

# BRIEFING BY DEPARTMENT OF WATER AND SANITATION ON PUBLIC COMMENTS MADE TO THE PORTFOLIO COMMITTEE ON THE NATIONAL WATER RESOURCE INFRASTRUCTURE AGENCY BILL

PRESENTED BY:  
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WATER IS LIFE - SANITATION IS DIGNITY



**water & sanitation**

Department:  
Water and Sanitation  
**REPUBLIC OF SOUTH AFRICA**



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# 1. DWS PUBLIC COMMENT PHASE

- The DWS held its initial public comment phase for a period of 90 days commencing 16 September 2022 until 16 December 2022 and extended the period until 17<sup>th</sup> March 2023 (totalling 120 days), to have a comprehensive, all-inclusive process.
- The DWS adhered to the principle of participatory democracy as supported by the Constitution.
- Some of the case law considered by the DWS:

The **CONSTITUTIONAL COURT** held in *Matatiele Municipality and others v The President of South Africa 2007 (1) BCLR 47 (CC) paragraph 60*:

***“... The Constitution contemplates that the people will have a voice in the legislative organs of the State not only through elected representatives but also through participation in the law-making process.”***

The **CONSTITUTIONAL COURT** found in *Merafong Demarcation Forum v The President of the Republic of South Africa 2008 (10) BCLR 969 (CC) paragraph 50*:

***“... But being involved does not mean that one’s views must necessarily prevail. There is no authority for the proposition that the views expressed by the public are binding on the legislature if they are in direct conflict with the policies of Government. Government certainly can be expected to be responsive to the needs and wishes of minorities or interest groups, but our constitutional system of government would not be able to function if the legislature were bound by these views.”***

## 2. COMMENTS ADDRESSED BY THE DWS AND RECOMMENDATIONS MADE TO THE PC (1)

- The DWS received approximately **82 COMMENTS**, some of which included a second or further comment from the same commentor.
- The Researcher of the PC stated that *“75% did not support the Bill based on 120 comments received by PC”*.
- However, the comments made were not substantive issues relating to the content of the Bill.
- The **3 comments received by the PC** that were considered pertinent are addressed in the slides that follow.
- The researcher made the following recommendations to the PC (a summary):
  1. The PC consider both SANBI and WCPG submissions when considering the Bill.
  2. The DWS will brief the PC on how they addressed the submissions from SANBI and WCPG.
  3. To note the submission of Mr Hendrik Du Doit, who stated that the all problems can be resolved by applying the NWA and the WSA, with no understanding of the functions, objects and governance structures required for an entity to operate.

## 2. COMMENTS ADDRESSED BY THE DWS AND RECOMMENDATIONS MADE TO THE PC (2)

### SANBI:

- **SANBI supports** the Bill.
- The NWRIA Bill focuses on built infrastructure.
- Ecological infrastructure is a key focus area dealt with in Chapter 12 in National Water Resources Strategy 3 and Chapter 8 of the National Water and Sanitation Master Plan and falls within the responsibilities of the Catchment Management Agencies (institutions established by the NWA).
- **DWS Agrees:** The word environment would be included in the preamble together with the words social and economic.

### MR H DU TOIT:

- Mr Du Toit's comment: The National Water Act and Water Services Act should be implemented instead of creating an Agency.
- **DWS response:** The importance of implementing the NWA and WSA is noted and is essential.
- The National Development Plan includes the Agency as an institutional reform
- NWRIA will be established in accordance with the NWRIA Bill which is aligned to and read with the NWA. The NWRIA Bill then sets out the clear functions that are delegated to the NWRIA.

## 2. COMMENTS ADDRESSED BY THE DWS AND RECOMMENDATIONS FROM THE PC(3)

### WESTERN CAPE PROVINCIAL GOVERNMENT:

- WCPG is uncertain if the DWS conducted a Socio- Economic Impact Assessment (SEIAS)
- The DWS confirms that the final SEIAS was approved by the Presidency in June 2023 and a Business case for the NWRIA has been reviewed and assessed by the NT and independently.
- Several suggestions have been made regarding grammatical changes and drafting suggestions.
- **DWS Agrees** that only S1 regarding the definition of Board will be amended to include S8(3) which refers to both S11 and S24 non-executive and executive directors.

### CONCLUSION:

With these responses, the recommendations on these three parties have effectively been addressed by the DWS. Similarly, the 82 comments received by the DWS were also considered and effectively responded to.

## 3. KEY STAKEHOLDERS THAT PRESENTED TO THE PC (1)

**NEDLAC** – 14 November 2023

- NEDLAC **SUPPORTS THE BILL.**
- NEDLAC noted that the Labour constituency just like Cosatu opposes the **agencification** of state and believe *“that the functions of the Agency are best done through the DWS”*.

