international obligations

- DWS (and/or CMAs) will allocate and authorise water use to meet objectives of equity, redress, efficiency and sustainability; DWS will maintain the national Water Authorisations Registration and Management System (WARMS)
  - DWS will authorise national infrastructure development through a formal Record of Decision.
  - DWS will regulate dam safety for infrastructure operated by the NWRIA.
- *Information Management*
- The NWRIA will conduct water resources monitoring in relation to the infrastructure that it manages and operates and will provide the data to DWS for the national information management system
  - DWS (with CMAs) will monitor all other water resources, will manage water resources (and related) information and will be the custodian of the national information management system for water resources.
- *Institutional Oversight / Regulation*
- DWS will review the shareholder compact prior to its approval by the Minister
  - DWS will review the Corporate Plan and annual projections of revenue, expenditure and borrowings in terms of the PFMA.
  - DWS (or an independent regulator, should this be established – see below) will review the water use charges for infrastructure development and operation proposed by the NWRIA in line with the raw water pricing strategy, while the Minister will approve and gazette the charges in the annual tariff tables.
  - DWS will monitor and audit the NWRIA's compliance with national policy, legislation and strategy (including catchment management strategies).
  - DWS will run the process for the selection of Board members of the NWRIA. Nominations to the Board will be submitted by the Minister for Cabinet approval.

*DWS and Catchment Management Agencies* will be the responsible authorities for allocating and authorising water use, as well as for water resources planning through reconciliation strategies and catchment management strategies, which will be in line with the National Water Resource Strategy. Transfers between catchments and for strategic water use will be allocated in the National Water Resource Strategy. The NWRIA will implement national water resources development and utilisation decisions developed through a consultative protocol that includes the NWRIA, DWS and relevant CMAs.

*Bulk Water Users* (and their representative bodies): Municipal, agricultural, power, industry and mining users may be clients of the NWRIA, in which case they should have water use/offtake agreements defining the quantity, reliability and quality of water to be supplied in exchange for agreed payment. These agreements will be in accordance with water use licences issued by DWS/CMAs.

*Stakeholders*: Social and environmental interest groups and affected communities (in addition to water users) have an interest in and/or are affected by the way in which the NWRIA performs its functions, so this relationship will be governed by a Stakeholder Compact.

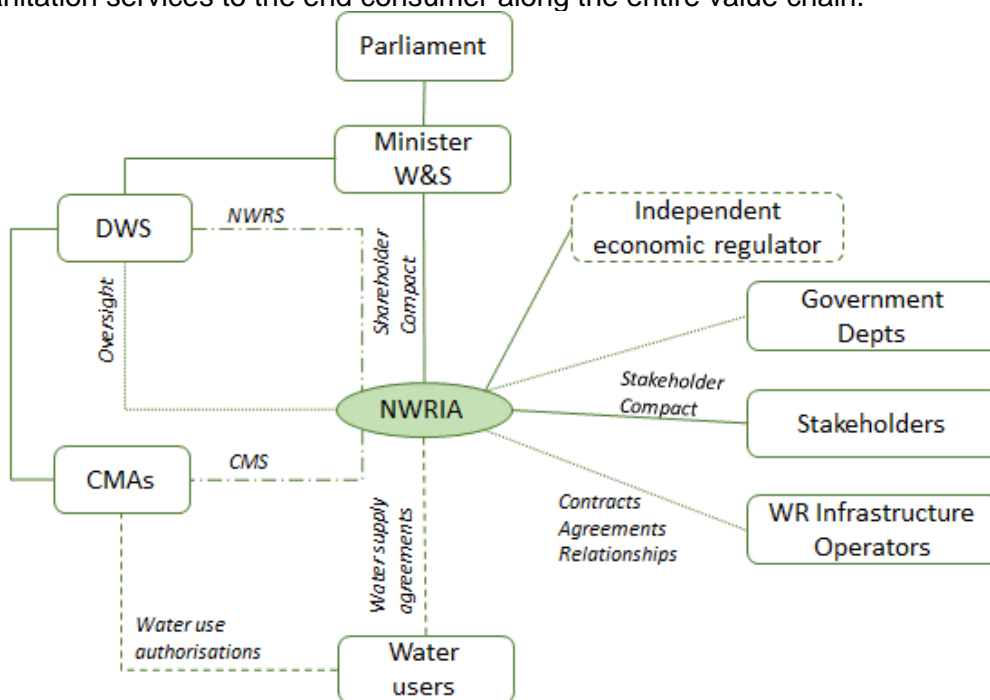
*National and Provincial Government Departments*: Departments representing ownership of land, infrastructure and other economic sectors that are dependent on water have an interest in the management of water resources infrastructure, and as organs of state have a Constitutional duty for cooperative government.

*WR Infrastructure Operators*: There are a range of water services institutions, such as local government, municipal utilities and water boards, and water management institutions, such as water user associations and international bodies, that own and/or operate non-national or international water resources infrastructure. There is a need to cooperate and jointly manage the infrastructure in a particular system to ensure effective and efficient management to meet water user requirements and resource management objectives.

*Independent economic regulator:* The intention is to establish an independent economic regulator which will have the mandate to ensure that services are provided in a cost efficient, fair, and sustainable manner, while bearing in mind social and economic priorities (equity objectives), set out by the policy makers (at national, provincial and local government levels). The main objectives of economic regulation can be broken down into three broad elements:

- To protect consumers from abuse of monopoly power by institutions in the water sector,
- To protect water institutions and consumers from inappropriate short-term decisions, and
- To enable the public sector to carry out long-term policy objectives.

The economic regulator will regulate financing options, tariffs and charges and service standards of the various institutions/authorities involved in the supply and delivery of water (raw and potable) and sanitation services to the end consumer along the entire value chain.



**Figure 2: Institutional relationships between the NWRIA and other key institutions (dotted line around box indicates not yet established)**

These relationships are critical to the effective functioning of the NWRIA and are a Constitutional requirement where the other institution is an organ of state. If there is a dispute between the NWRIA and another institution, DWS or the Minister has a responsibility to mediate between the institutions or to appoint an independent mediator. This may require DWS arbitration, possibly resulting in a directive to the NWRIA (and/or the other party) to resolve the dispute. An appropriate appeal mechanism with a final appeal to the courts if internal mechanisms do not resolve the dispute will be developed and legislated.

## 6. Associated Attributes of the NWRIA

The NWRIA, as a state-owned company dealing with a strategic national asset, should have the following attributes, which guide its governance and operation.

- **Legal Status:** a Juristic person in terms of its establishment Act

- **Ownership:** Fully owned by the State.
- **Political Accountability:** The Minister responsible for water resources management (currently the Minister of Water and Sanitation), as the Executive Authority, is accountable to Parliament and represents government's policy and shareholder interests.
- **PFMA Statutory Accountability:** The Board is the Accounting Authority and is accountable in terms of the PFMA; it is required to submit annual reports that include audited financial statements
- **Appointment of the Board:** The Minister, as Executive Authority, appoints the Board, with the approval of Cabinet, comprising non-executive and executive directors in terms of the establishment Act.
- **Appointment of the CEO:** The Board will appoint the CEO in concurrence with the Executive Authority.
- **HR practices:** Based on leading human capital practices.
- **Operational funding sources:** Business income from water sales, and state subsidies for public benefit non-commercial projects.
- **Budget approval:** the Board approves the NWRIA budget, but the NWRIA must submit the investment and borrowing plan to the DG (Accounting Officer) of the designated department (DWS) as well as to National Treasury.
- **Spending autonomy:** The NWRIA is autonomous within the limits of the Shareholder's Compact.
- **Procurement:** according to the PPPFA and the NWRIA's own governance rules but satisfying national priorities.
- **Development of new infrastructure projects:** new infrastructure projects must be in accordance with national water resources planning conducted by DWS and decided on in consultation with DWS, and with CMAs where appropriate.
- **Water use charges for infrastructure:** Approved by the Minister, advised by the regulatory authority (DWS), in terms of the Raw Water Pricing Strategy and based on infrastructure related charges submitted to DWS by the NWRIA.
- **Borrowing powers:** General powers within the borrowing limits approved by the Executive Authority with the concurrence of the Minister of Finance and enabled through the establishing Act with parameters defined in the Shareholder's Compact. Borrowing powers will be consistent with the PFMA and the scheduling of the NWRIA as a Schedule 2 entity.
- **Accounting basis:** International Financial Reporting Standards (IFRS) supplemented by regulations under the PFMA.
- **Dividend policy:** Agreed in the Shareholder's Compact; the recommendation is that an allocation of the ROA reserve to betterments and social projects agreed by mandate from the Minister would serve in lieu of dividends.
- **Tax regime:** The NWRIA will be exempt from income tax. A general policy on the application of VAT to water sales by water institutions should be developed in conjunction with the tax policy unit of National Treasury.
- **Social and environmental responsibility:** Direct responsibility to promote empowerment of local and affected communities and to meet environmental requirements.
- **Establishment of subsidiaries:** With approval of the Board and in consultation with the Minister, the Minister for Public Service and Administration and the Minister of Finance.
- **Dissolution:** By the Minister (as the Executive Authority) on resolution of Parliament, with all assets and liabilities returning to the state.

## 6.1 Legislative Environment

The NWRIA will operate in a strong legislative environment that supports good governance, which includes the following:

- The Public Finance Management Act
- The Companies Act
- The National Water Act
- The Prevention and Combating of Corrupt Activities Act
- The National Environmental Management Act and

- The South African National Water Resources Infrastructure NWRIA SOC Limited Act

## **6.2 Establishment of the NWRIA in terms of Legislation**

A South African National Water Resources Infrastructure NWRIA SOC Limited Bill (see draft in Appendix C) will be tabled in Parliament in order to establish the NWRIA. This Act, when passed, will set out the legal mandate, governance arrangements, and other critical elements of the legal basis of the NWRIA.

Provisions that will be incorporated into the enabling legislation include:

### **DEFINITIONS AND PURPOSE**

1. Definitions and Interpretation
2. Purpose of Act

### **CHAPTER 2**

#### **ESTABLISHMENT OF NWRIA**

3. Establishment of NWRIA
4. Memorandum and articles of association of NWRIA
5. Application of Companies Act to NWRIA
6. Objects of NWRIA
7. Functions of NWRIA

### **CHAPTER 3**

#### **GOVERNANCE OF NWRIA**

8. Governance and Composition of Board
9. Role of Board
10. Principles to guide the Board
11. Appointment to Board
12. Chairperson and deputy chairperson
13. Term of office and conditions of appointment of non-executive Board members
14. Removal and disqualification of Board member
15. Filling of vacancies
16. Shareholder's compact
17. Establishment of committees
18. Fiduciary duties of Board members
19. Disclosure of interest of Board members
20. Recovery of improper profits
21. Validity of decisions
22. Delegation of functions by Board
23. Meetings of Board

### **CHAPTER 4**

#### **CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER**

24. Appointment of Chief Executive Officer and Chief Financial Officer
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The Bill is included as Appendix C.

### **6.3 Shareholder's Compact between the Minister and the NWRIA**

A shareholder's compact will be developed by the NWRIA and signed by the Minister. Elements that will be included in the Shareholder's Compact are:

- Strategic Intent
- Policies
- Business, transformation and social objectives, reflecting Government's priorities
- Governance issues
- Roles and Responsibilities of the Minister
  - directives, regulation, etc.
  - reconciliation and augmentation planning'
  - monitoring and water quality objectives
- Roles and Responsibilities of the NWRIA
  - functions, legislative compliance, reporting
  - water resource infrastructure use charges
- Performance management
  - Rewards / Penalties
- Undertakings by the Minister
- Undertakings by the NWRIA
- Operating and performance indicators
- Mechanisms and structures for interaction between Minister, DWS and NWRIA
  - alignment in strategic planning processes
- Water use pricing
- Non compliance

## 7. Financial Viability

This chapter considers the financial feasibility of the NWRIA, through examination of a base case and a sensitivity analysis.

### 7.1 Introduction, Methodology and Outcome

To analyse the financial feasibility of the proposed NWRIA, the approach taken was to:

- Consolidate the financial statements of the TCTA and relevant DWS structures for the previous five years to provide a starting point for the analysis;
- Define the 'base case' scenario for NWRIA's establishment;
- Construct and populate a custom-made financial model to provide a basis for projecting the NWRIA's financial performance;
- Use the model to test the 'base case' scenario for the NWRIA to determine the viability of the proposals;
- Apply the model to evaluate the impact and test the sensitivity of the NWRIA to potential changes in a range of financial and operational parameters;
- Based on these analyses, draw conclusions and make recommendations on the feasibility of the NWRIA, the risks inherent in the sensitivity testing and the effective management of the establishment process.

It is concluded that the base case for the NWRIA is financially viable, subject to the concurrence of National Treasury with respect to specific ongoing grant transfers.

