



# ANNUAL REPORT 2020 | 2021

PORTS REGULATOR OF SOUTH AFRICA ANNUAL REPORT 2020/2021

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*A view of the Durban Container Terminal 1*



Port of Durban

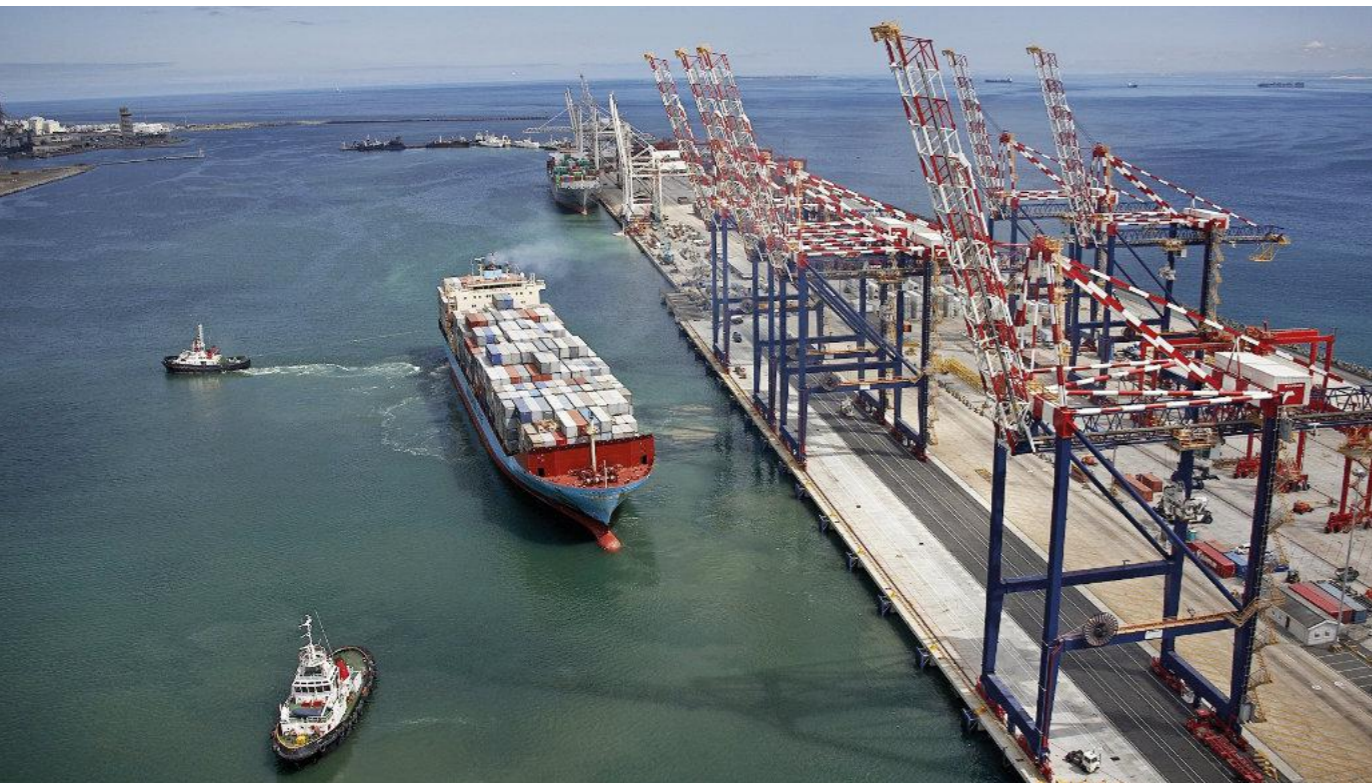
# PART A



## GENERAL INFORMATION

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Container Quay with sailing vessel

# Public Entity's General information

<b>Registered Name</b>	Ports Regulator of South Africa
<b>Registration Number</b>	Not applicable
<b>Physical Address</b>	Suite 1101, The Marine Building, 22 Dorothy Nyembe Street Durban, 4001
<b>Postal Address</b>	Private Bag X54322 Durban, 4000
<b>Telephone Number</b>	+27 31 365 7800
<b>Fax Number</b>	+27 31 365 7858
<b>Email Address</b>	info@portsregulator.org
<b>Website Address</b>	www.portsregulator.org
<b>External Auditors</b>	Auditor-General of South Africa
<b>Bankers</b>	Standard Bank Limited
<b>Company/Regulator Secretary</b>	Ms. Kathleen Hall
<b>Company/Regulator Secretary</b>	Adv. Lesedi Boihang (Acting)

# Abbreviations & Acronyms

<b>ACSA</b>	Airports Company South Africa	<b>NPCC</b>	National Ports Consultative Committee
<b>AGSA</b>	Auditor-General of South Africa	<b>PAA</b>	Public Audit Act
<b>APP</b>	Annual Performance Plan	<b>PCC</b>	Port Consultative Committee
<b>ATNS</b>	Air Traffic Navigation Services	<b>PCOT</b>	Portfolio Committee on Transport
<b>B-BBEE</b>	Broad Based Black Economic Empowerment	<b>PFMA</b>	Public Finance Management Act
<b>BCP</b>	Business Continuity Plan	<b>PPE</b>	Personal Protective Equipment
<b>CAPEX</b>	Capital Expenditure	<b>PPE</b>	Property, Plant & Equipment (Financials)
<b>CCSA</b>	Certified Control Self Assessor	<b>PPPFA</b>	Preferential Procurement Policy Framework Act
<b>CEO</b>	Chief Executive Officer	<b>PRSA</b>	Ports Regulator of South Africa
<b>CFO</b>	Chief Financial Officer	<b>PSR</b>	Policy, Strategy and Research
<b>CMTF</b>	Comprehensive Maritime Transport Policy	<b>PTIP</b>	Port Tariff Incentive Programme
<b>COVID-19</b>	Corona Virus Disease/ 2019 Novel Coronavirus	<b>RAB</b>	Regulatory Asset Base
<b>CSD</b>	Central Supplier Database	<b>RegCom</b>	Regulatory Committee
<b>DPE</b>	Department of Public Enterprises	<b>HR &amp; REMCO</b>	Human Resources and Remuneration Committee
<b>DoT</b>	Department of Transport	<b>RoD</b>	Record of Decision
<b>DTIC</b>	Department of Trade, Industry and Competition	<b>ROPS</b>	Rail Operators Performance Standards
<b>ECMBC</b>	Eastern Cape Maritime Business Chamber	<b>RORO</b>	Roll on Roll off
<b>ERT Bill</b>	Economic Regulation Transport Bill	<b>ROS</b>	Regulator Outcomes Strategy
<b>ETIMC</b>	Excessive Tariff Increase Margin Credit	<b>SADC</b>	Southern African Development Community
<b>GRAP</b>	Generally Recognised Accounting Practice	<b>SAMSA</b>	South African Maritime Safety Authority
<b>HOPS</b>	Haulier Operators Performance Standards	<b>SAPI</b>	South African Planning Institute
<b>ICT</b>	Information and Communications Technology	<b>SCA</b>	Supreme Court of Appeal
<b>ICASA</b>	Independent Communications Authority of South Africa	<b>SCM</b>	Supply Chain Management
<b>IEDP</b>	International Leadership Development Program	<b>SCOPA</b>	Select Committee of Public Accounts
<b>IESBA</b>	International Ethics Standards Board for Accountants	<b>SIU</b>	Special Investigations Unit
<b>ISA</b>	International Standards of Auditing	<b>SMME</b>	Small Medium and Micro Enterprises
<b>KPI's</b>	Key Performance Indicators	<b>SONA</b>	State of the Nation Address
<b>MEC</b>	Member of Executive Council	<b>SRAB</b>	Starting Regulatory Asset Base
<b>MOPS</b>	Marine Operations Performance Standards	<b>STER</b>	Single Transport Economic Regulator
<b>MTEF</b>	Medium Term Expenditure Framework	<b>TETA</b>	Transport Education and Training Authority
<b>MTSF</b>	Medium Term Strategic Plan	<b>TERB</b>	Transport Economic Regulator Bill
<b>MYPD</b>	Multi Year Price Determination	<b>TOPS</b>	Terminal Operators Performance Standards
<b>NAAMSA</b>	National Association of Automobile Manufacturers of South Africa	<b>TOC</b>	Trended Original Cost
<b>NCOP</b>	National Council of Provinces	<b>TPT</b>	Transnet Port Terminals
<b>NERSA</b>	National Energy Regulator of South Africa	<b>TR</b>	Treasury Regulations
<b>NPA</b>	National Ports Authority	<b>WEGO</b>	Weighted Efficiency Gains from Operations

# Foreword by the Chairperson

The 2020 year has not turned out to be a normal year for any of us. The COVID-19 pandemic presented a number of unique challenges at a juncture where the Regulator baton was passed from the Interim to a new Board that had to hit the ground running.

Despite not being able to meet in person due to lockdown restrictions, the new Board of the Regulator committed itself to executing the regulatory functions in ensuring efficient and sustainable port pricing and reducing the cost of doing business in and through South African ports. We refocused the organisation's efforts in ensuring adequate access to our port for our people by addressing equity of access and transformation challenges that still characterise our port system. This work shall continue to be one of the pillars of the current Regulator's activities.