**NATIONAL TREASURY (NT)** – 14 November 2023

- NT **SUPPORTS THE BILL.**
- NT stated that the Minister of Finance does not have the authority to amend the PFMA. This is done through an Act of Parliament. The NWRIA Bill when promulgated will be that Act of Parliament.
- DWS has already furnished the Minister of Finance with a Section 4 of the PFMA letter. **NB** The NWRIA Bill only amends the PFMA by inserting the Agency into Schedule 2 as a major public entity. There are no other amendments to the PFMA.

### 3. KEY STAKEHOLDERS THAT PRESENTED TO THE PC (2)

#### SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION(SALGA) – 14 November 2023

- SALGA **SUPPORTS THE BILL.**
- The main concern raised by SALGA were issues relating to long outstanding water revenue owed by municipalities to water boards and the WTE(DWS). Details are set out in the following slide.

#### CONGRESS OF THE SOUTH AFRICAN TRADE UNIONS (COSATU) – 21 November 2023

- It should be noted that Cosatu opposes “**agencification**” of state and believe “*that the functions of the Agency are best done through the DWS*”.

**CONCLUSION:** These parties have all been engaged and effectively addressed by the DWS.



## 4. THE DWS RESPONSE TO KEY STAKEHOLDERS THAT PRESENTED TO THE PC (1)

- **DWS RESPONSE TO LABOUR CONSTITUENCY(NEDLAC) & COSATU:**
- The Agency will be established but **TCTA will be disestablished**.
- **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 .
- **Agencies could obtain loans and raise funds outside of the allocation from the National Treasury and without National Treasury guarantees**, therefore establishing an Agency will address the issues that have been neglected.
- **Department of Water and Sanitation cannot raise funds on capital markets** and further reliance on the fiscus is not possible. It is for this reason that Government is reliant on special purpose vehicles to fund and implement viable economic projects.
- The conditions of service for employees will be 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. GEPP and GEMS) will be considered during the negotiating processes.
- **CONCLUSION:** These parties have been engaged and effectively addressed by the DWS.

## 4. The DWS RESPONSE TO KEY STAKEHOLDERS THAT PRESENTED TO THE PC (2)

FOR INFORMATION

### DWS RESPONSE TO SALGA ON OUTSTANDING DEBTORS FROM WATER SALES TO THE WTE

The Water Trading Entity is currently owed **R8.4 billion** by the municipalities of which R7.3 billion has been outstanding for more than 180 days.

#### Outstanding debtors to the WTE on 31 October 2023

CATEGORY	CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS	150 DAYS	180 DAYS	TOTAL	
	R'm	R'm	R'm	R'm	R'm	R'm	R'm	R'm	R'm
Municipalities	202	397	65	150	222	98	7,331	8,465	36%
Companies	574	87	-	111	73	90	49	4,945	21%
Water Boards	788	950	63	64	124	88	4,159	6,236	27%
WUAs / IBs	21	195	25	67	36	21	1,995	2,360	10%
National & Prov Gvt	2	20	2	1	2	2	338	367	2%
Individuals	2	91	8	5	5	5	993	1,108	5%
<b>TOTAL</b>	<b>1,589</b>	<b>1,741</b>	<b>52</b>	<b>360</b>	<b>479</b>	<b>263</b>	<b>18,999</b>	<b>23,482</b>	
	7%	7%	0%	2%	2%	1%	<b>81%</b>		

## 4. DWS RESPONSE TO KEY STAKEHOLDERS THAT PRESENTED TO THE PC (3)

FOR INFORMATION

### DWS RESPONSE TO SALGA CONTINUED:

Through focussed efforts on the top 18 municipal long-outstanding debtors, in collaboration with with NT and SALGA, 64% of the debts can be addressed.

Measures include:

- Debt relief strategies based on prepayment agreements
- Implementation of the proposed Standard Operating Procedures, including installing bulk meters
- Legal action

MUNICIPALITIES OVER 180 DAYS	NUMBER	TOTAL R'bn	% OF R7.3bn OWED BY MUNIS
More than R100m	18	5	64%
Between R50m - R100m	20	1	19%
	<b>38</b>	<b>6</b>	<b>83%</b>

## 5. DWS RESPONSE TO PC ON STRENGTHENED GOVERNANCE

- The PC emphasised the need for strengthened governance.
- DWS is confident that chapter 3 of the Bill **SUPPORTS STRENGTHENED GOVERNANCE**.

## 6. DWS RESPONSE TO PC ON VIABILITY AND SUSTAINABILITY

- The PC raised the issue of viability and sustainability of the NWRIA
- A comprehensive business case was submitted and reviewed by NT and independently reviewed and assessed by Ernest and Young.
- NT and EY support of the Bill
- EY had extensive consultation with TCTA's existing lenders
- TCTA's existing lenders had no objection to the Bill
- Extracts of the business case that can be presented if required.

### CONCLUSION:

The DWS has effectively responded to the issues raised above.

**THANK YOU  
KEA LEBOGA**