### 7.2 Base Case

The base case assumes:

- The transfer of the operating businesses<sup>6</sup> (Government Water Schemes of the WTE and NWRIB, excluding the Construction Unit) from DWS; and of the TCTA, to the NWRIA.
- Transfer of all staff and assets to the NWRIA under existing terms and conditions.
- The application of the current Water Pricing Strategy<sup>7</sup>.
- Transfer of existing borrowings, borrowing authority<sup>8</sup> and explicit government guarantees into the NWRIA.
- The TCTA's existing authorised<sup>9</sup> projects continue to be implemented in accordance with the existing off-take agreements, existing agreed specifications as set out in the directives and within the same terms and conditions of contracts awarded to Engineering, Procurement, Construction Management (EPCM) firms and constructions companies.
- All existing arrangements and protocols relating to the implementation of Lesotho Highlands Water Project (LHWP) are transferred to the NWRIA, including the commitment to pay royalties to Lesotho and to contribute to the funding of operations and maintenance by the Lesotho Highlands Development Authority (LHDA) of the water transfer component of the works in Lesotho.
- Existing<sup>10</sup> liabilities and commitments, less impairments, are transferred to the NWRIA.
- The NWRIA will focus on the development and management of water resources projects and systems that are strategic for meeting national development objectives and transboundary river obligations.

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<sup>6</sup> These include all Government Water Schemes (GWS) some of which do not constitute 'National Water Resource Infrastructure'. The financial implications and options are considered in sensitivity analyses in section 8.

<sup>7</sup> Refer to current pricing strategy. Proposed changes are addressed in the sensitivity analyses in section 8.

<sup>8</sup> Approved by the Minister of Finance, in accordance with the PFMA

<sup>9</sup> As directed and authorised by the Minister of Water Affairs and Sanitation at 31 March 2022

<sup>10</sup> As audited for the period ending 31 March 2021

- The Minister may request the NWRIA to undertake other water projects within the framework of s.103 of the National Water Act 1998. This will be done on a cost-recovery basis, including direct staff costs and market related equipment lease costs.
- Other than TCTA's current projects mentioned above, for the purposes of this base case, the NWRIA will only implement new projects set out in the Department's approved Annual Performance Plan 2021 (APP) where fiscal allocations for the social portions of these projects are included in the current Medium Term Economic Framework (MTEF).
- Expenditure to address the backlog in refurbishment (including renewal where necessary) of existing infrastructure is limited to the budgets included in the APP and will be applied to the critical facilities with the highest risk to water security and the highest impact on socio-economic outcomes.
- The NWRIA will monitor and manage the risks of the refurbishment and renewal backlogs and improve the operations and maintenance of assets, to mitigate service interruptions and infrastructure failures.
- For accounting and financial modelling purposes, the base case uses the consolidated accounts of TCTA and the WTE for the past 5 years (to the last audited accounts ending March 2021) as the basis for the modeling the NWRIA finances for the next 30 years to 2050, coinciding with the National Infrastructure Plan's (NIP2050) term.
- Annual revenue collection is projected at 80%.
- Fiscal contributions to the social portions of new build projects and to the WTE for new build, backlogs and maintenance, based on current MTEF allocations, are continued for the next 30 years and will increase annually with CPI.
- Depreciation is calculated for all existing schemes of the NWRIA and for all construction projects from the date of operational commissioning. The current average age of the assets is 39% of their useful life.
- Interest on bad debts is provided for at 8.9% per annum but this is generally impaired or written-off when payment is received.

### **7.3 Financial Rationale**

South Africa requires an ongoing and sustained mega water resource infrastructure build programme, in addition to effectively operating and maintained existing assets.

DWS cannot rely on significant additional fiscal support to develop and maintain the required infrastructure. An NWRIA would be better positioned than the Department to leverage user payments to raise finance from sources other than the fiscus.

The TCTA currently raises finance backed by project-based off-take agreements and explicit and implicit government guarantees; additional finance could be raised against the NWRIA's assets and income streams, potentially without explicit government guarantees.

Once listed as a PFMA Schedule 2 entity, based on the condition of its assets and quality of its revenue streams and after achieving a credit rating, the NWRIA should be able to raise commercial and development finance, domestically and internationally or enter into public-private partnerships.

The ability to raise commercial funding will mainly depend on (1) the NWRIA's governance and capacity to plan and deliver projects; (2) the financial credibility and strength of its revenue stream; (3) consistent revenue assured by a formal, statutory Pricing Strategy; and (4) government support in the form of fiscal contributions for 'social' components of projects as well as formal guarantees, strategic ("too important to fail") support and effective oversight.



## 7.4 Current Status of Businesses

The current asset portfolio of the NWRIA includes 264 existing Government Water Schemes (GWS) and 17 new projects. Of the existing GWSs, 76 have been provisionally identified as core National Water Resource Infrastructure. The share of core and non-core asset value, revenue and expenditure is:

**Table 2: NWRIA share of core and non-core asset value, revenue and expenditure**

Description	R'mil	Core GWSs	Non-core GWSs
Asset values: Property, Plant & Equipment (PPE) excluding intangible assets of LHWP and KOBWA	75 963	77%	23%
Asset values: PPE including intangible assets of LWHP and KOBWA	93 113	81%	19%
Prioritised refurbishment backlogs	19 000	42%	58%
Revenue	11 321	97%	3%
Fiscal grants (excluding new projects)	974	37%	63%
Operating expenditure	3 013	85%	15%
Employee costs	1 639	58%	42%

### Operations & maintenance, refurbishment & renewal and dam safety

Operation and maintenance ensure the optimal use of the infrastructure assets and that the benefits over their useful lives matches their design-life. Risks to be managed include the safety of large dams, that are subject to statutory controls, as well as avoidance of infrastructure failures that may lead to supply interruptions to essential economic and social users.

Current expenditure on operation and maintenance of infrastructure assets is about R4.6bn per annum. Employee costs are R1.6bn (37%), operating costs are R2.2bn (50%) and maintenance expenditure varies between 3% and 9% of operational expenditure (about R350 million).

Best practice for maintenance of water resource infrastructure is that 30% to 40% of the O&M budget should be applied to maintenance works (higher for electrical and mechanical assets and lower for civil structures). Maintenance expenditure on the current portfolio should thus be about R1.5bn per annum, indicating a shortfall of approximately R1.2bn per annum. This deficit is confirmed by the 2017 Asset Management Plans (AMPs) of the DWS which showed that R1.9bn (2021-values) is required for maintenance.

Underspending on O&M is due to under-collection of revenue as well as applying O&M funds to meet the commitment to pay TCTA their revenue in full. This results in additional refurbishment costs and the increased risk of service interruptions or infrastructure failure.

Based on infrastructure condition assessments and asset management life-cycle plans, the total backlog in refurbishments and renewal of infrastructure is R35.5 billion (2022 prices). Of this R12.5 billion is a refurbishment backlog caused by the cumulative effect of a lack of maintenance over several years. The aged infrastructure which needs to be renewed is estimated at R23 billion of which R5.5 billion is urgent. This excludes infrastructure earmarked for disposal or fully impaired due to under-utilisation.

The Department has prioritised R19 billion whilst a robust conditional assessment will be conducted on the remaining R16.5 billion.

### Implementation of New Projects

## TCTA Projects

When the NWRIA is established, it will continue with the implementation of the 4 projects which have been assigned to the TCTA by the Minister:

**Table 3: Projects in implementation currently assigned to the TCTA**

PROJECT	Cost 2021-Values R'mil	Construction start Year	Period of construction Years
<b>EXISTING TCTA PROJECTS IN IMPLEMENTATION PHASE</b>			
LHWP - Phase 2	32 000	2017	11
uMWP - Phase 1	23 800	2022	7
MWCAP - Phase 2	10 932	2022	8
Berg River - Voëlvele (BRVAS)	858	2022	5
<b>SUB TOTAL</b>	<b>67 590</b>		

Note: LHWP Phase 2 is being implemented by LHDA with the TCTA responsible for funding.

For the successful implementation of these projects, the NWRIA will continue to require funding from the financial markets and the fiscus as well as the expertise of the private sector. To this end, the NWRIA will have to demonstrate a credible, long-term and consistent focus understood and supported by off-takers, the Department, EPCM firms and construction companies, organized labour, staff, regulators, landowners, communities and financiers/borrowers.

## DWS Projects

In addition to the 'TCTA projects', the NWRIA will continue to undertake the following 13 projects which are included in the DWS APP and for which there has been an allocation in the current MTEF:

**Table 4: Projects that the NWRIA will take on that already have MTEF funding allocations**

PROJECT	Cost 2021- Values R'mil	Construction start Year	Period of construction Years
<b>EXISTING DWS PROJECTS</b>			
Dam Safety Rehabilitation Programme	2 800	2021	18
Thukela – Goedertrouw Emergency Water Transfer Scheme	536	2018	7
Groot Letaba Water Augmentation Project – Phase1 (Tzaneen Dam)	167	2017	8
Groot Letaba Water Augmentation Project – Phase 2 (Nwamitwa Dam)	2 949	2021	TBC
ORWRDP – Phase 2D	2 382	2021	10
ORWRDP – Phase 2E	618	2036	5
ORWRDP – Phase 2F	2 696	2036	5
Orange-Fish-Sundays River Government Water Scheme: Phase 1B - Coerney Dam	553	2022	4
Lusikisiki Regional Water Supply: Zalu Dam	2 770	2025	8
Clanwilliam Dam Raising	3 500	2018	8
Mdloti River: Raising of Hazelmere Dam	110	TBC	TBC
Foxwood Dam	3 350	2030	5

PROJECT	Cost 2021- Values R'mil	Construction start Year	Period of construction Years
Mzimvubu Water Project	12 380	2035	10
<b>SUB TOTAL</b>	<b>34 811</b>		

In total TCTA and DWS are implementing 17 projects which cost R102bn.

### Management of existing project debt

The NWRIA will continue to manage the debt of projects that it has completed and transferred to DWS for operational management purposes, with the exception of LHWP Phase 1 whose operational management is the responsibility of the LHDA. These completed TCTA projects, which were implemented on a ring-fenced basis<sup>11</sup> against contractual off-take agreements, include:

### Revenue collection

Revenue collection is the responsibility of the DWS-WTE and will be transferred to the NWRIA. Bad debts have been increasing steadily and currently amount to R20.7bn, equal to about one and a half year's annual revenue.

Revenue collection averaged 73% over financial year(s) 2017-2021, improving to around 80% in 2021, supplemented by bad debts recovered from prior years. About R11bn of the bad debt has been impaired with the balance of R9.7bn still shown as Trade Receivables in the financial statements. Debtors' days after impairment have deteriorated from 164.6 days in 2019/20 to 237.9 days in 2020/21 mainly due to non-payment by various municipalities. An early priority for the NWRIA will be to maintain and improve recoveries.

**Table 5: Debt by sector**

Type of Institution	2021 R'bn	2020 R'bn
Municipalities and Government Institutions	7.86	6.74
Bulk Water Providers and WUA's	8.99	7.64
Private Sector & Companies	3.87	3.26
<b>Total Debtors</b>	<b>20.72</b>	<b>17.65</b>

Under current agreements, DWS is responsible for collecting revenues and no shortfall is transferred to TCTA which is the basis for TCTA's 'implicit guarantee' to its lenders. However, DWS has used its O&M budget to cover shortfalls, impacting negatively on maintenance and increasing future refurbishment needs. To end this effective 'subsidisation' of new build from O&M, either revenue collection rates must improve, the costs must be passed to the existing end-users through increased tariffs or additional fiscal allocations will be needed.

## 7.5 Current Financial Status

The TCTA accounts are prepared using International Financial Reporting Standards (IFRS) whilst the WTE's accounts are prepared using Generally Recognised Accounting Practice (GRAP). The consolidated statements ensure that the opening balances on 1 April 2021 are correct in the financial model.

<sup>11</sup> Subject to the outcome of discussions with financiers and rating agencies, consideration could be given to transferring the existing TCTA projects in construction, to a separately controlled company or special purpose vehicle.

### **Consolidated statements for the past 5-years**

Consolidated accounts (income statement and balance sheet) were prepared for the combined DWS-WTE and TCTA from 2017 to 2021. These are available in the full modelling report. Key issues relevant to these accounts are the status of fiscal transfers and government guarantees.

### **Fiscal transfers: provisions for 2022-2025**

The DWS/NWRIB's approved budget and future MTEF allocations illustrate the streams of fiscal support currently received, elements of which may continue to be required by the NWRIA.

- Allocations for refurbishment is between R1.2bn to R1.3bn per annum. R5.5bn has been prioritised on a risk-management basis to address the priority backlog refurbishment estimated at about R19 bn.
- Operation and maintenance allocations currently total between R2.4bn to R2.7bn per annum of which 37% is for salaries and only about 3% to 9% is for maintenance. Under-funding of maintenance is the main reason for the refurbishment backlog and needs to be reinstated to full maintenance.
- 'Augmentation Projects', the social component of new capital works, are funded from fiscal allocations rising from R1.1bn to R1.7bn annually.
- The TCTA allocation includes the repayment of borrowings and royalties paid for the LHWP, which is funded from WTE revenue, augmented by transfers from other line function allocations when collections are inadequate.

### **Outstanding debt and government guarantees**

With respect to the debt and guarantees:

- Outstanding debt of almost R20bn is 34% of projected peak debt and 25% of the total project cost;
- Current TCTA borrowing is supported by "explicit"<sup>12</sup> and "implied" government guarantees as follows:

#### **Explicit guarantees:**

- R25bn for the Vaal River System until the debt is repaid; and
- R7.3bn for MCWAP to underwrite the provision for future water users to sign up for a portion of the yield.

#### **Implied guarantees:**

- Implied guarantees are the undertaking from the Department that TCTA will be funded to meet its debt obligations at all times. They are not formal government guarantees and offer no recourse to the National Revenue Fund but recognize the strategic support from government for a function which is "too important to fail".