A number of critical issues and challenges in our port system, regulatory and otherwise, were identified and are getting attention. These broadly include:

- the effects of COVID-19 on the Regulator's mandate, the National Ports Authority (NPA) and port users;
- the treatment of the Regulatory Asset Base. This directly relates to the corporate structure of the Authority and how the Regulator's framework is responding to progress with the corporatisation of the NPA;
- the problems with implementation and expenditure on CAPEX in our port infrastructure to sustain current capacity and provide capacity ahead of demand. This is highly concerning as it predates the COVID-19 pandemic, which only exacerbated the issue;
- the low efficiency levels in terminal operations as well as congestion that hampers the efficient movement of cargo into and out of terminals;
- the slow pace of transformation in the provision of port facilities and services, in

leases and commercial licenses, despite the NPA meeting the B-BBEE level 4 requirements; coupled with the need to improve participation of private sector players and SMMEs in the different offerings in our port system; and

- the continued need for efficient pricing of port infrastructure based on the cost and benefit arising from the use of infrastructure by different port user segments which takes into account industry structure, sustainability of the NPA and the equitable pricing for port users.

The end goal is to improve port pricing and efficiencies and thus the competitiveness of South African ports in the global shipping and supply chain, and to be responsive to prevailing conditions while lowering barriers of entry for SMMEs, women and black owned businesses.

Despite the COVID-19 related challenges, the Regulator members and the secretariat remain focused on effectively addressing these and many other challenges and continued to implement and enhance the regulatory framework which has been developed over the years. This is done in conjunction and close collaboration with port users and interested and affected parties through rigorous stakeholder engagement.

One of the Regulator's main outputs are the Record of Decision on the NPA's tariff application, received on the 30th of July 2020, and the Records of Decision on Tribunal matters dealing with appeals or complaints against the NPA. After a vigorous process that included a series of virtual consultations with stakeholders, the Regulator announced its decision on the NPA's tariffs application at the end of November 2020. Amongst others the Regulator considered the following areas of concerns:

- What the magnitude of the tariff adjustment should be relative to the NPA's Application for a 19,74% average increase, with a request to use the Excessive Tariff Increase Margin Credit (ETIMC) to reduce the tariff to an inflation related 3.80% in the face of large scale collapse of businesses due to COVID-19;
- How to incentivise the NPA to drive better efficiencies and improvements in terminal operations;
- Interventions for improving capital expenditure;
- What incentives the Regulator should provide as immediate steps to ease the burden of COVID-19 through incentives for license holders, non-cargo working and bunker/supply vessels as a direct response to industry submissions; and
- Continued incentives for government's intention to grow the number of vessels on the South African ship registry whilst increasing the opportunities for training and development of SA seafarers.

## Tariff Record of Decision

Subsequently, the Regulator approved a 0% tariff adjustment that was differentiated across the different elements of the tariff book. In line with our thrust for cost-reflective tariffs and rebalancing the tariff book, where cargo dues for containers and motor vehicles have generally been high and to support government's policy and objectives of increasing exports, we reduce cargo dues on export containers by 10%. Cognisant that the manufacturing sector is reliant on inputs that are imported, our decision was to also reduce cargo dues on import containers by 3%. Our tariff strategy, which is in its sixth year of implementation, shows that cargo dues for dry bulk commodities remain lower than the cost reflective base rate and would need to increase over time to the base rate. Accordingly, cargo dues for coal and magnetite were increased by 5% for the 2021/2022 tariff period.

Alive to the Minister of Transport's priorities and objectives of building the maritime sector, and allowing SA ports to play an even greater role in contributing to

Left:  
**Dr. Tshisikhawe Victor Munyama**  
Acting Chairperson  
Ports Regulator of South Africa

the country's GDP as well as initiatives to attract non-cargo working merchant vessels that by-pass South African ports but pass through our waters, the Regulator also provided additional incentives, through a reduction of port dues, for vessels taking on bunkers in SA ports.

In support of the sector, cargo dues for vessels coming in to take bunkers were reduced by 60%, whilst vessels calling for reasons other than working cargo would receive a reduction of 30%. To provide relief to companies applying for licenses to provide port activities and lower barriers for emerging companies, the Regulator approved a 30% reduction on license fees effective 1 April 2021 and the license fees are now payable over the life of the license. The tariff decision reflects a pragmatic and balanced approach in responding to the NPA's Application, the needs of port users as expressed in the submissions received, progress on corporatisation and transformation imperatives in the port system.

#### Tribunal Records of Decision

On the complaints and appeals process, which is intended to provide port users an avenue to obtain redress when they are adversely affected by a decision, action or inaction of the Authority, in September 2020, and four months into the term of the new Board, the Tribunal concluded a Record of Decision on one matter and by the end of the 2020/2021 financial year parties settled two matters by way of Alternative Dispute Resolution, with a further two matters withdrawn by the complainant and appellant.

Through the resolution of Tribunal matters as provided for in the National Ports Act of 2005, the Regulator contributes to the effective and efficient management of different elements of the port system, and protects port users and affected parties from inaction and/or adverse decisions by the Authority. Accordingly, port users are encouraged to make use of the complaints and appeals process.

With COVID-19 lockdown restrictions prohibiting gatherings, the Regulator made the necessary adjustment and ran all Tribunal and pre-trial conference hearings on virtual platforms, which allowed the entity to deliver a Record of Decision in September 2020. In future more hearings will be held and decisions will be issued in this manner

as the pandemic is still affecting business activities.

#### Commitment and support

Building on the Regulator's strong focus on research, and despite the circumstances, this tradition was continued in 2020/2021. A number of internal studies as well as the publication of the updated Port Sector Review, amongst others, added to the body of knowledge and have enriched the deliberations and analyses in our decision making. This will continue, as evident in the wide scope of work planned for the 2021/2022 year.

None of this would've been achieved if not for the professionalism and diligence with which members embraced their responsibilities, especially in preparing, deliberating on hearing the outstanding tribunal cases and making the annual tariff decision. A special thanks must also be extended to the Audit and Risk Committee that oversaw a clean audit, Human Resources and Remuneration Committee (HR & REMCO) that oversaw the appointment of a new CEO and the Regulatory Committee that took responsibility for the tariff assessment.

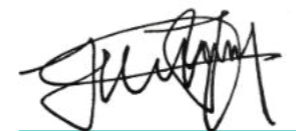
We were well supported by the outgoing CEO, Mr Mahesh Fakir, and would like to express our thanks to him for steadfastly leading the PRSA through a period of transitioning and maturing. We now look forward to achieving much under the able leadership of the newly appointed CEO, Ms Johanna Mulaudzi and look forward to building on the foundation laid by the hard work of the past year. We have every confidence in management to assist us in executing the strategic objectives we set ourselves. The Regulator is also grateful for all the unwavering support from the Department of Transport under the stewardship of the Honourable Minister Fikile Mbalula who has provided clear and solid policy objectives of government, and also provided the Regulator enough space to contribute towards those objectives.

#### Forward looking with confidence

Casting our eyes to what lies ahead, we are confident in ensuring a continued focus on the Regulatory response to the corporatisation of the NPA and providing support to the Minister of Transport for the process. We will continue to address inefficiencies in the port system through

Weighted Efficiency Gains from Operations (WEGO) and expanding the scope of research conducted and also keep using the tariff process and regulatory oversight to bring about improvements not only in pricing but the provision of much needed infrastructure in the port system. Finally, the transitioning of the PRSA and its functions into the Single Transport Economic Regulator remains an important element in our planning and the execution of wider government policy.

The pandemic has not disappeared, the economic and practical challenges remain, but as the Board of the Ports Regulator of South Africa, we can confidently look forward to a year where the focus will steadfastly remain on doing our part to lower the cost of doing business and improving access to this key sector of our economy, to support the creation of a better life for all South Africans.



**Dr. Tshisikhawe Victor Munyama**

Acting Chairperson  
Ports Regulator of South Africa  
30 July 2021



A vessel berthing in the Duncan Dock of the port of Cape Town

# Chief Executive Officer's Overview

The 2020/2021 Annual Report reflects the Ports Regulator spending trends in a year that was characterised by adaptations to change in the way we do things, due to COVID-19 and the restrictions it necessitated as we all played our role in flattening the curve, and minimising infection rates whilst maintaining livelihoods.

For the organisation, 2020/2021 was also a year of transition in leadership from seven Interim Members whose term ended in May 2020 to the ten Regulator Members. It was also occasioned by the end of the CEO's extended contract in October 2020 until the Minister of transport's appointment of a new CEO in January 2021 as approved by Cabinet.

Through these changes the organisation managed to meet all but one of the set 35 targets in the 2020/2021 Annual Performance Plan – a 97,14% achievement. The Regulator obtained an unqualified audit report from the Auditor General of SA for the 2020/2021 financial year. This represents a collective effort and commitment to the mandate of effective regulation of South Africa's commercial ports as well as responsible custodianship of the resources placed at our disposal by Members of the Regulator, management and staff.

