

**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

#### **CHAPTER 4**

##### **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

#### **CHAPTER 5**

##### **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*.