The TCTA has a credible record with local and international funders and has proven its financial management skills through successfully completing large water resource projects of international size and standards within budget and timeframes.

The formation of the NWRIA will require lenders to be afforded acceptable security for their existing loans, failing which they may call on the loans. This will be discussed with the relevant stakeholders. Future 'corporate finance' type arrangements would raise loans on the assurances provided by evidence of effective management of the asset base and the strength of revenues derived from it to enable the NWRIA to meet its loan commitments. Such an approach might allow the NWRIA to increase its borrowing capacity.

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<sup>12</sup> The "explicit guarantee" is provided to TCTA and lenders by the Minister of Water and Sanitation in concurrence with the Minister of Finance. Lenders evaluate this against South Africa's credit rating internationally.

## 7.6 Financial Projections for 2022-2027 and to 2050

### **Modelled statements for the next 5-years 2022-2027**

The financials for the five years of consolidated operation have been modelled, using the assumptions outlined in the base case and the 2021/2022 values from the Consolidated Balance Sheet as the starting values. The remaining modelled statements are available in the full modelling report, which also contains details of the model construction and the data used, but a summary of the main features is provided below.

It should be noted at the outset that the nature of the business modelled using the base case is not that of a traditional, profit-oriented corporation but rather the initial situation resulting from the amalgamation of a diverse set of activities involving the development and funding of infrastructure projects under completely different financial frameworks and their operations within a government department 'trading account' structure. As a result, the accounting statements show considerable variation year-to-year and do not yet reflect the kind of coordinated and consistent financial and operational management that would be expected from the NWRIA. The data is however presented, as far as possible, in a formal accounting framework.

**Table 6: Statement of financial position as at March 2021**

<b>STATEMENT OF FINANCIAL POSITION</b>			
<b>As at March</b>	<b>2021 WTE</b>	<b>2021 TCTA</b>	<b>2021 Consolidated</b>
	<b>R'000</b>	<b>R'000</b>	<b>R'000</b>
<b>ASSETS</b>			
<b>Current assets</b>	<b>12 411 192</b>	<b>10 961 000</b>	<b>22 310 192</b>
Cash and cash equivalents	1 403 143	9 234 000	10 637 143
Receivables from exchange transactions	10 636 096	358 000	10 994 096
Inventory	137 328		137 328
Construction Work In Progress	234 625		234 625
Tariff Receivable		1 053 000	
ST financial market investments		14 000	14 000
Prepayments		293 000	293 000
AMD receivable		9 000	
<b>Non-current assets</b>	<b>93 112 872</b>	<b>14 256 000</b>	<b>93 193 872</b>
Property, plant and equipment	75 963 341	2 000	75 965 341
Intangible assets *	17 149 531		17 149 531
Right-of-use assets		3 000	3 000
Tariff receivable		12 228 000	
LT financial market investments		76 000	76 000
AMD receivable		1 947 000	
<b>Total assets</b>	<b>105 524 064</b>	<b>25 217 000</b>	<b>115 504 064</b>
<b>LIABILITIES</b>			
<b>Reserves</b>	<b>84 650 781</b>	<b>2 976 000</b>	<b>87 626 781</b>
Retained income	83 366 427	2 976 000	86 342 427
Pumping cost reserve	1 284 354		1 284 354
<b>Current liabilities</b>	<b>3 378 702</b>	<b>12 080 000</b>	<b>14 397 211</b>
Trade and other payables	2 024 899	1 855 000	3 880 611
Bank Overdraft			-
Employee benefits	290 682		290 682
Finance lease liability	918		918
Financial liabilities: TCTA	1 062 203		
Provisions		35 000	35 000
Borrowings		10 186 000	10 186 000
Lease liability		4 000	4 000
<b>Non-current liabilities</b>	<b>17 494 581</b>	<b>10 161 000</b>	<b>13 480 072</b>
Finance lease liability	554		554
Fin Liab: Income in advance	3 318 518		3 318 518
Financial liabilities: TCTA	14 175 509		
Borrowings		9 774 000	9 774 000
Provisions		387 000	387 000
Lease liabilities			
<b>TOTAL LIABILITIES</b>	<b>105 524 064</b>	<b>25 217 000</b>	<b>115 504 064</b>

\* Intangible assets are projects where South African has the right to receive water from assets built outside of the country such as KOBWA in Swaziland and LHWP in Lesotho. The water transfer components of these projects were paid for by South Africa.

### **Projected 5-Year Cash Flow Statement of the NWRIA**

The NWRIA's projected cashflow statement for the next 5 years exhibited considerable variability in revenue (R11.9bn – 18.7bn). Initiation of LHWP Phase 2 is associated with substantial CAPEX outflows and financing inflows as project implementation proceeds with the result that net cash decreases from R10.6bn to R5.4bn over the period.

As per base case assumptions, O&M expenditure has been capped to the MTEF levels for the 3 years from 2022 to 2024; it continues at that level subject to CPI adjustments. This cap results in expenditure on maintenance being underfunded by about R1 billion per annum.

### **Projected 5-Year Income Statement of the NWRIA**

Total revenue increases, following the cash flow trends, with additional increases accounted for principally by provision for construction revenue (R0.2bn – R0.3bn) and interest on bad debts (R0.9bn – R1.2bn). Together with the capping of O&M, refurbishments etc. (as per MTEF), this results in a surplus of between R3bn to R5bn annually, with a 2026 value of R4.8bn. This surplus is needed in the short-term to cover loan repayments.

### **Projected 5-Year Balance Sheet of the NWRIA**

Total assets grow from R115bn to R182bn in 2026, with a large growth in intangibles reflecting the assets under construction (AUC) of the LHWP Phase 2. Similarly, total borrowings (current and non-current) increase from R19.9bn to R49bn, primarily due to the construction of LHWP Phase 2, with a smaller contribution to other TCTA projects under construction.

### **Projected statements for the 30-year planning horizon**

Using the base-case assumptions, the financial model was also used to produce longer-term projections of the financial performance of the NWRIA to 2050. In summary:

**Cashflow projections** show that annual revenue collected grows from R12bn to R49bn over the next 30 years with fiscal contributions are capped to current MTEF levels (both CPI based). Similarly, admin, employee and O&M costs are capped to current MTEF budgets and escalated by CPI thereafter. Royalties are adjusted when LHWP Phase 2 is commissioned and other capital expenditure on new schemes, refurbishment and renewal is included. On this basis, net cash flows are positive for first 5 years, fluctuating from 2022 to 2029, and near zero until 2040, whereafter they become positive.

**Financial income** is in surplus until 2030, moves into deficit between 2030 to 2040, returning to surplus from 2040 to 2050.

**Overall financial position** shows a negative annual change in current assets of between R1bn to R2bn until 2040, whereafter it becomes positive as the capital program reduces and total assets grow from R115bn to R128bn in 2050. Over this period, total borrowing (current and non-current) increases from R20bn to R50bn in 2030 and remains there until 2040, whereafter it declines to R4bn by 2050. The steep increase in the first 10 years is due to the construction of LHWP Phase 2 and other projects. The CUC is used to cap the debt peak until 2040 and most of the debt is repaid by 2050.

## **7.7 Viability of the Base Case**

The viability of the NWRIA under the base case has been evaluated using the financial model. This section summarises the findings in the detailed report.

### **Ability to repay debt**

The ability to repay the debt on each project within 20 years from completion of construction was determined, considering the cumulative debt graph of TCTA projects and as well as the projects in the current DWS MTEF. This shows that debt repayment can be achieved soon after 2050, if assumed levels of revenue collection and cost curtailments are maintained.

### **Ability to service debt**

The ability to service debts within the 20-year repayment period was also confirmed. This includes loan funding for the economic portion and fiscal allocations for the social portions reflected in the current MTEF.

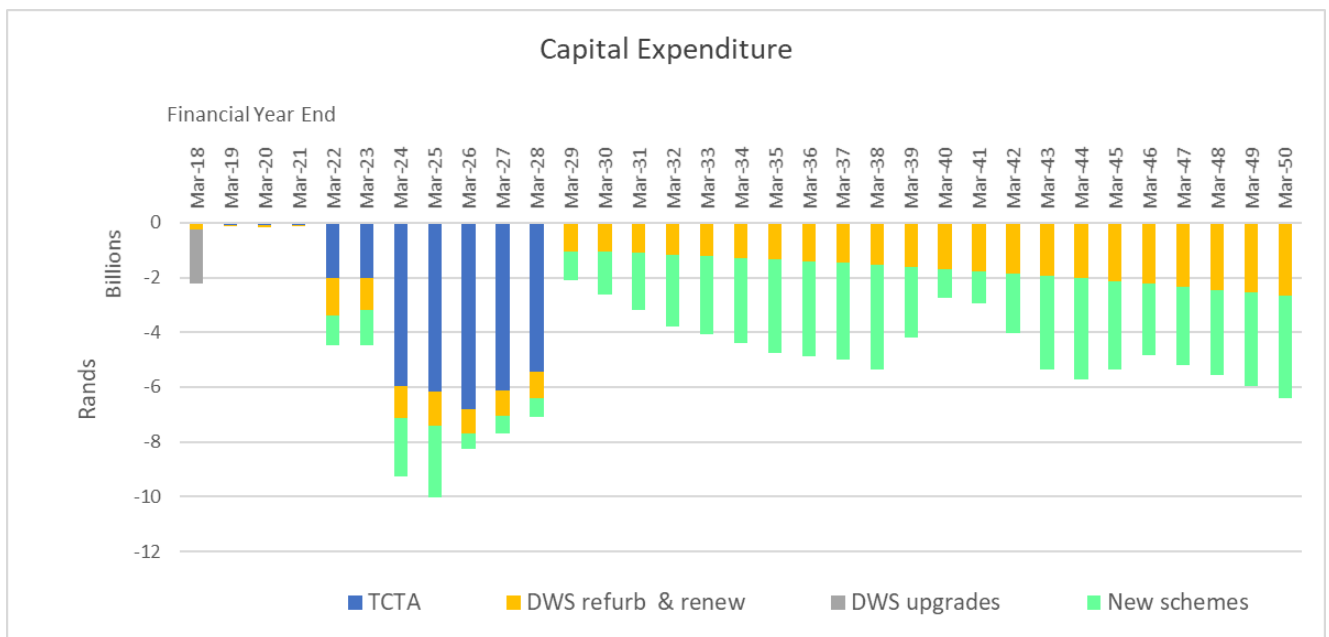
### **Revenue collected based on the existing pricing strategy**

Although the existing pricing strategy is scheduled to be amended (the proposals and their impacts are considered in section 8 and see FBIC, below), the revenue that is expected from each charge under the base case revenue collection is as follows:

- **CUC** (capital unit charge) is levied to repay capital loans on TCTA’s loan funded projects and removed when the project debt has been repaid.
- **ROA** (return on assets charge) raises financing for future infrastructure development and the betterment of existing infrastructure and is only levied after the CUC has been removed, serving as a “savings account” for upgrades and renewals.
- **DEP** (depreciation charge) is intended to fund scheduled refurbishments of infrastructure wear and tear, component renewals and decay that is not restored by regular maintenance. Current DEP revenue is inadequate to fund the refurbishment backlog.
- **O&M** (operation and maintenance charge) is intended to fund direct and indirect costs of operating and maintaining the NWRIA’s schemes, including electricity for pumping and employment costs which will be adjusted as schemes are added.
- **FBIC** (future build infrastructure charge) is **not** applied to the base case analysis but is proposed as a revision to the pricing strategy to cross-subsidise the costs of new infrastructure and the betterment of existing infrastructure which are identified as development planning priorities. It would be pooled at a national level, with all eligible users paying the same charge per m<sup>3</sup>, currently estimated to be between 11 and 15 cents per m<sup>3</sup>. Its impact is assessed in the sensitivity analyses and sustainability scenarios.

**Capital expenditure trends under base case assumptions**

The trends of annual capital expenditure for the implementation of the capital programmes are presented in the graph below and illustrates the significant variability in the rate of capital investment.



**Figure 3: Trends of annual capital expenditure for implementation of the capital programmes**

Most of the capital expenditure for the first 7 years is for TCTA projects (blue color) and DWS projects (colored green). Some prioritised refurbishment work (orange color) will begin immediately and continue at an appropriate level once the backlog has been addressed. Under base case assumptions, implementation of the projects prioritised from the National Water and Sanitation Master Plan list will speed up from 2032 once the initial projects and critical upgrades have been completed and then drop and increase again in 2042. The graph also shows that there will be programming opportunities to smooth the rate of capital spending which would enhance the feasibility of the proposed investment programme.



### **Ageing of scheme assets & impact of renewals**

The long-term feasibility of the NWRIA will depend not just on the viability of the new investment programme but also on the effective maintenance, refurbishment and eventual renewal of the entire infrastructure asset base. A review of the full asset base found that the average remaining life was **39%** of design life. Poor maintenance has resulted in backlog refurbishment indicating that ageing is speeding up and that some infrastructure may reach end of life prematurely, resulting in service failure and loss of revenue. For this reason, the refurbishment program has been prioritized in the base case. There are significant differences in the status of the core National Water Resource Infrastructure schemes and the non-core GWSs whose implications are considered in the sensitivity analyses.

### **Key financial indicators**

As explained in Section 5, traditional financial indicators and ratios are of limited use for this analysis since the financial information simply reflects the current status of two different sets of activities neither of which have been managed within a traditional business framework. In addition, the nature of the current operations has made it difficult to separate key variables, such as capital and operating 'income', which produces anomalous results.