The expenditure trends on the modest budget of R42,1m for the 2020/2021 financial year, when compared to the 2019/20 financial year, are indicative of areas where our energies were expended, as we adapted to the new operating environment within and in relation to COVID-19.

## Spending trends

During the year the organisation spent more on employee costs than on supplier and other payments reflecting our commitment to empower staff to carry out the mandate of the Regulator. Adjusting to the new normal under COVID-19 meant that staff worked from home during the hard lock-down and the various adjusted alert levels, and our stakeholder engagements and Board outreach programmes could not be conducted in person. This resulted in significant reductions in expenditure on catering, travel, subsistence and disbursements for staff and members from about R2,462m in 2019 to just over R111 000. As we migrated onto virtual

platforms to remain connected and productive, our communication costs increased from R160 000 to R310 000.

Another notable trend, is in the area of consultants where expenditure grew from R158 000 to R786 000 as we brought in expertise for a labour matter as well as bolstering capacity in the under resourced areas of our administration. Significant growth in expenditure was recorded in the area of legal fees where R5 435m was spent as the Regulator prioritised measures to clear the backlog in Tribunal matters and invoked section 50 of the National Ports Act, Act 12 of 2005 (the Act) with the use of a Senior Counsel in corporate legal support.

Only R1 098m compared to the projected R1 530m interest was realised from investment due to the 3,5 percentage point reduction in interest rates by the South African Reserve Bank. Overall, the Regulator realised a surplus of R6,807m for 2019/20. National Treasury only approved retention of surplus from previous years at the end of the financial year and as such this could not be factored into the 2020/2021 budget.

Although the Ports Regulator operates as a going concern with more assets than liabilities, the ability of the organisation to develop the requisite capacity to carry out its full mandate remain constrained by its reliance only on transfers from the fiscus.

The proposed funding model and concomitant amendments to the Act to allow additional revenue from a regulatory charge, levied on beneficiaries of regulatory interventions and collected through the NPA, were put on hold by the Department of Transport which is instead pursuing the Transport Economic Regulator Bill which makes provision for various sources of funding of the Regulators mandate. The passing



Ms Mukondeleli Johanna Mulaudzi  
Chief Executive Officer  
Ports Regulator of South Africa

of the Bill that has been approved by the Portfolio Committee on Transport will provide an enabling framework for adequate and sustainable funding of the Regulator in the long run.

In preparation for the Regulator's role in the Single Transport Economic Regulator as envisaged in the Transport Economic Regulator Bill, currently before Parliament, the secretariat has started to implement various research projects to gain insights into, and to understand, economic regulation imperatives in the broader transport sector.

In the preceding fiscal year, the Ports Regulator applied for retention of surpluses that were realised in 2019/20 which will be utilised to provide training and development opportunities for members, including exposure to international best practices in economic regulation; port pricing and tariff setting; efficiency measurement and the

use of regulatory regimes to include efficiency in port pricing; training in regulatory accounting versus financial accounting; legal writing and drafting of Records of Decisions and governance amongst others.

## Capacity constraints and challenges facing the public entity

Our staff complement of 22 is the organisations most valuable asset. Collectively the men and women at the Regulator are responsible for delivering on the 35 objectives set in the Annual Performance Plan; for providing secretariat services to the Board in the running of the Tribunals, and the determination of appropriate tariff levels for the SA port system.

The current structure is characterised by employee multi-tasking on functions where best practice guidelines require them to be separated. For example, in the corporate services department our staff members work diligently with the functions of Supply Chain Management (SCM), Human Resources Management and Information and Communication Technology (IT) undertaken by a functionary; the Chief Financial Officer is also the de facto Corporate Services Manager.

At a minimum, the PRSA requires additional capacity in support services whilst taking care not to grow support service at the expense of capacity in the functional areas of the organisation. We continue to engage with the Department of Transport (DoT) for the approval of the organogram and a progressive upward adjustment to the baseline allocation of the organisation. Under the prevailing economic and fiscal conditions the holding strategy is for the Regulator to be allowed to, at least, retain its baseline allocation until such time that it can be increased, and retain surpluses which can be used to source human capacity on a temporary basis as non-permanent expenditure.

The small staff complement means that the loss of one member of staff is felt more severely than would be the case in other organisations. Although we managed to fill three management positions during the year, there were two resignations, a voluntary termination and the end of a contract which impacted on the capacity of the organisation. To address the head count, in 2018 the Regulator reviewed the organogram and motivated that the Minister of Transport in line with the Act approves the expansion of the staff complement from 27 to 60.



### Discontinued key activities, activities to be discontinued and new or proposed activities

The Minister of Transport approved the removal of the project “to engage with DoT on the legislative developments regarding the National Ports Act amendments (funding model and enforcement clauses) from our 2020/2021 Annual Performance Plan, as the Department prioritised the Economic Regulation of Transport (ERT) Bill according to which the Ports Regulator would be part of the Single Transport Economic Regulator or STER. The enforcement clauses and broadening of the revenue sources for the Regulator are catered for in the ERT Bill.

The establishment of the National Ports Authority (NPA) as a corporate entity under Transnet instead of a division, will no doubt, require adjustments and an enhancement of the regulatory framework, products and services from the Ports Regulator, in the coming years, as we continue to ensure the Authority complies with its functions, delivers appropriate port infrastructure, facilities and services in a cost effective and efficient manner.

### Supply chain management

There were no unsolicited bid proposals to the Regulator during the year under review. The Regulator’s supply chain management (SCM) function, though under-resourced, has performed well. Charged with the sourcing of goods and services for both the secretariat and Members of the Board, SCM managed the procurement of R14,520m in goods and services, in addition to SCM processes for normal operational expenditure of the organisation in the 2020/2021 financial year.

The Executive Managers, with a pivotal role played by the CFO, are part of our processes of ensuring compliance with existing SCM and internal control systems and processes, and the maturation thereof.

Particular care is taken to ensure compliance with the pillars of an effective procurement system, which includes ensuring that the PRSA realises value for money in its procurement by avoiding any unnecessary costs and delays for the entity and suppliers; continuously improving internal procurement processes and systems; that the entity runs an open and competitive procurement process be it through the three quote system for procurement under the R500 000 threshold, or applicable open tender processes; that the Board

ensures oversight of SCM through quarterly reports on financial and organisational performance audited in terms of the work plan of our internal audit function.

There is always space for improvement of SCM process and the Auditor General of SA (AGSA) has highlighted the areas of contract management and performance measurement which management will pay attention to whilst maintaining performance in all other areas.

We are particularly appreciative of meeting our obligations towards suppliers, who are by and large emerging companies, by complying with the 30 days or less payment period. Under COVID-19 the SCM system was significantly challenged with long lead times as suppliers battled either with registering on the Central Supplier Database (CSD) or maintaining tax compliance or their ability to secure goods and services. Notwithstanding, the Regulator has ensured that its procurement complies with SCM, in instances adjusting delivery times.

The Audit and Risk Committee of the Regulator, which also monitors the organisation on its reported financial performance, risk management and internal controls, is chaired by an Independent Chairperson and two additional independent members. The SCM system also complies with transformation and equity requirements as dictated by both the Preferential Procurement Policy Framework Act (PPPFA) and the Broad Based Black Economic Empowerment Act.

### Outcome of AGSA findings

The 2019/2020 AGSA findings against the Regulator for failing to seek condonation from National Treasury in deviating from normal procurement process for goods above the value of R500 000, which resulted in irregular expenditure and a qualified audit outcome, was addressed successfully.

The Regulator also had to ensure that a determination test was conducted and remedial action taken against the employee(s) responsible for the irregular expenditure. The determination test conducted found the CFO responsible for the irregular expenditure however, it found that the transaction resulted in value for money for the PRSA and that there was no fraud or corruption in the transaction. The necessary remedial action was taken in line with the organisation’s discipline and grievance policy, and Treasury granted condonation of the irregular expenditure. Importantly, the organisa-

tion’s internal controls and systems are maturing under the able oversight of the Audit and Risk Committee with the majority of independent members and the leadership of the Board

To ensure the organisation complies with controls put in place to avoid and/or eliminate irregular, wasteful or fruitless expenditure, members of staff including two executive managers have attended SCM training during the course of the year. Consolidation of knowledge into competence in SCM will continue to be a focus of the organisation.

### Outlook: Plans for the future to address financial challenges

The funding constraints wrought by the economic downturn and government’s response to the COVID-19 pandemic will no doubt have a bearing on all entities reliant on the national fiscus, including the Ports Regulator. Treasury’s approval of the surpluses retained in previous financial years when obtained (awaiting formal letter) will be reprioritised and spent prudently in carrying out and expanding our activities to cover more areas of the Regulators mandate, where we previously could not pay full attention due to capacity constraints. Even with the retention of surplus, without an increase in the baseline allocation, the economic viability of the Regulator remains a concern especially in relation to our mandate, and as the “nucleus” to the STER.

### Events after the reporting date

There were no events that took place post the balance sheet date of 31 March 2021. We are grateful that the unrest that took place in KwaZulu-Natal in July 2021 did not have an effect on the property or operations of the Ports Regulator.