However, the information derived is presented here to provide insight into the key trends identified from an analysis of the 'base case' assumptions. The ad-hoc indicators show, for instance, a steady growth in assets as well as a consistently high level of liquidity which are supportive of the assertion that the NWRIA has the potential to be a sound and viable business operation. The indicators show that a business structured and operated under the base case assumptions will be viable over the 30-year period. Thus:

- Operating cashflow is positive, varying between R6bn and R11bn.
- Liquidity remains positive throughout the 30-year projection period.
- The balance sheet shows that both assets and liabilities are growing with a positive net effect (increase in equity over time).
- the Debt/Asset ratio varies between 23% and 35%, falling substantially toward the end of the period, illustrating a growing capacity to take on additional debt to fund new investment.

### **Feasibility – conclusion**

From this review, supported by the projections provided by the modelling, it is concluded that the NWRIA will be able to develop and operate the base case investment programme, subject to the assumptions in Section 2 and the sensitivity analysis which follows.

## **7.8 Financial Risks and Sensitivities**

An extensive set of issues, options, risks and uncertainties was considered in developing the business case. The financial model was constructed to evaluate the impact of these on the NWRIA's viability and fitness for purpose. The key outcomes with financial implications are set out below.

### **Strategic asset portfolio and concentration risk**

#### **Asset portfolio as guarantee for borrowing capacity**

It is assumed that the NWRIA will be able to raise finance against the assets on its balance sheet and the revenue derived from them rather than on the project finance basis currently used by TCTA. This will depend on the credit rating that the NWRIA can achieve which is dependent, in turn, on other performance variables and governance framework.

#### **Transfer of non-core assets to more appropriate institutions**

The base case assumes that all 264 Government Water Schemes (GWSs) are transferred to the NWRIA and that the NWRIA will continue to operate, maintain, refurbish, renew and upgrade these schemes to maintain reliable raw water supply to its customers. Many of these schemes do not fall within the national and strategic mandate of the NWRIA and may, in future, be transferred to other water institutions or sold to the private sector; alternatively, some components (e.g. dams) may be

kept with the NWRIA while irrigation distribution infrastructure is transferred to water user associations. In such cases, schemes would be transferred or sold as a going concern with staff and equipment.

As shown in Table 2 (section 7.4), there are substantial differences in financial position and refurbishment backlogs in core and non-core schemes. The consequences of this are evident in the analysis which shows that cash flow of the non-core schemes is negative throughout the 30-year period and that transferring the non-core schemes from the NWRIA, would substantially increase its cash surpluses and borrowing capacity, although this does not take account of the prior refurbishment that would be required.

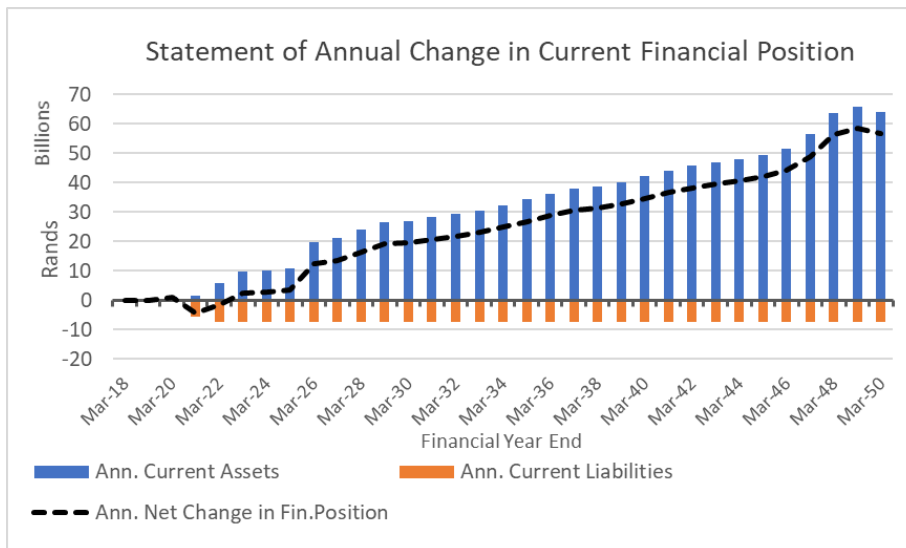


Figure 4: Statement of annual change in current financial position (core schemes)

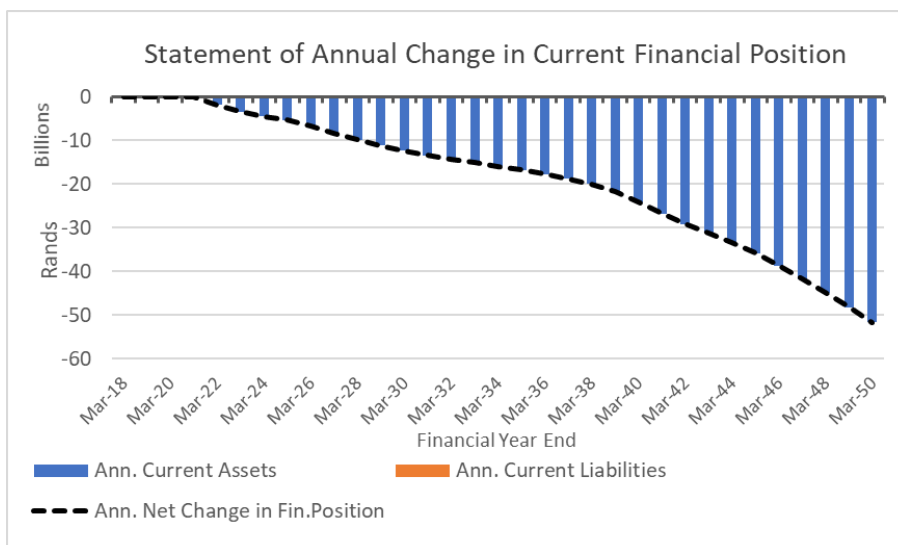


Figure 5: Statement of annual change in current financial position (non-core schemes)

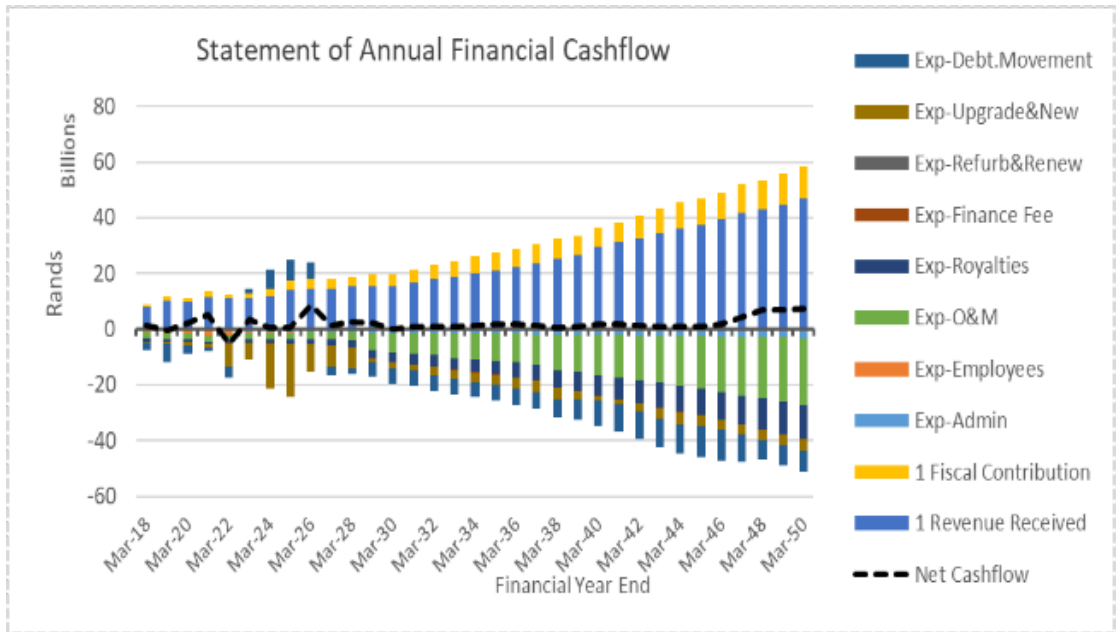


Figure 6: Statement of annual financial cashflow (core schemes)

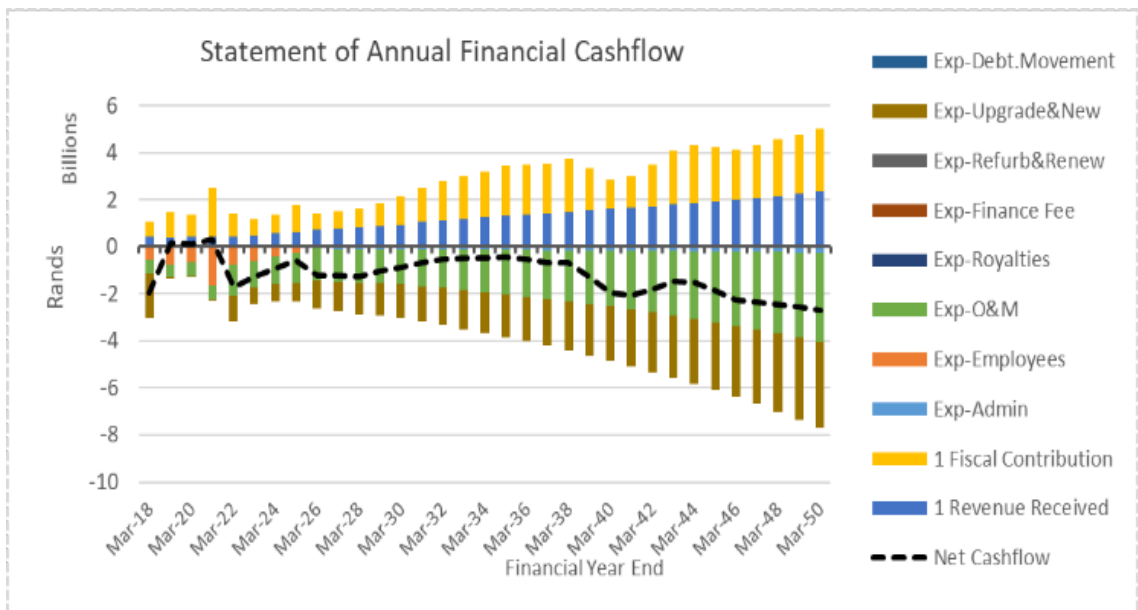


Figure 7: Statement of annual financial cashflow (non-core schemes)

**Vaal River System concentration risk**

The Vaal River System (VRS - Lesotho Highlands Water Project, 12 other dams, VRESAP and other pipelines and AMD treatment installations) currently accounts for **52%** of national revenue collected. Within that system, one customer (Rand Water) accounts for almost half of the VRS revenue. This concentration may pose some future risk to the NWRIA. While revenue from the VRS is a critical element of the NWRIA’s finances, current arrangements for ‘pre-collection’ to finance the LHWP provides a valuable surety and risk management tool for borrowings. While VRS concentration will initially increase with the completion of LHWP2, it will later be mitigated by large projects outside the VRS, notably uMkhomazi and Mokolo-Crocodile Phase 2 projects.

**Raw water quality risks and opportunities**

Raw water quality has deteriorated in many river catchments, caused primarily by acid mine drainage and poorly maintained wastewater treatment works. This results in accelerated deterioration of the NWRIA's infrastructure condition and increased costs for users. In extreme cases the NWRIA may lose income if water quality does not meet water users' requirements. This risk to the NWRIA will have to be addressed in partnership with DWS to ensure that water remains fit-for-use. The NWRIA is already involved in infrastructural approaches to quality management through AMD projects and such schemes may offer further business opportunities, but future involvement would need to be agreed with relevant stakeholders and provision for water quality related charges included in the pricing strategy.

### **Changes to and expansion of the project development list**

Projects with a construction value of about R102bn are identified on the NWRIA's base case list for implementation. If some of these are withdrawn this could affect the NWRIA's financial performance. However, the base case list includes just 17 of the 76 projects identified in the NWSMP for implementation before 2050. The estimated cost of the full NWSMP list is R310bn. There is thus no risk that there will be insufficient projects for the NWRIA to implement since, if some projects are cancelled, others can be identified and substituted.

If all 76 projects were to be implemented by the NWRIA, its capital expenditure would increase from R10bn to R30bn per annum, grant funding required by up to R5bn per annum and the resulting cumulative debt would increase to about R100bn. A decision to expand the investment programme could only be taken by the Minister once the NWRIA has demonstrated its capability to manage its initial programme. Various scenarios could then be modelled to determine the optimal development portfolio for the NWRIA as well as to identify projects that could be implemented.

## **Water pricing, regulation and related operational risks**

### **Tariff regulation**

The tariffs for bulk raw water applicable to the NWRIA will continue to be set in terms of the statutory pricing strategy, established and reviewed in terms of the National Water Act (1998), which provides for a formal process of consultation with water users. Although this tariff regulation is administered by the DWS, it has generally not been contentious; although some economists argue that tariffs are too low, scheme-based costs on some new projects have been found to be prohibitively high in some poor regions and it has been proposed that a transitional 'cap' on tariffs for agricultural water use should be lifted. There are proposals to establish an independent economic regulator for the water sector and, at present, the existing DWS regulatory unit is being ring-fenced and strengthened to create the required capacity.