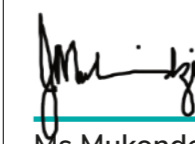
President Ramaphosa announced the establishment of the National Ports Authority as a subsidiary of Transnet as per section 3(2) of the Act on 22 June 2021. This means that this is the last financial year where we have regulated the NPA as a division of Transnet.

### Acknowledgements

Having taken office in January 2021, I would like to firstly thank the Members of the Board for the confidence demonstrated in recommending a female, internal candidate to this position and the Minister of Transport for the appointment with Cabinet’s approval. With very limited resources and capacity, the Regulator continues to achieve its targets and “punch” above its weight.

If we achieve much it is because we stand on the shoulders of those who came before us. A heartfelt thank you, to my predecessor Mr. Mahesh Fakir for adding to that foundation.

With the commitment of each of the 22-strong Regulator staff, demonstrated in the achievement of all but one objective under trying COVID-19 conditions, I am equally committed to lead the team into the Regulator’s next chapter in serving the South African port and transport sector, by focusing on our core mandate – ensuring appropriate pricing to provide port infrastructure and service in a cost effective and efficient manner and reducing the price of doing business for SA importers and exporters – in the new environment where the NPA will be a subsidiary of Transnet.



**Ms Mukondeleli Johanna Mulaudzi**

Chief Executive Officer  
Ports Regulator of South Africa  
30 July 2021

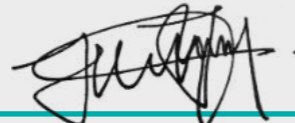
# Statement of Responsibility and Confirmation of Accuracy of the Annual Report

To the best of our knowledge and belief, we confirm the following:

- All information and amounts disclosed in the Annual Report are consistent with the Annual Financial Statements audited by the Auditor-General of South Africa.
- The Annual Report is complete, accurate and is free from any omissions.
- The Annual Report has been prepared in accordance with the guidelines for the Annual Report as issued by National Treasury.
- The Annual Financial Statements (Part E) have been prepared in accordance with the Generally Recognised Accounting Standards applicable to the public entity.
- The Accounting Authority is responsible for the preparation of the Annual Financial Statements and for the judgements made in this information.
- The Accounting Authority is responsible for establishing and implementing a system of internal control, which has been designed to provide reasonable assurance as to the integrity and reliability of the performance information, the human resources information, and the Annual Financial Statements.
- External auditors were engaged to express an independent opinion on the Annual Financial Statements.
- In our opinion, the Annual Report fairly reflects the operations, the performance information, the human resources information, and the financial affairs of the public entity for the financial year end 31 March 2021.



**Ms Mukondeleli Johanna Mulaudzi**  
Chief Executive Officer  
30 July 2021



**Dr. Tshisikhawe Victor Munyama**  
Chairperson of the Regulator  
30 July 2021

# Strategic Overview

The Ports Regulator of South has, over the past 14 years, made great strides in achieving its mandate. With limited capacity and financial resources, it has had a profound impact on the South African economy as a whole through its regulation of the port sector.

It is required to perform a very strategic balancing act between ensuring the sustainability of the National Ports Authority (NPA) as well as lowering the cost of doing business in South Africa and attracting new business and therefore investment.

A substantial milestone for the entity was the announcement, by the State President Mr. Cyril Ramaphosa, that the NPA established in terms of the National Ports Act No. 12 of 2005, to own, manage, control and administer all South African ports to ensure their efficient and economic functioning capable of contributing to the economic growth and development of our country, will be corporatised.

Since its inception, according to its mandate, the Ports Regulator has lobbied government to implement section 3(2) of the Act which states that the NPA should be established as an independent entity with its own board of directors empowered to make decisions on the best use of capital investment. Corporatisation will also remove cross-subsidisation and have an impact on tariffs.

Through the regulator's tariff decisions there has been a smoothing of the tariffs charged by the NPA which has translated into a saving to port users of approximately R10 billion. The Regulator's research studies have informed economic policy and assisted in aligning port tariffs more closely to international trends, given that South African cargo dues are amongst the highest in the world.

In addition the Regulator has assisted users by creating a buffer through the Excessive Tariff Increase Margin Credit against excessive tariff increases due to large capital investments by the NPA.

A programme aimed at developing efficiencies in the port system has been introduced which includes Port Tariff Incentive Programme (PTIP) and Weighted Efficiency Gains from Operations (WEGO). While these two programmes have an effect on the tariff decision and tariff book they are primarily aimed at contributing to the efficient use of port facilities within reason.

Greater regulatory certainty and predictability has been created through a fairer tariff frequency and more accurate investment signals have been given through the multi-year tariff methodology.

The transformation of the ports sector remains a key concern of government and industry stakeholders. Therefore, the Regulator is expected to play a significant monitoring role through its legislative compliance and tribunal functions as well as its interaction with policy makers including the Department of Transport.

The Regulator remains committed to ensuring that the organisation is indeed positioned as an efficient and effective economic regulator, the only one of its kind and a model which other regulators may want to emulate. Its agenda must therefore effectively carry out its mandate which will ensure it remains relevant in a continually challenging environment.

# Vision, Mission and Values



## Vision

The Ports Regulator developed its vision at inception and has retained it without alteration as it clearly articulates the primary perspective for the existence of the public entity. The vision of the Ports Regulator remains as:

*“The Ports Regulator will be regarded nationally and internationally as a world class institution which sets the standards for economic regulation in South African maritime ports.”*

## Mission

The Mission of the Ports Regulator is to:

- exercise economic regulation of the South African ports system consistent with the government’s strategic objectives;
- promote equity of access to ports and to facilities and services provided in ports;
- monitor the activities of the National Ports Authority to ensure that it performs its

functions in accordance with the National Ports Act, Act No.12 of 2005 (the Act);

- consider the proposed tariffs of the National Ports Authority; and
- regulate the provision of adequate, affordable and efficient port services and facilities

## Values

The Ports Regulator initially established a value set that articulated its mandates as set out in legislative, regulatory and policy sources. This has been reviewed on an annual basis since inception. The values that the Ports Regulator aspires to have been retained over the years and are articulated to align to the performance of our mandate. They represent the foundation upon which the corporate culture in the Ports Regulator is built and maintained at every level.

## The Ports Regulator continues to adhere to the Key Values of:

PROTECTION OF THE VALUES OF HUMAN DIGNITY, EQUALITY & FREEDOM AS ENSHRINED IN THE CONSTITUTION	RESPECT AND RELEVANCE	STAKEHOLDER FOCUS AND SERVICE DELIVERY	ACCOUNTABILITY
Being people centred in terms of protecting the rights of our staff, enshrined in the Constitution, and upholding the democratic values of fairness, integrity and transparency.	Respect for others at all levels, maintaining high ethical standards and trust, especially with regard to the proper use of the resources entrusted to us by the public.	Striving to exceed stakeholder expectations, which engender credibility.	Being accountable to the Board of the Regulator, its Executive Authority and stakeholders for the decisions and actions it takes.
			

# Legislative and other mandates

The Ports Regulator, established in terms of section 29 of the National Ports Act, Act 12 of 2005, is a public entity reporting to the Minister of Transport.

Its main functions are to:

- exercise economic regulation of the ports system in line with government’s strategic objectives;
- promote equity of access to ports, facilities and services provided in ports; and
- monitor the activities of the NPA to ensure that it performs its functions in accordance with the Act.

Charged with the responsibility of:

- considering the proposed tariffs of the NPA;
- the promotion of regulated competition; and
- the regulation and provision of adequate, affordable and efficient port services and facilities,

the Ports Regulator is guided by various government programmes aimed at improving the price and operational efficiencies of South Africa’s commercial ports, thereby contributing to the country’s overall goal of reducing the cost of transport and increasing competitiveness in global supply chains.

In addition to the National Ports Act, the Ports Regulator operates within and derives its mandate from a range of statutory and policy instruments, the primary sources being the White Paper on Commercial Ports (2002); the Comprehensive Maritime Transport Policy; the National Ports Act, 12 of 2005, together with the Regulations and Directives thereto.

The Ports Regulator’s procedural and substantive mandate is derived from statutory and policy instruments including but not limited to:

- The Constitution of the Republic of South Africa;
- The Public Finance Management Act, 1 of 1999 and the Regulations thereto;
- The Labour Relations Act, Act 66 of 1995 as amended;
- The Basic Conditions of Employment Act, Act 75 of 1997, the Employment Equity Act, Act 55 of 1998.

## Recent court rulings

The objective of intervening in a market to drive results similar to those that would prevail if there was competition in the market; monitoring performance of an industry player; enforcing accountability, to protect consumers and ensure fair prices.

The exercise of regulation constitutes administrative action conferring significant powers on the Regulator which may materially and adversely affect the rights of the public and/or the regulated entity(s).

As an entity of the state undertaking administrative action, the Ports Regulator, in its processes and decisions, is informed by and complies with the provisions of the Promotion of Administrative Justice Act, Act 3 of 2000, which requires administrative action to be lawful, reasonable and procedurally fair and the provision of reasons for every administrative action.