### **Changes to the water pricing strategy**

The Water Pricing Strategy has important implications for the financial viability of the NWRIA. The base case assumes that the current strategy continues to be applied although it is recognised that the strategy is under review, some elements of which are mentioned above.

While it is expected that amendments to the strategy will, in general, enhance the viability of the NWRIA, questions have been raised by various stakeholders about options and their implications. The financial model will make it possible for the financial impact of any new proposals to be rapidly evaluated which should support an informed tariff setting process. The model could also be used to evaluate the different tariff adjustments of the proposed water pricing strategy and the phasing of their introduction which may assist water users to manage their impact.

### **Phasing of expenditure on maintenance and refurbishment backlog**

Actions to address the consequences of the maintenance backlog will have a financial impact and affect the NWRIA's ability to initiate new projects. The programming of maintenance and refurbishment expenditure will have to be reviewed by the NWRIA and its shareholder in order to determine the optimal approach. However, delayed maintenance expenditure will create further refurbishment backlogs. This situation would best be mitigated through tariff adjustments or

increased fiscal grants. Since the backlogs are greatest in the non-core GWSs, this may be addressed as part of a transfer process.

### Tariff setting to sustain refurbishment

Any shortfall in the funding required to address refurbishment could be addressed by increasing tariffs under the current pricing strategy. It is estimated that the following increases would be needed to fund achievement of specific sustainability outcomes:

- Maintenance shortfall 9%
- Refurbishment backlog 10%
- Renewal backlog 5% (priority) or 18% (full)

**Total adjustment 24%**

Alternatively, the new Water Pricing Strategy proposes the addition of a **Future Infrastructure Build Charge (FIBC)**, to be levied across all schemes and thereby creating a special dedicated fund for the future build purpose. A similar fund could be created to eradicate the refurbishment which could be combined with the FIBC and applied in two phases (e.g. first 10 years for the backlog eradication and thereafter for the social components of new projects).

The following **FIBC tariff** will be needed:

- Backlog (refurbishment) over 10 years 9 c/m<sup>3</sup>
- Backlog (renewal) over 10 years 4 c/m<sup>3</sup> (17 c/m<sup>3</sup> for full renewals)
- Social component (76 new projects) 22 c/m<sup>3</sup> (R3bn/annum)

**Total 38 c/m<sup>3</sup>**

### Interest rate variations

Variations in interest rate levels from base case assumptions will have a financial impact and could affect the NWRIA's ability to finance and repay the loans needed to build the infrastructure. These risks need to be identified and mitigated. In terms of the present pricing strategy (see below), an increase in the interest rate will directly impact on the CUC (Capital Unit Charge) that is levied to repay the loan of the project. This poses direct price risks to water users and indirect risks of non-payment by financially distressed users to the NWRIA. Some of the interest rate related risks could be mitigated by the adoption of a balance-sheet based funding model but this will only be possible once the NWRIA has established an acceptable credit rating.

### Financial implications of climate variability and change

Climate-change models predict an increased variation in rainfall with prolonged droughts and increased risks of extreme floods. The implications of more extreme floods are already being addressed through dam safety processes. Prolonged droughts, which reduce water availability may reduce the sale of water and the revenue of the NWRIA. Measures to mitigate this would include the application of increased drought water tariffs at wholesale level which would pass on to the NWRIA while present 'retail' drought tariffs for individual municipal and agricultural users are usually retained by local water suppliers.

Extreme floods will increase the risk of flood damage to infrastructure, impacting on the viability of the NWRIA. While the financial costs of such damage have historically been covered by the fiscus, this policy has not been confirmed for the NWRIA. It may thus be necessary for the NWRIA to incur the additional cost of insuring its infrastructure.

Any permanent long-term changes in the availability of water would need to be compensated through tariff adjustments. This is allowable under the current water pricing strategy.

## Revenue collection, fiscal support and related risks

**Revenue collection** is currently a risk for both the TCTA and DWS, as indicated by the current level of bad debts (approximately R20bn), which is unsustainable and needs a concerted effort by all parties involved to collect long outstanding revenue. A continued robust approach will be required to ensure that under-collection of revenue does not undermine the effective operation of the NWRIA.

The incentives to address billing risks will be enhanced once the NWRIA is fully responsible for its revenue; increasing internal efficiencies will be an explicit performance objective. External risks, such as non-payment, will be more difficult to address. The NWRIA will have to engage with DWS, NT and COGTA, its users and other stakeholders to consider the best approach. This is likely to include the establishment of performance goals for revenue collection by the NWRIA and the introduction of a pricing strategy principle that allows tariff setting to provide for a small proportion of non-payment.

Revenue collection levels average 80% but vary significantly between different categories of schemes and users across the full portfolio of 264 schemes. While collection rates on larger, national schemes are above the average, recovery of revenue due from smaller schemes and 'social' schemes averages between 50% and 70% suggesting that action may be required at this level to improve performance which may also require a review of social grants for water users. If revenue collection increased from **80%** to **90%** across all scheme types, the annual revenue would increase by **R1.5bn**.

### Budget augmentation

The continued provision of budgetary support will be critical to the successful establishment of the NWRIA. The relevant requirements have been recognized and provided for in the current MTEF allocations. If these budgetary allocations are continued into the future at present levels and the NWRIA implementation proceeds on schedule, this will allow:

- Full infrastructure maintenance from 2026, halting the growth in refurbishment backlogs;
- The cap on ongoing refurbishment and renewals to be lifted for additional renewals;
- Other surpluses to be allocated to the backlog of refurbishment and renewals which currently totals R35.5bn of which R19bn has so far been prioritised.

While there will still be a net funding shortfall of R1.8bn per annum to address the full backlogs, this will be addressed through a combination of improved revenue collection, recovery of bad debt and tariff adjustments. The fiscal provision, if rolled forward at the levels established, will help to ensure the viability and sustainability of the NWRIA while reducing the risks associated with the accumulated refurbishment and renewal backlog.

58% of the prioritised refurbishment is in the 'non-core' GWSs. Funding for this element may be considered as a fiscal contribution to the transfer of non-core assets to new operators or as part of the ongoing contribution of the NWRIA to 'social' activities.

## 7.9 Conclusion and Recommendations

The base case for the establishment of the NWRIA **is financially viable and operationally justifiable**.

The NWRIA will require ongoing fiscal support to address the substantial refurbishment and renewal backlogs occasioned by years of inadequate maintenance expenditure. In this regard, the 'social' policy purposes of the non-core GWSs should be recognised and appropriately supported either within the NWRIA or by transfer to other institutions. Without adequate provision, cashflow projections show that surpluses adequate to address the full backlogs will only be generated after **2040**. In addition to fiscal transfers, it is also recommended that high priority be given to improved revenue collection and tariff adjustments over the first 3 years in order to ensure that prioritised refurbishment is addressed in 10 years.

**Priority actions** to achieve longer-term sustainability includes:

- Investigate the potential for balance-sheet based funding to reduce borrowing costs and risks and provide greater flexibility.
- Establish an acceptable guarantee or “support” framework to replace the ‘implicit’ guarantee regime on existing TCTA projects.
- Introduce the new pricing strategy to achieve cost-reflective revenue collection across all schemes.
- Conduct viability assessments at scheme-level and design a comprehensive intervention and support package for sustainable socio-economic water use.
- Increase maintenance expenditure from current levels to R1.5bn per annum.
- Curtail the increase in bad debt and continue to pursue aggressively further collection of aged debts (currently R20bn).
- Conduct detailed condition assessments on strategic assets (e.g., bulk pipelines and mechanical/electrical equipment) with a life of less than 10 years, to determine priority refurbishments and renewals.
- Develop and expand the financial model for use to support the NWRIA’s financial management as well as asset planning and management.

## **8. Governance Arrangements**

### **8.1 Governance and oversight arrangements**

#### **8.1.1 Objectives of Corporate Governance**

The importance of corporate governance has increasingly been recognised in the South African public sector, with the interpretation of the King IV recommendations and principles. According to the King IV report, corporate governance is ‘the exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes: ethical culture, good performance, effective control, legitimacy.’ The principles of corporate governance as outlined in the King IV Report are set out in Appendix B.

In addition to the guidance provided by the King IV Report, the PFMA is the guiding legislation for corporate governance in public sector entities, but there are several dimensions beyond financial governance that must be considered.

Firstly, good corporate governance for a public entity must ensure the implementation of systems and controls that promote service delivery in line with the eight principles of Batho Pele: consultation, service standards, courtesy, access, information, openness and transparency, dealing with complaints and giving best value.

Secondly, good corporate governance must enable the effective identification, understanding and management of risk to all elements of the organisational, business and service delivery objectives.

Thirdly, good corporate governance should address the entity’s social and environmental responsibilities in addition to its core financial or economic corporate sustainability requirements.

Finally, bearing in mind the impact of state capture on several South African public entities, corporate governance must ensure effective anti-corruption programmes are in place and must establish a culture of professionalism and sound public service ethics in the entity.

Together these elements build an integrated picture of corporate governance requirements for the NWRIA that must be achieved through the governance arrangements and systems associated with the NWRIA, its Board and the Minister.

### **8.1.2 Mechanisms for Corporate Governance**

Governance and oversight of the NWRIA will be facilitated through several inter-related mechanisms, including:

- Parliamentary oversight in terms of the Portfolio Committee on water and SCOPA.
- Ministerial and DWS oversight, in terms of the Shareholder's Compact and specific project mandates, as well as the requirements of water sector policy, legislation and strategy and economic regulation.
- Oversight through annual audits conducted by the Auditor General
- Board control through its governance responsibilities, fiduciary duties and risk management, made more effective through appropriate committee structures.
- Internal Audit within the NWRIA, reporting directly to the Board.
- An organisational structure that follows business strategy, and that promotes effective checks and balances as it relates to all human capital practices including transparent and resilient recruitment and selection and performance management processes,
- Strong and clear governance policies, systems, procedures and controls.

Each of these mechanisms is further developed in the following sections. The experience with existing public sector entities must be considered in developing the governance mechanisms, particularly:

- The need for clear role definition between the Executive Authority (i.e. the Minister), the Accounting Authority (i.e. the Board) and the Executive (i.e. the CEO and NWRIA staff), to ensure adequate checks and balances in responsibilities and oversight
- The provision of decisive, but balanced, intervention mechanisms for the Minister to ensure the effective functioning of the Board and NWRIA, particularly where governance and oversight is not adequate.
- The need to prevent corruption in or the capture of the NWRIA

## **8.2 Role and Structure of the Board**

The Board is the accounting authority of the NWRIA as contemplated in section 49 of the Public Finance Management Act and is responsible for the strategic direction of the affairs of the NWRIA and for ensuring the sustainable functioning of the NWRIA through the management of risk. The Board is accountable to the Minister and has responsibilities outlined in the attributes presented in Section 4.3 above. It must adhere to good corporate governance principles.

The Board will consist of a minimum of nine and a maximum of eleven executive and non-executive members appointed by the Minister and approved by Cabinet. The Minister will appoint the Chair and Deputy Chair of the Board (which must not be the CEO). A quorum will be two thirds of the members of the Board. The CEO will be an ex-officio member of the Board.

The skills and expertise of the Board should be based on the management of integrated business risk, which has financial, legal, organisational, water resources, engineering, social, economic and environmental elements. Members should have significant experience in governance, a sound understanding of the fiduciary responsibilities of a Board, relevant expertise and experience in relation to the listed elements above and no taint of corruption or malfeasance. The following capabilities should be represented amongst the members:

- audit, legal and risk management;
- project finance, treasury management and corporate financial management;
- water resources infrastructure development, operations, maintenance and management;
- social development and poverty eradication;
- economic management and development
- corporate governance compliance;
- transformation, diversity and equity; and
- environmental management and compliance.



Of the members, only the CEO would be an executive director (thereby complying with King II recommendations). One member of the Board will be a senior officer of the Department of Water and Sanitation, nominated by the Minister, and one member of the Board will be a senior officer from the National Treasury, nominated by the Minister of Finance.

The Board does not require direct water user or stakeholder representation because decisions about water allocations and management are made by DWS and CMAs who are responsible for stakeholder consultation processes. However, it is important that the appointed members are perceived by the water user community to be competent and ethical and that they will represent the interests of all water users, including poor and marginalised groups, in their strategic decision making.

### **8.3 Committees of the Board**

The Board must establish several committees to support the effective functioning of the Board. King III suggests that all board committees, other than the risk committee, should only comprise members of the board, and should have a majority of independent, non-executive directors. Committees should be chaired by independent non-executive directors.

Technical advisors or experts, and other external parties, may be invited to attend committees. Non-directors who are members of Board committees are not entitled to vote but are subject to the same standards of conduct and liability as if they were directors.

The exact structure of the committees will be determined by the Board, but they should deal with the following functions –

- Audit
- Risk
- Human Resources
- Finance
- Procurement
- Technical
- Remuneration
- Nominations
- Governance and
- Social and Ethics.

#### **8.3.1 Executive Committee**

An Executive Committee (EXCO) may be established to act on behalf of, and within the powers granted to them by, the board of directors, for matters that need to be addressed between board meetings.

#### **8.3.2 Audit Committee**

The appointment of an Audit Committee is a legal requirement under the Companies Act. The primary purpose of the Audit Committee is to provide oversight of the financial reporting process, the audit process, the NWRIA's system of internal controls and compliance with laws and regulations to assist the Board in the effective discharge of its responsibilities in relation to statutory reporting, internal control systems, risk management systems, insurance and legal proceedings, and the internal and external audit functions. The Committee does not relieve any directors of their responsibilities for these matters.

#### **8.3.3 Risk Committee**

A separate risk committee is recommended because of the complex market, credit, liquidity, pricing, regulatory and other risks that require attention. The Risk Committee will have responsibility for the

oversight of the risk management policies and practices of the NWRIA and oversight of the NWRIA's risk management framework.

In setting up a risk committee, it is necessary to address certain potential challenges:

- Ensuring a sufficient number of independent directors who possess deep knowledge and experience in dealing with the industry and its critical risks
- The dependence of the risk committee on the quality of inputs to and outputs from management processes and information and insights from external sources.

Regardless of the committee structure, the full board has the responsibility to provide effective risk oversight and must decide how best to organize itself for risk oversight.

#### **8.3.4 Finance**

The role of the Finance Committee is to provide financial oversight for the organization. Typical task areas include budgeting and financial planning, financial reporting, the creation and monitoring of internal controls and accountability policies, and assisting the Board in fulfilling its oversight responsibilities on specific financial matters which are beyond the scope or expertise of general Board members.

#### **8.3.5 Investment and Procurement**

The purpose of this Committee is to provide guidance and oversee the NWRIA's decision-making structures and process management structures relating to asset management and end to end investment management, and to recommend for Board approval the NWRIA's asset master plan. It should provide guidance and oversee the asset delivery, the non-infrastructure capital program and any outsourced operational functions to ensure service delivery strategies are developed and implemented in a manner consistent with the NWRIA's corporate strategy and related budgets. In accordance with its delegation of authority from the Board, it will consider for approval or recommend for Board approval, significant capital works decision points, and significant operational investment decisions, and it will provide guidance and oversee compliance with the PFMA and other relevant procurement and asset management legislation.

#### **8.3.6 Technical**

The role of the Technical Committee is to provide technical oversight for the organization. The focus is on assisting the Board in fulfilling its oversight responsibilities on specific technical matters which are beyond the scope or expertise of non-technical Board members. This should include infrastructure development and management, and addressing issues of climate change and the impacts on the organisation.

#### **8.3.7 Remuneration**

Boards are responsible for adopting remuneration policies and practices in accordance with the guideline developed by the Department of Public Enterprises. The policies and practices should be demonstrably aligned with the corporate objectives, business strategy, shareholders compact and reviewed regularly. The policies should be designed in such a way that that a clear relationship between key executive performance and remuneration is demonstrated.

A Remuneration Committee should be established in accordance with the guideline and the provisions of the King II principles of Corporate Governance. It should comprise of independent directors and external committee members who bring independent thought and scrutiny to all aspects of remuneration. It is important to maintain a constructive and timely dialogue between boards and the shareholder regarding remuneration policies and practices. Executive remuneration should be linked to individual and corporate performance through graduated targets that align the interests of executives with those of shareholders. The resulting arrangements should be clear and readily understandable.

### **8.3.8 Nominations**

The mandate of the nominations committee is to regularly review the composition of the board, and where the board is lacking in skills or experience in a certain area, to identify how best to rectify the situation and to make proposals to the Board which can then be relayed to the Minister who has the responsibility for appointing Board members. This may involve identifying skills that are required, and those individuals best suited to bring these to the board.

King III suggests that the committee should only comprise members of the board, with the majority of members being independent and non-executive. The committee should ideally be chaired by the chairperson of the board, but if not, an independent non-executive director should be the chairperson.

### **8.3.9 Human Resources, Social and Ethics**

A Social and Ethics Committee is a legal requirement under the Companies Act. In terms of Companies Regulation 43, a Social and Ethics Committee must monitor the company's activities regarding matters relating to:

- Social and economic development, including the company's standing in terms of the goals and purposes of:
  - The 10 principles set out in the United Nations Global Company Principles;
  - The OECD recommendations regarding corruption (refer to the Organisation for Economic Co-operation and Development (OECD) website for further details ([www.oecd.org](http://www.oecd.org)));
  - The Employment Equity Act, No 55 of 1998;
  - The Broad-Based Black Economic Empowerment Act, No 53 of 2003;
- Good corporate citizenship, including the company's:
  - Promotion of equality, prevention of unfair discrimination and measures to address corruption;
  - Contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
  - Record of sponsorship, donations and charitable giving;
- The environment, health and public safety, including the impact of the company's activities and of its products or services;
- Consumer relationships, including the company's policies and record relating to advertising, public relations and compliance with consumer protection laws; and
- Labour and employment matters.

## **8.4 Board Induction and Training**

Board Members will, on appointment, participate in induction that includes the legislative framework for the NWRIA, the role and mandate of the NWRIA, the role and mandate of the Board and of individual directors, anti-corruption and ethics training.

## **8.5 Chief Executive Officer**

The role of the CEO is outlined below.

Function:

- To implement the strategic goals and objectives of the organisation
- With the Chairperson, to enable the Board to fulfil its governance functions
- To give direction and leadership toward the achievement of the organisation's philosophy, mission, strategy, and its annual goals and objectives

Reports to:

- Board of Directors

Major Functions/Accountabilities:

1. Board Administration and Support -- Supports operations and administration of Board by advising and informing Board members, interfacing between Board and staff,
2. Programme, Product and Service Delivery -- Oversees design, marketing, promotion, delivery and quality of programmes, products and services
3. Financial, Tax, Risk and Facilities Management -- Recommends annual budget for Board approval and prudently manages organisation's resources within those budget guidelines according to current laws and regulations
4. Human Resource Management -- Effectively manages the human resources of the organisation according to authorised personnel policies and procedures that fully conform to current laws and regulations
5. Community and Public Relations -- Assures the organization and its mission, programmes, products and services are consistently presented in strong, positive image to relevant stakeholders

Key Aspects of the CEO contract include:

- Limited duration contract (e.g. five years)
- Linked to a performance contract with provision for a performance-linked bonus
- Under particular circumstances, if the annual performance contract is not signed by a certain date, the contract expires
- Includes all terms and conditions of employment
- Includes dispute resolution mechanisms
- Incorporates PFMA guidelines as part of corporate governance and
- Includes a Code of Conduct and an anti-corruption commitment.

## **8.6 Key Governance Systems and Controls**

### **8.6.1 NWRIA Business Planning and Reporting**

The NWRIA will be required to develop a multi-year strategic plan and an annual business plan, consisting of strategic organisational planning, infrastructure planning, financial planning and social responsibility elements. The financial plan must have an investment and borrowing plan. Business planning must be consistent with the MTSF and MTEF.

The CEO will report quarterly to the Board (copied to DWS), with annual reporting to the Minister (and DWS), as well as to Parliament. The CEO will ensure that all statutory reporting requirements are complied with.

### **8.6.2 Procurement/Supply Chain Management approach**

Procurement is a critical element of the NWRIA, given the magnitude of the proposed infrastructure development projects. Systems and procedures to ensure compliance with government policy, to ensure good performance and to prevent corruption are fundamental to good governance in the NWRIA, and therefore an effective Supply Chain Management System must be implemented, considering economic empowerment and the equitable distribution of resources. Effective management of procured contracts must also be considered as a key element of the supply chain. Spin-offs of an integrated system should be:

- Rapid adjudication of applications/proposals
- Timeous payment procedures to suppliers
- Proper monitoring - resulting in an equitable distribution of contracts among SMMEs
- Improvement of the system with time due to ongoing monitoring and support

The Supply Chain Management system should comply fully with the Framework for supply chain management as published in the Government Gazette Number 25767.

The NWRIA should ensure that its procurement procedures accord with global best practice in terms of transparency and access to information.

### **8.6.3 Broad-Based Black Economic Empowerment (BBBEE)**

The proposed NWRIA will create opportunities for BBBEE in two ways. First, the NWRIA would have considerable procurement needs to ensure that infrastructure is developed, operated and maintained. A substantive opportunity exists for the NWRIA to ensure that a percentage of the procurement spend is on BBBEE, and is directed to women and women-owned companies. Second, due to its influence in the sector, the NWRIA should help influence and drive the BEE Charter for the Construction industry. Finally, the empowerment targets agreed with the Board will be stated, together with statements of the extent to which the targets were achieved during the year. The NWRIA's annual report will disclose the entity's procurement practices in so far as they relate to Black Economic Empowerment. All applicable BEE legislative frameworks and requirements must be understood and complied with.

Secondly, the establishment the NWRIA provides opportunities for broader, externally focused transformation and contribution to the post-Covid economic recovery. The NWRIA's Corporate Plans will ensure that the entity contributes to job creation, rural development, urban renewal, poverty alleviation, empowerment of women, skills and management development and education.

Finally, in addition to channeling infrastructure expenditure towards BBBEE, the NWRIA should operate strategically and with impact in other important dimensions, including directed efforts at black enterprise development, a graduate internship program and an apprentice program. Equally essential is a well-resourced corporate social investment program, executed to have a meaningful impact on selected communities.

### **8.6.4 Gender and social inclusion**

The infrastructure sector still faces significant challenges in relation to gender equality, both in terms of the impacts and benefits from infrastructure development and the employment of women and other marginalized groups in the infrastructure sector.

It is often assumed that women will benefit from new infrastructure projects in the same way as men, without recognising the distinct impacts on women and men in relation to their needs and social roles. Negative gender-specific effects of infrastructure may be worsened by discriminatory social norms.

The NWRIA will adopt an integrated approach to quality and sustainable infrastructure development with a gender lens, taking into account other socio-economic goals such as economic development, job creation, and environmental sustainability. This approach recognises the gender-sustainable infrastructure nexus, and the need to manage the trade-offs and synergies that may arise between different goals and policies.

The NWRIA will consider the specific gender aspects of infrastructure strategies, policies and projects which demands understanding women's needs and preferences, as well as trends, such as urbanisation, changes in women's participation in the labour force, the growth of part-time employment, the trend to single parent households, and migration. The NWRIA will also ensure the engagement of women in the design of infrastructure strategies and plans and in implementation, and give due consideration to the well-being of female employees along infrastructure supply chains.

The NWRIA will actively promote the presence of women in decision-making positions and ensure that its capacity building and internship programme is balanced in participation of women and men.

In consultative processes the NWRIA will ensure that it facilitates the involvement of women and other marginalised groups and that their voices are heard in the processes.

## 8.7 DWS Oversight Role

The Minister of Water and Sanitation will be the Executive Authority of the NWRIA, due to the central role of the NWRIA for the water sector, the fact that its primary function is determined by the National Water Resource Strategy, the highly technical nature of the function and the specific mandates for development provided by the Minister within the context of the Shareholders Compact. Under this scenario, DWS would have an important oversight role with regard to the governance of the NWRIA, both from a financial perspective (in terms of the PFMA) and a technical perspective (in terms of the establishment Act and National Water Act).

This departmental oversight role would be led by Director General, with support from the following components within DWS:

- *Corporate Services*: representivity and transformation.
- *Institutional Oversight*: social responsibility, finance and pricing.
- *Integrated water resources planning*: compliance with the national water resources strategy, augmentation decisions and operating frameworks.
- *Water Use*: complying with authorisation requirements, water restrictions and dam safety.
- *Regional Clusters*: catchment management strategy and cooperating with local institutions.

The Minister must have powers of intervention where the Board is not adequately performing her/his functions and/or there is mismanagement of the NWRIA. However, this power must be balanced to prevent undue interference in the independence of the Board and should focus particularly on governance and performance against the shareholders compact (and National Water Resources Strategy / Catchment Management Strategies), rather than on operational level decision making. The Minister will also exercise all Executive Authority responsibilities as defined in the PFMA.

It is critical that DWS develops its institutional oversight and economic regulation capacity considerably and that this becomes a professional component with clear performance targets for CMAs, WUAs, water boards and the NWRIA to take up the critical responsibility of institutional regulation. Establishing the NWRIA becomes a further motivation to the existing need to improve oversight.

## 8.8 Stakeholders' Compact

The NWRIA will develop a Stakeholders Compact focusing on the following three areas, representing a hierarchy of stakeholder interaction.

- *Water Users* represent the NWRIA's customers and are therefore the focus of a sustainable business; large water users such as Water Boards and municipalities specifically require the development of water use agreements on the reliability, quality of supply (related to authorisation conditions) and the financial responsibilities of the users.
- *Affected communities* represent a key area of social responsibility in meeting government's objectives; they require beneficiation and compensation of local communities associated with new infrastructure development, as well as access, resource use and empowerment of local communities related to existing infrastructure and facilities.
- *Environmental stakeholders* represent civil society's interest in sustainable infrastructure development; they require broad assurance of the NWRIA's social and environmental responsibilities in the development and operation of infrastructure.

The Stakeholder Compact should be developed in accordance with these three areas of interaction and responsibility.

## 9. Transition Plan

This section sets out the proposed change approach with regards to the transition into the NWRIA and the actions required immediately after the establishment of the NWRIA. The transition calls for an overarching change management plan, including a staff transfer plan and asset transfer strategy to be agreed with National Treasury, as well as a communication plan.