Supported by a robust stakeholder engagement process, the Regulator adheres to the principles of openness, fairness, transparency and consultation in developing regulatory instruments and in seeking submissions from affected and interested parties on its tariff decisions. To this end, the Regulator keeps abreast of case law on the implementation of administrative action by organs of state, seminal to which, in the 2021/2022 financial year, are the following:

## Eskom Holdings SOC Limited v National Energy Regulator of South Africa and Others (74870/2019) [2020] ZAGPPHC 2

The case represents the development of jurisprudence on the matter of procedural fairness vis-a-vis application of a tariff methodology by regulators. The North Gauteng High Court judgement set aside the National Energy Regulator of South Africa (NERSA) decision to disallow Eskom to recover a portion of the Regulatory Clearing Account (RCA), which is part of its Multi-Year Tariff Methodology for the reconciliation of prudently incurred costs, for 2015-2017 which Eskom successfully took on review.

The review application was premised on the fact that the applicable legislative framework i.e. the MYPD methodology had not been correctly implemented by NERSA. In addition, the principles applied to certain items in previous decisions were not maintained, and no valid reasons were provided for the departures made from these previous precedents. The court found that NERSA’s failure to process the decisions within a reasonable time was inconsistent with the Constitution and NERSA had not been consistent in applying its Multi-Year Tariff Methodology. The judgement highlights the need for efficiency in decision making and consistency in application of a methodology by regulators.

### Sunrise Energy (Pty) Ltd v Avedia Energy (Pty) Ltd et al Case No. A255/18 Western Cape Division

In this case, the High Court appeal judgment emphasised the PRSA's mandate and internal processes in terms of sections 46 and 47 of the National Ports Act No.12 of 2005. On the 8th June 2020, the full bench of the High Court of the Western Cape Division set aside an appeal lodged by Sunrise Energy (Sunrise) on the basis that Sunrise had failed to follow the prescripts of the National Ports Act and should have lodged a complaint with the Ports Regulator, as the body is afforded extensive powers to deal with complaints as effectively and promptly as possible in terms of the National Ports Act, before approaching the High Court.

### Applicable case law on transformation and targeting of SMMEs to achieve transformation in certain industries.

This case law relates to the use of regulatory instruments in the transformation and mainstreaming of designated groupings, by targeting the procurement spend of public entities. This is a responsibility for which the Regulator is accountable in its internal procurement processes and in the context of driving equity of access to port infrastructure and services, by monitoring the National Ports Authority's Broad Based Black Economic Empowerment programme.

In the **Afribusiness NPC v Minister of Finance (1050/2019) [2020] ZASCA 140** case, the judgement delivered by the Supreme Court of Appeal (SCA) on 2 November 2020, declared the 2017 regulations (Regulations) to the Preferential Procurement Policy Framework Act, 2000 (PPPFA) invalid, with the invalidity suspended for a period of 12 months to enable the Minister of Finance to correct them.

The basis for the invalidity is that the Minister of Finance exceeded his powers in making the Regulations as they were inconsistent with the PPPFA. Whereas the SCA held that the PPPFA does not allow for the preliminary disqualification of tenderers based on a failure to achieve a particular B-BBEE score or black ownership percentage or other criterion in terms of the B-BBEE Commission; the Minister of Trade and Industry is empowered through section 9(c) of the B-BBEE Act, upon application by a public entity, to grant a deviation and allow for application targets different from those set in the codes of good practice.

The case **Airports Company of South Africa SOC Ltd v Imperial Group Ltd & Others (1306/18) [2020] ZASCA 02** which was decided on 31 January 2020, wherein the SCA dismissed the appeal by the appellant and unanimously found that the preferential procurement policy reflected in ACSA's Request for Bids breached section 217 of the Constitution and the provisions of the PPPFA.

### Other Mandates

#### National Development Plan

The Ports Regulator aims to respond to the National Development Plan goals, to improve efficiencies and reduce the inflation of administered prices, in support of building a diversified economy, stimulating manufacturing, enhancing the regulation of market participation and provision of appropriate infrastructure and services. In particular, the Ports Regulator aims to ensure that the NPA is efficient and financially viable and continues to invest in maintaining, refurbishing and extending port capacity.

#### Medium Term Strategic Framework 2019 - 2024

The Ports Regulator takes cognisance of and, through its regulatory mandate, responds to some of the Medium Term Strategic Framework (MTSF) 2019 – 2024 outcomes.

The Ports Regulator's tariff decisions, compliance monitoring on the NPA contributes to and support the following MTSF outcomes:

- the increased levels of investment by public entities and increased contribution to economic growth;
- a percentage growth in exports for defined national priority sectors;
- increase competitiveness and access to transport modal networks through effective regulation with the establishment of a STER which will subsume the Ports Regulator into a new, wider economic regulator in the transport sector; and
- the reduction of costs for priority sectors by increasing the efficiency of ports through the corporatisation of the NPA.

### Priorities of the Department of Transport

The defined Minister's five guiding strategic thrusts and focus of the current administration are enthused by the Khawuleza ethos for the Department and the public entities reporting to the Department. The Regulator assists in building a maritime nation and elevating the oceans economy by participating in and taking regulatory decisions which take in account the Minister's maritime programme constituting five pillars:

#### Pillar 1

Enhancing South Africa's Ship Registration Regime.

#### Pillar 2

Mainstreaming maritime through empowering historically disadvantaged persons to access opportunities, support development of young people to take up opportunities in the maritime fraternity through recreation and economic opportunities.

#### Pillar 3

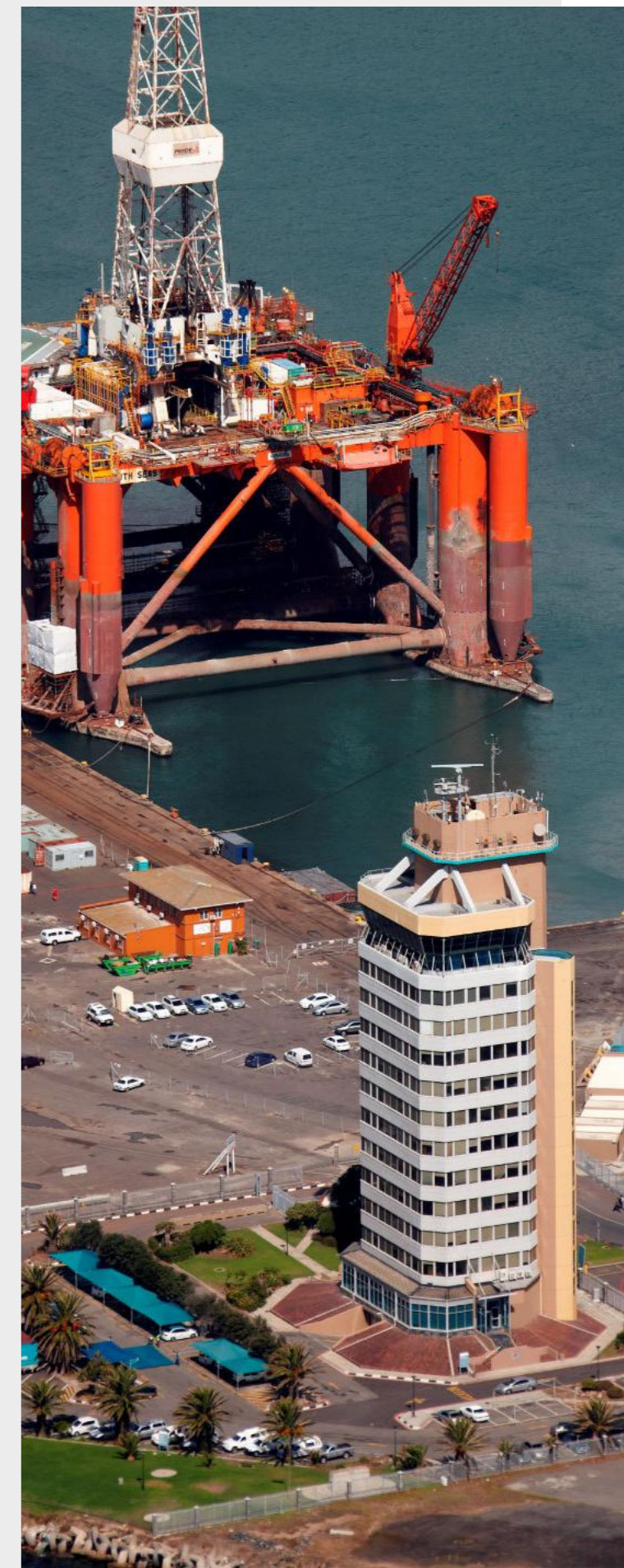
Rolling out of coastal shipping and creating partnerships to ensure sustainable support systems that enable effective implementation. The end-goal is to have a SADC region-wide coastal shipping market. This is to include all offshore shipping activities in the Oil and Gas sector.

#### Pillar 4

Creating programmes to elevate fluvial transport and open up new economic opportunities by maximising the use of inland waterways; and

#### Pillar 5

Unlocking maritime economic stimulation and recreation.



The Transnet National Ports Authority House in the foreground with an Oil rig in the background

# Organisational Structure

## REGULATOR BOARD MEMBERS 2021

### Mr. Zolani Kgosietsile Matthews

Mr Matthews served as the Chairperson from June 2020 until his resignation in March 2021



#### Areas of Expertise

Economics, commerce, public management, international relations, strategy, politics.

### Dr. Tshisikhawe Victor Munyama

Dr. Munyama serves as the acting Regulator Chairperson and Chairperson of the Regulatory Committee and the Hearing Panels.



#### Areas of Expertise

Economics, commerce, ports, the shipping industry, public and development management.

### Ms. Sekgothadi Kabelo

Ms. Kabelo serves as a Member of the Regulatory Committee and Hearing Panels.



#### Areas of Expertise

Commercial law.

### Ms. Siphokazi Matolengwe

Ms. Matolengwe who serves as a Member of the Regulatory Committee and Hearing Panels.



#### Areas of Expertise

The shipping industry, commerce and ports.

### Mr. Zola Fihlani

Mr. Fihlani serves as the Chairperson of the Human Resource and Remuneration Committee and as a Member of the Audit and Risk Committee and Hearing Panels.



#### Areas of Expertise

Commerce, economics and public management.

### Mr. Ashraf Adam

Mr. Adam served as a Member of the Audit and Risk Committee and resigned in November 2020



#### Areas of Expertise

Built environment in transportation planning and economic development, public management, commerce

### Ms. Zandile Kabini

Ms. Kabini serves as a Member of the Human Resource & Remuneration Committee and Hearing Panels.



#### Areas of Expertise

ICT, commerce, corporate strategy and execution.

### Ms. Kenosi Selane

Ms. Selane serves as a Member of the Audit and Risk Committee and Hearing Panels.



#### Areas of Expertise

Finance, economics and commerce.

### Mr. Mthunzi Madiya

Mr. Madiya has been re-appointed and serves as a Member of the Regulatory Committee.



#### Areas of Expertise

The shipping industry, economics, commerce, ports and public management.

### Ms. Leanda-Marsha Mtshali

Ms. Mtshali serves as a Member of the Regulatory Committee and Hearing Panels.



#### Areas of Expertise

Corporate commercial law, risk management, regulatory compliance, property and conveyancing law, corporate governance, trust law and notarial law.

### Mr. Mahesh Fakir

Mr. Fakir served as CEO & Ex officio member.



Term Ended 30 October 2020

### Ms. Mukondeleli Johanna Mulaudzi

Ms. Mulaudzi serves as CEO & Ex officio member



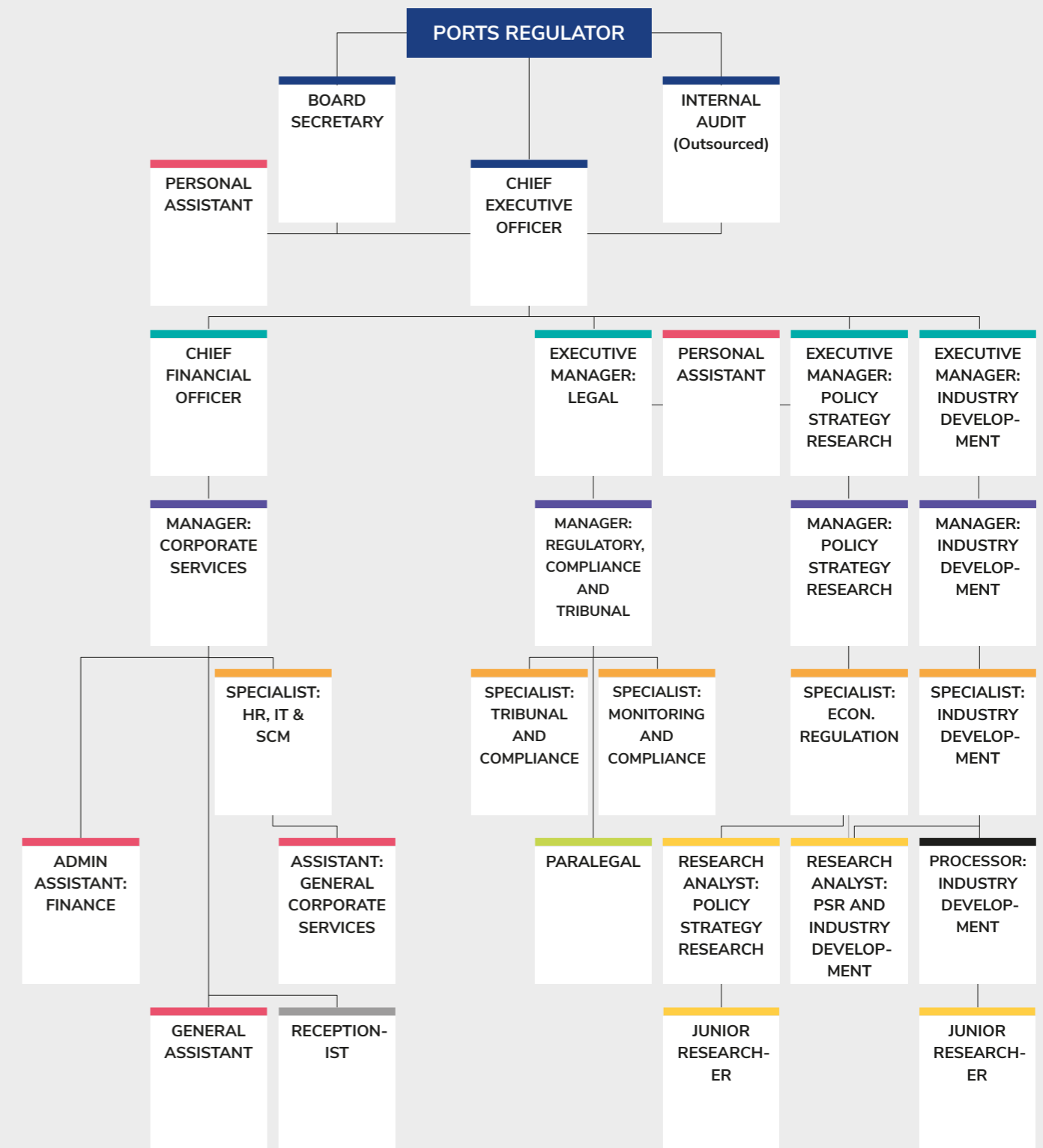
Effective 01 January 2021

# Organisational Structure

## MANAGEMENT STRUCTURE



## PRSA ORGANOGRAM





A view of the Port of Durban

# PART B

## PERFORMANCE INFORMATION

### PART B PERFORMANCE INFORMATION: 26–59

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A view of the Durban Container Terminal 1

# Auditor's Report

## PREDETERMINED OBJECTIVES

The Auditor General of SA performed the necessary audit procedures on the performance information to provide reasonable assurance in the form of an audit conclusion. The audit conclusion on the performance against predetermined objectives is included in the report to management, with material findings being

reported under the Predetermined Objectives heading in the report on other legal and regulatory requirements section of the auditor's report.

Refer to page 104 of the Report of the Auditor's Report, published as Part E: Financial Information.

# Situational Analysis

The Regulator is an independent ports regulatory body vested with legal personality, which is governed and constrained by the parameters of the Act together with its Regulations and Directives.

Section 30 of the Act specifically sets out the parameters of the functions of the Regulator, which is namely to:

- Exercise economic regulation of the ports system;
- Promote equity of access to ports and to facilities and services provided in ports;
- Monitor the activities of the Authority to ensure that it performs its functions in accordance with the National Ports Act;
- Consider and approve the proposed tariffs of the Authority<sup>1</sup>; and
- Regulate the provision of adequate, affordable and efficient ports services and facilities.

### Service delivery environment

As an economic regulator, the Ports Regulator's service delivery environment is characterised by the regulatory frameworks that it has developed to define and guide the trajectory for port tariffs and the assignment of the incidence of the tariffs on different port user groupings – shipping lines, cargo owners, terminal operators and lease holders – in SA's commercial ports.

To this end the Regulator undertakes consultations with industry players, port stakeholders, role-players, interested and affected parties to ensure what is essentially an administrative process complies with the tenets of openness, fairness and transparency.

Additionally, there is the legislated function to hear appeals and complaints by port users and affected parties against the decision(s), action or inaction of the National Ports Authority as a measure to open up access to port infrastructure, services and facilities or to ensure the NPA complies with the Act by providing appropriate recourse to port users where they are adversely affected.

### Tariff methodology

A multi-year tariff methodology, which sets tariffs for the opening year and provides indicative tariffs for the outer two years, was published, thus creating certainty on the tariff trajectory for the

Authority and port users who bear the tariff burden.

The methodology is reviewed, consulted with stakeholders, updated and published every three years. The current methodology was adopted and published in March 2020 and the next review will be conducted during the 2022/2023 financial year for publication at the end of that financial year as it will be applicable to the 2023/2024 tariff period.

### Tariff strategy

The tariff strategy, which is implemented over a ten year period (starting in 2015 and updated in 2020) has established user-pays and cost reflective principles for assigning the incidence of port tariffs amongst the different users based on the infrastructure used and/or benefit derived from use of distinct or common port infrastructure, facilities or services.