The tempo and approach of the transfer of functions and assets will be based on good business practice, a well-considered transition plan and with the flexibility to adapt as the process unfolds. In particular:

- Where functions are transferred, they will be accompanied by the transfer of budgets.
- The lenders to TCTA projects will be consulted and briefed on the establishment of the NWRIA, and kept informed of developments throughout; the restructuring of TCTA is listed as a condition for early loan repayment in most of the loan covenants, and it will be vital to assuage lender concerns that their loans may be at risk.
- Similarly, organised labour in both organisations will be engaged, at the institutional and national levels, and consulted throughout the migration process.

It is intended that the establishment of the NWRIA will be completed by the end of April 2023, under conditions where stakeholders are generally amenable to the institutional changes, and where no unexpected delays arise. The implementation timeframes and key actions are set out in Figure 10 below.

On the critical path is the approval of the business case. This will be presented to National Treasury for approval, and in parallel the founding legislation of the NWRIA will be prepared, taken through Cabinet, through stakeholder consultations, and tabled for Parliamentary consideration and promulgation.

Following the promulgation of the NWRIA Act, the NWRIA will be established as a legal entity, and several will follow:

- The Minister must appoint the Board and the Chairperson of the Board. This is on the critical path, and it is recommended that the Minister begin this appointment process in advance of the establishment of the NWRIA by appointing key future Board members to an advisory committee to support the establishment of the NWRIA. This will enable an informed Board to be appointed at short notice and to carry forward the critical actions required of the board after appointment.
- The Board must conduct interviews for the CEO of the NWRIA. To expedite this process, it is recommended that DWS prepare the advertisement for the CEO in advance of the promulgation of the Act, and that the advertisement is distributed widely as soon as the Act is promulgated. It is also recommended that a head-hunting company be appointed to assist in identifying appropriate candidates for the position. This appointment should be done by DWS in advance of the promulgation of the Act.
- The assets, staff and financial resources of the TCTA, the NWRIB, relevant parts of the WTE and the Options Analysis function must be transferred into the NWRIA. Staff will be transferred under section 197 of the Labour Relations Act.
- The Board and CEO must conduct a detailed organisational design for the NWRIA, with appropriate job descriptions and gradings and conduct a skills analysis to assist in placing staff in the appropriate positions. A significant change management strategy will be required to ensure the smooth transition of staff into one, coherent and effective organisational culture and structure.
- Once employees, assets and obligations have been transitioned and transferred from the TCTA to the NWRIA, the TCTA will be dis-established.
- Under the leadership of the Board, a multi-year corporate strategy, investment plan and budget must be prepared, for subsequent approval by the Minister.

The proposed timeframes for the establishment of the NWRIA, and the core steps, are outlined in Table 10 below. Further details on key steps are provided in the sections below.

	2022												2023											
	Mar	Apr	Jun	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec			
<b>NWRIA implementation plan</b>																								
<b>Business Case</b>																								
Submit Business Case to National Treasury																								
Approval of Business Case by National Treasury																								
<b>Legislative process</b>																								
SEIAS approved																								
Bill to Cabinet																								
Publish for comment and revise																								
Bill to Parliament																								
NWRIA Act passed																								
NWRIA established																								
<b>Finance</b>																								
Lenders consulted																								
Financing plan developed																								
Operation budget developed for year 1 - 3																								
Finance and revenue management systems in place																								
<b>Technical and operations</b>																								
Infrastructure to be transferred scheduled																								
Initial NWRRIA investment programme confirmed																								
Assets transferred																								
<b>Governance</b>																								
Advisory committee appointed (proto-Board)																								
Board appointed																								
CEO appointed																								
Procedures and delegations in place																								
<b>Human resources and change management</b>																								
Consultation with labour																								
NEDLAC process																								
Migration plan developed																								
Affected staff consulted																								
Staff transferred																								
Organisational design conducted																								
Alignment of employment conditions for all staff																								
<b>Communication and stakeholder engagement</b>																								
Engagement strategy developed																								
Communication strategy developed																								
Implement communications and engagement strategy																								
<b>AGENCY COMMENCES OPERATIONS</b>																								

Figure 8: Transition to and immediate actions of the NWRIA

### 9.1 Organisational Design

The organisational design process will follow the intent and strategy of establishing a progressive, modern and cost-effective NWRIA. At this point it is premature to communicate the optimal organisational design in the form of an organogram, as this work will be conducted by an independent service provider under the leadership of the Board and the CEO once the NWRIA has been established and all staff have been transferred. Using the services of an independent organisational design service provider will give the assurance that an optimal fit-for-purpose structure is arrived at.

The following strategic principles will be employed, namely:

- The organisational design process will be informed by the business strategy.
- Leading practice, benchmarking and fit-for-purpose underpinnings will be used in the design process
- The organisational structure will enable good corporate governance through clear segregation of duties, not only internally to the NWRIA, but also as it relates to the DWS.



- The organisational design process will enable service delivery and address the required systems and processes needed to achieve efficiency and effectiveness.
- A comparative study of the conditions of service across the merging entities will be done, to arrive at a well-designed, consistent, fair and transparent proposal with regards to the NWRIA conditions of service package.
- The design process will take cognisance of the merging entities context and requirements through appropriate consultation with key stakeholders
- Structure influences organisational culture, and the design process will consider the establishing of a healthy organisational culture.

The Board will conduct an organisational design process, the result of which will be an organisational structure, with well-developed role profiles (based on an approved role profile standardization framework) set within the specifically designed and then approved competency framework, with the various job-family libraries.

## **9.2 Human Resources Management**

Key to the success of the NWRIA will be the implementation of robust, fair and transformative human resource processes during the establishment of the organisation. The aspects set out below should not be seen as sequential. Rather, some will be implemented simultaneously, whilst others, like the communication process, will be ongoing throughout the establishment and transfer process.

A particular challenge that will need to be addressed is the merging of two different institutional cultures and HR systems into one: those of the infrastructure branch of DWS and those of the TCTA. This will require a focused and structured change management programme over a period of time.

Once the Bill has been passed and the NWRIA has legally been established, the NWRIA Board will start to operationalize the NWRIA. The Board will ensure that the organisation adopts a strategic human resources approach, which promotes the NWRIA as an employer of choice while complying with the provisions of all applicable legislation such as the BCEA, LRA, POPIA Act, Skills Development Act, and the Employment Equity Act. The Board will oversee development and implementation of a Human Resources Strategy through the appointed management team.

Initially the focus of the Board will be on the following strategies, as part of the Human Resources Strategy:

- Talent Management Strategy (including performance management as key enabler of talent whilst making explicit the Employee Value Proposition that the NWRIA offers)
- Organisational Culture Embedding Strategy (focusing on all key internal stakeholders, including labour, as culture change agents)
- Total Rewards Strategy as mentioned above
- Transformation Strategy

The strategies will be brought to life through focused implementation plans, supported by the development of prioritized policies, procedures, and guidelines. These must comply with all relevant labour related acts.

### **9.2.1 Staff Transfer**

Staff will be transferred into the NWRIA according to Section 197 of the Labour Relations Act (1995) under which an individual is obliged to transfer to the new employer provided there are substantively similar conditions of service. This means that an individual may be transferred ultimately without his/her consent provided that the organisation can show that the division/section was:

- taken over as a going concern and that
- the new conditions of service are not prejudicial to the employee.

### **9.2.2 Remuneration and Grading**

Job evaluation involves developing job profiles in line with the proposed strategy and structure, evaluating same to deduct the applicable grade and determine the job worth through making clear the applicable pay-line. A strategic pay plan will be developed, and the supporting budget will be compiled, in order to cost the new structure. The alignment of salaries and pay positioning will be necessary. This will be done once the NWRIA is established and staff have been transferred.

Details of grading and remuneration of Board Members will be determined in line with National Treasury prescripts in this regard.

### **9.2.3 Conditions of Service**

The grades and pay packages will form the basis of an equitable set of conditions of service and policies. Existing policies and practices of DWS and the TCTA will need to be adjusted to create a single, unified set of documents that will support recruitment, retention and appropriate staffing. Employment contracts will be a key output.

### **9.2.4 Communication Plan**

In order to inform both internal and external stakeholders about the establishment of the NWRIA and to keep them updated on progress, a comprehensive communication plan will be developed. In this plan, the detail of the stakeholder groups to be targeted will need to be specified. In addition, the media to be used, as well as the messages that the organisation wishes to be disseminated, will need to be detailed.

### **9.2.5 Change Management**

To ensure that staff are kept abreast of the establishment and migration process, a change management team will be appointed to manage the processes. It is recommended that a group of change agents conduct ongoing sessions to obtain feedback from staff as well as to facilitate a positive and open environment for change.

### **9.2.6 General Considerations**

It is critical that a core team in Human Resources be available to project manage the process. There are many logistical issues involved in each process. Generally, these include:

- completion and logging of relevant documentation
- withdrawal of personnel files
- receipt of banking details
- termination of salaries on Persal
- determining discharge dates and informing of Finance Section
- withdrawal from medical scheme/s
- confirmation of staff loans
- acquisition of leave records
- issuing of UIF and service certificates
- obtaining tax directives and calculation final payments

It is beyond the scope of this document to detail each of these processes. However, it is sufficient to state that each option brings with it commensurate administrative burdens and a dedicated team is needed to address them.

Pertinent to the DWS situation, the organisation will need to consider the various mechanisms that it will need to put in place to deal with the upheaval created by the restructuring. Strategies could include:

- provision of counselling to staff
- provision of outplacement services
- retraining of staff
- upskilling of staff.

## **10. Risk Analysis and Indicators**

The main risks for the NWRIA are set out in the table below, with reference to potential mitigation measures. The relevant spreadsheet is attached as Appendix E.

**Table 7: Main risks and potential mitigation measures (see separate spreadsheet for details)**

Risk area	Risk name	Root causes of the risk	Potential consequences of the risk	Potential Impact (worst case scenario)	Likelihood of risk occurring if no controls are in place	Inherent risk exposure with no controls in place	Current business processes / controls in place to manage identified risks	Perceived control effectiveness	Priority due to residual risk exposure	Mitigating action plans to further address the residual risk exposure
<b>Risks pertaining to the establishment of the NWRIA</b>										
Human resource	Staff resistance	Uncertainty amongst staff about the change Fear of job security in NWRIA Challenges of merging two different work cultures	Workplace conflict Poor performance	Critical	Likely	High	Engagement with staff will run in parallel with publishing the Bill for comment	Satisfactory	Priority 3	Implement an effective change management intervention; strong engagement with staff; strong and well-resourced change management process and team led by new management including instilling positive and supportive culture of professionalism and efficiency; ongoing transparency and communication
Human resource	Labour union resistance	Resistance from labour unions to the change	Delays in establishment of the NWRIA	Critical	Likely	High	Engagement with labour will run in parallel with publishing the Bill for comment	Satisfactory	Priority 3	Constructive engagement with labour unions; Good transparency and communication; Transfer staff under s197 of the Labour Relations Act
Finance	Creditor uncertainty	Lack of consultation with creditors Failure to address concerns of creditors	Uncertainty amongst creditors over the establishment of the Agency leads to poor credit terms, changes in existing credit terms, or lack of new financing	Critical	Likely	High	Engagement with creditors is planned but has not yet started	Satisfactory	Priority 3	Effective, transparent and ongoing engagement with creditors immediately and ensure a transparent process; Develop the systems, authorisations and credit rating Make the shift from project to programme financing appropriately over time
Governance	Absence of mandate for non-national infrastructure	No policy decision taken on future ownership, use and governance of the assets	Unmandated financial and management burden will divert resources from core business	Serious	Likely	Moderate	Decision taken to transfer assets to the NWRIA and devolve them in future on a case by case basis	Satisfactory	Priority 4	Engage with Department of Agriculture and Water User Associations regarding transfer of appropriate schemes

Human resource	Staff transfer delays	Poor record keeping in DWS e.g leave records, personnel records	Delays in staff transfer to NWRIA; Staff grievances	Serious	Possible	Low	None	Weak	Priority 4	Conduct an audit on the completeness of staff records
<b>Risks pertaining to the operation of the NWRIA after establishment</b>										
Finance	Low revenue collection	Failure to pay by municipalities, water boards, and other users; Poor billing and debt management	Insufficient funds to service debt and to cover operation and maintenance	Critical	Almost certain	Extreme	Debt management processes have improved in DWS, but debt is still increasing annually	Unsatisfactory	Priority 1	The financial risk will be mitigated by rational financial limits imposed by National Treasury, formalized reporting, the procurement of professional financial management, good governance and controls (specified in the shareholders compact), and comprehensive financial reviews and risk assessments. An integrated risk management approach to planning, developing, financing and operating infrastructure development (with DWS) will also be adopted. The existing revenue and asset management systems and procedures do not perform sufficiently and will need to be stabilised and improved
Governance	High level corruption	Insufficient vetting of potential Board members; Systemic corruption in government	Financial loss Reputational loss	Critical	Likely	High	The TCTA Board has retained its integrity during the corruption of many SoEs. This expertise and commitment can be built on in the NWRIA Board	Weak	Priority 1	Clear roles, responsibilities and procedures for good governance in the legislation and organisational design base on best practice and international standards; Checks on integrity of Board members and managers; Transparent procurement and budgeting systems ; adoption of international best practice such as transparent infrastructure data standards and reporting; Strong internal audit capacity; Ethics and anti-corruption training for all Board members and staff.