The strategy sets baseline tariffs for the different tariff lines and is intended to reduce the existing multiple tariff lines to a few main categories with approved exceptions. The strategy also establishes the Port Tariff Incentive Program (PTIP). This is an open, transparent and fair process for determining cross-subsidies within ports when such cross-subsidies are for the benefit of specific groups or in support of government policy/objectives/strategies. For example, the beneficiation of raw material and other economic imperatives that are in the public interest.

### Port operational efficiency

The Required Revenue methodology incentivises the implementation of CAPEX which is necessary as the NPA must provide capacity ahead of demand and maintain major port infrastructure.

The Regulator recognises that whilst getting the pricing of port infrastructure right, port efficiencies – measured as the overall time taken to turn around vessels calling at any of the country's commercial ports to load, unload or tranship cargo – are critical

<sup>1</sup>Contemplated in section 72 of the Act, 12 of 2005



in determining the competitiveness of South African ports within the global shipping industry, which is characterised by aggressive action to reduce transportation costs.

To influence the NPA, as regulator of terminal operators in terms of section 11 of the Act, the Regulator continues to implement the Weighted Efficiency Gains from Operations (WEGO). This factors efficiency considerations into the Authority's Required Revenue formula to send the right message and incentivise improvements in operational efficiencies.

Currently in its third year of implementation and covering mainly waterside Key Performance Indicators (KPIs) agreed to amongst port users (through the PCC KPI subcommittee) and the NPA with the Regulator, the 2021 WEGO decision resulted in the NPA foregoing R64m of its after-tax profits due to lack of improvement in the measured KPIs.

The WEGO incentive, process and outcomes must be strengthened to ensure that the incentive (up to 7,5% additional profit to the NPA for up to 10% improvement) and penalty (up to 7,5% reduction in profits for up to 10% reduction in performance on the selected KPIs) are extended to terminal operators through enforcement mechanisms that address lack of performance and rewards above average performance.

#### **National Ports Authority Capital Expenditure**

To ensure that the NPA provides the requisite port infrastructure and services that support trade through the country's ports, the Regulator has acted to create certainty in the Authority's infrastructure investment programme.

While the NPA has been allowed the CAPEX applied for (on average up to R3bn per annum) the Authority has not been able to invest much of the approved CAPEX budget.

Since 2009/10 the Regulator has approved R39,8bn in CAPEX, but the Authority has only been able to spend R18bn with the balance being clawed-back. The lack of port infrastructure development is clearly a result of the Authority's inability to implement projects due to capacity, governance frameworks and delivery capability problems rather than a funding problem.

Having required the NPA to provide its plans for addressing capital expenditure and its "game-

changer" initiative, the Regulator continues to monitor progress in the NPA's CAPEX plan through its CAPEX register, and ensuring that CAPEX projects applied for have the requisite approval and are backed by approved business cases as opposed to a list of projects at conceptual phase.

Notably the Regulator is closely watching the Vulindlela initiative which aims to address bottlenecks which has hindered State Owned Entities from implementing infrastructure investment plans the country needs to drive economic recovery and ultimately growth.

#### **Appeals and complaints**

Due to the lapse in the appointment of Regulator members who in turn serve on the hearing panels (Tribunal) to hear and decide on appeals and complaints brought against the Ports Authority, the Regulator has been slow in the resolution of Tribunal matters.

Resources, in the form of budget provision and the appointment of hearing panels from amongst the members whose term started in June 2020, have since been allocated to address the Tribunal backlog and to set in motion the processing of new matters as expeditiously as possible. One matter was finalised, in another matter parties settled whilst a number of new matters were brought before the Regulator.

#### **Stakeholder engagements and industry development**

The actions and decisions of the Regulator constitute administrative action which require that stakeholders be consulted, their inputs and comments solicited whilst the processes and decisions of the Regulator must be socialised with various stakeholders.

The secretariat optimises on its status as an observer in the Port Consultative Committee (PCCs) and its KPI sub-committee's and the National Port Consultative Committee (NPCC) to create awareness of the Regulator's processes, keep abreast with pertinent issues and developments in each of the ports. With the prominence afforded to port operational efficiency, it is important that Industry Development undertakes studies that measure the utilisation of port infrastructure and efficiencies in the port system.



Container berth at the Port of Cape Town

#### **Key regulatory outputs**

Over the years the Regulator's tariff decisions have translated into direct and indirect benefits for port users, Transnet through the NPA and ultimately the South African economy including:

- a saving of R8,9bn between tariffs applied for and what the Regulator has approved between 2010/11 and 2020/2021; and
- support of the 2019–2024 Medium Term Strategic Framework (MTSF) target to increase exports and government's prioritisation of domestic manufacturing through overall reduction of tariffs for containers and Roro's. The reduction of tariffs has resulted in export containers charged between R412 and R824 per box (depending on size) in 2021/2022 compared to between R964 to R1929 per box in 2009/10 at the start of regulation, translating into between a -0,29% and -7,86% change.

The Regulator's objective, based on the current tariff methodology and pricing strategy, is for a container tariff rate of R179 per box by 2025/26 in 2021/2022 terms.

The Regulator normalised export vehicle tariffs, when in 2016 it equalised and afforded all vehicle manufacturers and exporters a 60% tariff discount previously only available to large exporters. This decision brought down the tariffs for export of South African manufactured/assembled vehicles and allowed the smaller companies to benefit equally from the discount, bringing down the port cost for exporting vehicles.

#### **2020/2021 Tariff decision**

A zero percent (0%) average increase in Port

Authority tariffs for 2021/2022 announced by the Regulator on 30 November 2020 was accepted by the industry. This tariff decision was arrived at without compromising the continued financial sustainability of the NPA. The Ports Regulator was cognisant of the difficult and challenging economic climate brought on by the COVID-19 pandemic, which specifically affected the revenue generating ability of all industry players, and fixed costs which had to be controlled while there was less activity in the ports. The tariff decision also responded to the Government's call for the lowering of port administered prices providing for the following:

- A 30% reduction in license fees payable over the duration of the licence, for port activities - bunkering, stevedoring, vessel registration agents, diving and waste disposal;
- A 60% reduction of cargo dues for vessels calling at SA ports to take on bunkers, without staying more than 48hrs;
- Up to 30% reduction of marine charges for vessels flagged on the SA register;
- A 10% reduction on cargo dues for export containers;
- A 3% reduction on cargo dues for import containers;
- A 10% increase in cargo dues for coal and magnetite.

Another Regulator success in accelerating the discharge of its mandate in ensuring Equity of Access to port infrastructure and facilities is the annual assessment and report on the implementation of Broad Based Black Economic Empowerment by the National Ports Authority, following on the Baseline Equity of Access Report of 2016.

Research reports which the Regulator continues to publish annually, include the Tariff Methodology, Tariff Strategy, the Global Ports Pricing Study, as well as a Record of Decision (RoD) on WEGO KPI's and weights to be measured in 2021/2022. These documents create transparency in the decisions taken by the Regulator and create certainty for the industry in terms of the future trajectory of the tariffs.

Through the Industry Development function, the PRSA attended consultations with the Ports Consultative Committees, National Ports Consultative Committees and other port industry development imperatives, including discussions dealing with the incorporation of the NPA in terms of the National Ports Act.

There was also a great need to assure stakeholders that the Regulator would be able to deliver the tariff assessment Record of Decision as well as hold Tribunal hearings during the pandemic. This was successfully achieved. These various engagements took place virtually during the financial year and garnering the participation of 72 port users and stakeholders and the receipt of 15 submissions on the Tariff Application.

The Regulator had to ensure that the NPA could navigate through one of the most difficult trading environments ever experienced as a result of COVID-19. The lockdown implemented by the government negatively impacted goods flowing through SA ports which ultimately affected revenue for the NPA, the implementation of CAPEX and normal port operations.

### Organisational environment

Regulator members were appointed, effective 01 June 2020, by the Minister of Transport and were tasked with enforcing best practice governance and accountability, financial management and reporting and compliance monitoring. The Tribunal, previously suspended as result of no Regulator members being appointed, was brought back into operation and resulted in the new Regulator's first Record of Decision, issued in September 2020. This was followed by tariff Record of Decision in November 2020.

Amongst the Regulator's first tasks was the process to expedite the appointment of a CEO as the sitting CEO's employment contract expired on 31 October 2020. As per the National Ports Act, the Regulator concluded the recruitment process and made recommendations for the employment of a

successful candidate to the Minister of Transport in November 2021. The Minister's recommendation was approved and announced by Cabinet. The new CEO was approved by Cabinet in December 2020 and started her employment contract effective 01 January 2021.

The Regulator also had to ensure that it could enable its workforce to work from home and still deliver on the annual performance plan targets signed with the Minister of Transport.

The Regulator submitted to the Minister of Transport in February 2020 a revised organogram for approval. When approved, the revised organogram will allow the Regulator to better capacitate itself in preparation for the Single Transport Economic Regulator as the Regulator is to be the nucleus of the STER. Approval of the revised organogram will also require the Minister to revise the baseline allocation to the Regulator as the current allocation is insufficient to appoint more employees. It must be remembered that the Regulator is financed mainly by the transfers from the Appropriation and thus its revenue generating ability is limited based on the provisions of section 41 of the National Ports Act.