Governan ce	Weak governance	Inadequate systems and controls for good governance Lack of governance training for board and senior management Poor consequence management	Poor performance of organisation Breakdown in relationship between Board and CEO or Board and Shareholders Fraud, corruption and mismanagement Poor audit results Loss of credit status	Critical	Almost certain	Extreme	Current processes in place in DWS are not sufficient while the TCTA has good systems in place	Weak	Priority 1	Clear roles, responsibilities and procedures for good governance in the legislation and organisational design; governance training for board and senior management;
Governan ce	Lack of legal compliance	Weak management capacity Lack of updated legal compliance information	Reputational damage Loss of credit rating Legal action	Critical	Likely	High	Current processes in place in DWS are not sufficient while the TCTA has good systems in place	Weak	Priority 1	The Board and Agency's performance will be contracted in the Shareholder's Compact; DWS will exercise oversight; The governance framework should include a competent Board Secretariat function and an integrated assurance function which includes an independent audit function, internal audit, risk management and legal compliance. ; Appropriately experienced and skilled Board members should be appointed; Appropriate system and controls aligned with policy and performance frameworks should be implemented with effective monitoring and reporting systems.

Finance	Poor financial management	Weak financing expertise Poor revenue and debt management Risk of revenue understatement due to faulty systems, poor reconciliation between actual use and licensed amounts; Ongoing poor collections from water boards and municipalities	Reputational damage Loss of credit rating Legal action Insufficient revenue for effective operation	Critical	Likely	High	TCTA has good systems in place for management of loans but debt management through the WTE needs considerable improvement	Weak	Priority 1	The financial risk will be mitigated by rational financial limits imposed by National Treasury, formalized reporting, the procurement of professional financial management, good governance and controls (specified in the shareholders compact), and comprehensive financial reviews and risk assessments. An integrated risk management approach to planning, developing, financing and operating infrastructure development (with DWS) will also be adopted. The existing revenue and asset management systems and procedures do not perform sufficiently and will need to be stabilised and improved
Operational	Dam safety	Lack of technical competence Lack of funding Poor dam safety planning	Infrastructure failure with associated loss of life	Critical	Likely	High	There is a backlog in dam safety implementation that will have to be addressed	Weak	Priority 1	The Dam Safety Office performs an important regulatory function, and must remain within DWS and be staffed appropriately to ensure oversight and regulation of all NWRIA dams. The independence of the Dam Safety Office, as an independent auditor in DWS, not accountable for financial or programme performance, will be protected.
Operational	Infrastructure development delays	Poor communication between DWS and NWRIA Poor planning and financing processes in NWRIA	Reputational damage Water shortages undermine economic development	Critical	Likely	High	The development of national water resources infrastructure is behind schedule in several places already	Weak	Priority 1	The planning and phasing of future supply augmentation must be appropriately planned and implemented. Water resources planning will remain a function of DWS, informed by catchment management strategies and national and provincial development plans
Operational	Water supply failure	Poor O&M Droughts and climate change Overallocation	Reputational damage Loss of income	Serious	Possible	Low	There is a significant O&M backlog which increases the potential for water supply failures	Weak	Priority 4	Good drought management protocols; Multi-year refurbishment and rehabilitation programme; Independent and strong DWS dam safety office; Regular audits and record keeping; Effective asset management system;

										Market related recruitment or outsourcing
Human resource	Lack of technical expertise	Lack of skilled and experienced candidates	Poor performance of NWRIA	Serious	Likely	Moderate	There is a lack of experienced water resources engineers and scientists in the country	Weak	Priority 2	The benefits of the NWRIA being an SoE is that it will be easier to recruit highly skilled staff and remunerate them appropriately. However, it is also recommended that the NWRIA institute a training and mentorship programme to ensure long term availability of a skilled staff complement over time.
Human resource	Failure to meet BEE targets	Lack of skilled and experienced BEE candidates	Failure to meet state requirements Resistance from black staff and management	Serious	Possible	Low	There is a lack of experienced BEE water resources engineers and technical experts in the country	Weak	Priority 4	Set employment equity targets for filling of posts in the NWRIA; Develop an Employment Equity Plan with specific targets and measures; Leadership commitment through performance contracts; Help to lead the development of the Sector BEE Charter
Assets	Poor asset register and systems to support the billing and collection of revenue	Lack of an up to date up-to-date asset register of water resources infrastructure to be transferred delays the transfer of the assets to the NWRIA;	Poor O&M and refurbishment of assets Asset theft Poor revenue collection and impact on financial viability	Critical	Likely	High	The last assessment of DWS assets was done in 2018	Weak	Priority 1	Check the status of the current asset register and put in place a process to update it if necessary; Audit the condition of systems and the water reconciliation account; Establish mitigation measures to address weak or poor institutions and how water revenues could be ringfenced and paid directly to the Agency



## 10.1 Operational and Service Delivery Indicators

Performance indicators will be set and updated through the Shareholder’s Compact between the Minister and the NWRIA. In addition, as is required by the framework for state-owned enterprises, a multi-year strategic plan will be developed to guide the work of the NWRIA.

The performance indicators are to a large extent determined by the functions that will be assigned to the NWRIA. There are however indicators which are linked to overall government objectives and which would be generic to any Statutory Corporation or Government Business Enterprise. The objectives must align with the broader government planning framework and the MTSF.

The performance indicators will also need to be closely correlated with the primary functions of the NWRIA, the financial plan and the governance philosophy, and with the National Water Resource Strategy.

Brief descriptions of possible / typical key indicators are tabulated below:

Function or Objective	Indicators	Target
<b>Core functions</b>		
Develop augmentations to the NWRI	Capability of major water resources infrastructure components and date of substantive completion.	National Water Resource Strategy and specific reconciliation strategies
	Risk of water resource supply failure.	Specified levels of assurance of supply.
	Arrangements for relocation and environmental protection.	Best international practice, international agreements and NEMA requirements.
Funding of schemes and debt management	Ratings	To be phased in over 5 years
	Average interest charge	Treasury 15-year bond yield plus a margin for liquidity and credit spreads
	Compliance with all loan convenance and guarantee conditions	No findings
	Loan redemption period for loans assigned to specific infrastructure	Maximum 20 years from completion of any major infrastructure component.
Recover costs incurred in respect of functions related to the NWRI	Percentage cost recovery	Domestic & Industrial 97% Irrigation 95%
	Administered price increases	In accordance with National Pricing Strategy with increases linked to basket of (CPIX, PPI, Energy tariffs)
Manage, operate NWRI	Supply failures	Not to exceed levels of assurance
	Level of serviceability maintained	Best commercial practice maintained (after 10-year betterments programme completed)

Function or Objective	Indicators	Target
	Cost	5% real cost reduction in non-energy related direct operating costs (excluding betterments and refurbishment) achieved within 8 years with later cost increases linked to function of (CPIX, PPI, Energy)
Refurbish and better (upgrade through betterments) the existing NWRI;	Level of serviceability	Best commercial practice level of serviceability achieved within 10 years and then maintained
<b>Functions undertaken by the NWRIA, directed by the Minister</b>		
Develop components of the NWRI, that are not immediately fundable on a commercial basis, in the public interest on an NWRIA basis utilising State funds	Marginal cost of water supply	Implement as agreed, within budget and on time.
Manage, in the interim, non-national water infrastructure currently owned by DWS;	Maintain and prepare for phased transfer according to Turnkey contract	Phased transfer achieved within period of 8 years. 5% real reduction in direct operating cost to State (excluding energy, chemicals and refurbishment) achieved over 5 years.  Thereafter cost increases to State linked to function of (CPIX, PPI, Energy)
Undertake other tasks requiring similar expertise identified by the Minister on an agency basis in order to support government policies, such as NEPAD, as far as its expertise and mandate allow; and	Turnkey contract conditions	Contracted amount and timing
<b>Overall government objectives and governance indicators</b>		
Audited financial statements and other legal compliance	Auditors report	Full compliance with no qualifications and significant findings
Staff composition		
Procurement		

## APPENDIX A: FINANCIAL STAKEHOLDER ENGAGEMENT STRATEGY

Lenders			
Issues of Interest	Engagement Strategy	Timing	Responsible Party
To be kept informed about the decision to disestablish TCTA once it is official, and on details of the roadmap to creation of the Agency and incorporation of the TCTA functions into it.	Investor roadshows to engage investors on the intention to establish the NWRIA, giving investors the opportunity to be heard before the decision is taken.	After the Minister has approved the business case, before a formal decision to proceed is announced (promulgation of the NWRIA bill).	DGs of DWS & NT
	One-on-one roadshows with existing lenders, and group events for other potential lenders. Led by directors-general of DWS and NT and TCTA CEO.		TCTA CEO
	Decision to disestablish TCTA may trigger a potential event of default under most loan agreements.	Immediately after promulgation of the NWRIA bill.	Engagements with institutional investors (besides existing lenders) with the assistance and co-ordination of SBSA (TCTA's JSE Sponsor) and Transaction Advisor
	TCTA to request lenders to waive potential EoD, which would require disclosure of detailed information on plans for the NWRIA, including the roadmap and transitional plans, so that Lenders may assess how their interests will be affected and decide whether to accept transferring of their loans to the NWRIA or to demand prepayment of outstanding loans.	TCTA	
	Provide regular updates on progress with the roadmap.	Ongoing from promulgation of the bill.	TCTA
No breach of covenants in the process of transitioning to the NWRIA	Provide information to enable lenders to assess how the transition will affect TCTA's ability to perform its obligations under finance agreements and how risks will be managed. An Information Memorandum and/or a data room should be prepared, which will form the basis for due diligence. It should contain human capital, technical and financial information on the merging entities and the NWRIA, and legal and regulatory information on the NWRIA and the water sector.	When requesting waiving/suspension of potential events of default	Transaction Advisor
			TCTA
			DWS
Lenders not left in a worse-off position under the NWRIA compared to their	Demonstrate that the ability to collect revenue under the NWRIA will not be compromised	Immediately after the bill is promulgated	TCTA

<b>Lenders</b>			
<b>Issues of Interest</b>	<b>Engagement Strategy</b>	<b>Timing</b>	<b>Responsible Party</b>
current positions, in terms of their rights and benefits under the loan agreements, implementation agreements and government guarantees	Convert “implied” guarantees to “explicit” guarantees.  Preserve the strength of offtake agreements.	Immediately after the bill is promulgated.  When amending the offtake agreements for transfer to the NWRIA.	TCTA / DWS / NT  TCTA / DWS
No breach of covenants by NWRIA after taking over TCTA’s obligations	Clear demonstration of the NWRIA’s readiness and ability to seamlessly take over TCTA’s obligations and avoid default.	After the bill is promulgated.	Transaction Advisor to provide assurance that will enable the board and management of the NWRIA to give undertakings and warranties to lenders.
NWRIA has the capacity to plan, finance, engineer, construct, operate and maintain infrastructure projects, and to collect revenues due to it	<ul style="list-style-type: none"> <li>• independent evaluation of the institutional capacity of the NWRIA</li> <li>• adequacy of governance structures and processes</li> <li>• adequacy of resources and systems</li> </ul>	After the bill is promulgated.	Independent Transaction Advisor or GTAC
NWRIA has the capacity to collect revenues due to it.	A business case that demonstrates financial viability and assessed by the Transaction Advisor	By August 2021	Independent Transaction Advisor

<b>Ratings NWRIA (Moody’s Investor Services)</b>			
<b>Issues of Interest</b>	<b>Engagement Strategy</b>	<b>Timing</b>	<b>Responsible Party</b>
To assess the implications of transferring TCTA’s liabilities to the NWRIA on the credit ratings of TCTA projects debt.	Briefings on the details of the plans to establish the NWRIA, progress and sharing the Information Memorandum, especially the proposed funding model and financial strategy of the NWRIA.	During the annual ratings review mission ca. October 2021	TCTA

**Project Partners (Offtakers) and other DWS Customers**

<b>Issues of Interest</b>	<b>Engagement Strategy</b>	<b>Timing</b>	<b>Responsible Party</b>
<p>To be kept informed of the intention to establish the NWRIA</p>	<p>Roadshows to engage project partners regarding the intention to establish the NWRIA, and to give assurance on the NWRIA’s capacity and viability.</p>	<p>After the bill has been promulgated.</p>	<p>TCTA CEO and DWS DG.</p>
<p>NWRIA has the capacity to plan, finance, engineer, construct, operate and maintain infrastructure projects, and to collect revenues due to it</p>	<ul style="list-style-type: none"> <li>• Share the results of the Independent evaluation of the institutional capacity of the NWRIA to show the adequacy of governance structures, processes, resources and systems</li> </ul>	<p>After the bill has been promulgated.</p>	

## **APPENDIX B: KING IV PRINCIPLES OF GOOD GOVERNANCE**

The governing body should lead ethically and effectively

The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture.

The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen.

The governing body should appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.

The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation's performance and its short, medium and long-term prospects.

The governing body should serve as the focal point and custodian of corporate governance in the organisation.

The governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively

The governing body should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties.

The governing body should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members, support continued improvement in its performance and effectiveness

The governing body should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.

The governing body should govern risk in a way that supports the organisation in setting and achieving its strategic objectives.

The governing body should govern technology and information in a way that supports the organisation setting and achieving its strategic objectives.

The governing body should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen.

The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.

The governing body should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the organisation's external reports.

In the execution of its governance role and responsibilities, the governing body should adopt a stakeholder inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time.

**APPENDIX C: South African National Water Resources Infrastructure  
NWRIA SOC Bill**

**APPENDIX D: DUE DILIGENCE 2017, DELOITTE AND TOUCHE**



# **APPENDIX E: RISK MANAGEMENT**