The Regulator, when it was appointed in June 2020, also appointed members to different subcommittees which include the Regulatory Committee, Human Resources & Remuneration Committee and the Audit & Risk Committee. The establishment of these committees was aimed at assisting the Regulator to have oversight of the operations of the secretariat as required by legislation including the National Ports Act and the Public Finance Management Act. These committees developed and approved their charters and executed their responsibilities, to ensure successful implementation of the annual performance plan and the strategic objectives.

During 2020/2021, the Regulator had to respond to the changes brought about by the COVID-19 pandemic. The secretariat had to adapt to the new normal and put in place systems and processes to ensure delivery on the annual performance plan under unprecedented challenges. This required adapting to using virtual platforms for Regulator and Regulator subcommittee oversight meetings, Tribunal hearings, recruitment interviews, tariff assessment roadshows, Port Consultative Committee (PCC) and National Port Consultative Committee (NPCC) quarterly meetings etc.

The COVID-19 lockdown restrictions impacted on many processes including delays in appointing employees in funded vacant positions; the Annual General Meeting only being held in November 2020; and Tribunal hearings coordinated virtually which were unusual and strange to in-person hearings. The imposed Lockdown Alert Levels also required the entity's staff to adjust to working from home as a result of the lockdown restrictions implemented by the government.

The entity has managed over past financial years to consistently upscale the discharge of its mandated functions despite the challenges of scarce human resources as well as budgetary constraints. The organisation has made strides towards full implementation of all of its programmes. It is expected that existing constraints will alleviated and institutional capability further enhanced and allow for full implementation of our mandated functions – especially in overseeing the Authority's performance of its functions in terms of section 11 of the Act – when the revised organogram is approved by the Minister of Transport. The Regulator has submitted a revised organogram to the Minister in order to increase the positions from current 27 to 60 in order to allow the Regulator to expand its capacity to deliver on all aspects of port administered pricing, equity of access and compliance and also in preparation for the Single Transport Economic Regulator (STER).

The entity has managed to strengthen its governance structures with the intention of fully complying with its key legislative framework, policies, procedures and regulations. This process of strengthening governance has also led to the development and approval of policies and procedures that will govern the operating activities of the entity and achieve the required output in line with Annual Performance Plans and strategic plans. The governance and compliance of the entity is monitored on a quarterly basis through a checklist which is tabled and discussed at the Audit and Risk Committee. This checklist helps to identify areas of concern and measures to improve non-compliance if any.

The 2009 Directives requires the Ports Regulator to conduct periodic reviews and obtain feedback from members of the public on the quality and relevance of its decisions. The Regulatory review is aimed at understanding public perceptions about the impact of the decisions taken by the Regulator regarding the National Ports Authority's Tariff Application as well as Tribunal. The results of the

2020 review helps to highlight areas of improvement and acceptance of Regulator decisions by stakeholders.

### Key policy developments and legislative changes



As the Regulator is the custodian of the National Ports Act (the Act), and charged with the function of policy development it submitted proposed amendments to the Act – to the Department of Transport for consideration and processing. These amendments aimed at augmenting the funding of the Ports Regulator, enforcement powers and ancillary matters of the Ports Regulator. Consultations with the DoT during the year revealed that the proposed funding model had been put in abeyance as the e department wanted to develop legislative instruments for a Maritime Development Fund of which one of its objectives was to fund the Ports Regulator. The DoT also aims at implementing a Single Transport Economic Regulator (STER) by March 2022, once it is signed into law by the President of the country. When STER comes into effect the Ports Regulator will be absorbed into the new Regulator and cease to exist. While the COVID-19 pandemic delayed parliamentary processes for the Economic Regulation of Transport Bill (ERT Bill) the DoT was able to pursue some progress in this regard.

### Progress towards achievement of institutional impacts and outcomes

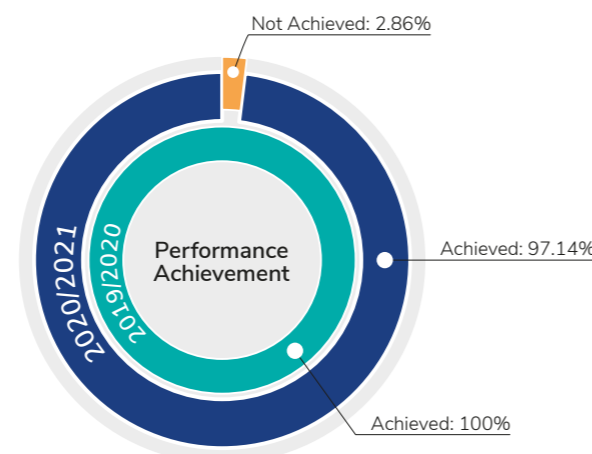
The new administration of the Ports Regulator developed a strategic plan for the 2020/2021 to 2024/2025 financial year taking into account the Medium Term Strategic Framework, National Development Plan as well as other guiding planning documents of the government. This plan was then translated into annual targets in the 2020/2021 Annual Performance Plan (APP).

The strategic plan places more emphasis on enforcing compliance by the NPA; reviewing and amending the outdated National Ports Act Directives and Regulations, and an analysis of the NPA's lease revenue to tie up to results of compliance monitoring. This is aimed at ensuring that market related prices are charged on leases and drive transformation in the sector.

Using the strategic plan the secretariat will develop annual performance plans for the next four years and report quarterly and annually to the Minister of Transport and National Treasury.

STRATEGIC GOAL 	PROGRESS 
Ensure implementation of all elements of the regulatory framework within its mandate.	The publication of the tariff strategy and the tariff methodology which creates greater certainty and transparency for the industry in terms of the principles applied in tariff assessment. This also demonstrates compliance to the requirements of the Comprehensive Maritime Transport Policy (CMTTP) and other government policies, and responds to the needs of the stakeholders.
Enhance the capacity to deal with all the output requirements of the organisation.	Revision of the organogram as well as implementation of the training plan to ensure development of staff.
Continue to maintain its reputation as an organisation with integrity focused on delivery and excellence.	Continuous public consultations with the maritime sector and stakeholders on the decisions of the Regulator, and the processes followed to reach such decisions, thereby creating confidence in the Regulator's decisions. Feedback is obtained through the Public Regulatory Review process.
Ensure that the NPA complies with the Act.	Compliance reviews performed on contracts that fall within the jurisdiction of the Regulator to ensure that such contracts are in compliance with government policies, frameworks and guidelines. This includes a review of the NPAs compliance with B-BBEE.
Consider the proposed tariffs of the Authority and regulate the provision of adequate, affordable and efficient port services and facilities to ensure enhanced competition and investment.	<p>Analysed the NPA's 2021/2022 – 2023/24 tariff application and issued a RoD in line with the principles set in the tariff methodology and tariff strategy, which enables the NPA to make appropriate investment in port infrastructure, facilities and services and the maintenance thereof. Maintained an average of 0% increase in port tariffs responding to President Ramaphosa's call for reduced port administered prices while ensuring sustainability of the NPA ;</p> <p>Assessed and reported on port performance and setting of operational targets for port terminals under the Terminal Operator Performance Standards (TOPS); Implemented equity of access strategy to allow entry of new port participants; implemented WEGO to enhance efficiency in the port system.</p>

# Institutional Programme Performance



## PROGRAMME 1:

# Administration

**Section 31(1)(a) of the National Ports Act states that: 'The Regulator consists of a chairperson and a minimum of six and a maximum of twelve other members appointed by the Minister for a period of up to five years at a time'.**

The Minister of Transport appointed Regulator members effective 01 June 2020 for a three-year term. This was a significant milestone for the Ports Regulator because without members the Regulator is unable to carry out its governance, other statutory responsibilities and oversight role as required by the PFMA and other legislation. With the appointment of members, the Regulator's functions are back on track and its Tribunal function commenced and accelerated to reduce the Tribunal backlog. Following the expiry of CEO Mr. Mahesh Fakir's contract at the end of October 2020, the Minister of Transport appointed Ms. Mukondeleli Johanna Mulaudzi as Acting CEO from November 2020 to January 2021 when Cabinet approved her appointment as CEO effective 01 January 2021.

The Secretariat reviewed policies and procedures covering all areas of administration and support, while strategies and frameworks were updated to ensure ongoing guidance of the entity's business processes with regards the finance, human resources, information technology and risk management functions. Regular compliance monitoring and review has resulted in a system of strong internal control and adequate governance practices ensuring minimal instances of non-compliance by the Regulator.

The Regulator achieved all its Administration programme KPI's which focus on effective management of the entity's performance, employee performance, policy management and oversight reporting by the secretariat. These KPI's ensure that the entity complies with all key legislated deadlines, and enable effective oversight by Regulator members.

The unprecedented global outbreak of the COVID-19 pandemic in March 2020 that forced South

Africa into hard lockdown for six weeks followed by various levels of relaxation, affected the entire 2020/2021 financial year. The Regulator secretariat developed a COVID-19 Business Continuity Plan which outlined how the organisation would respond to each of the five lockdown levels, as well as all the safety protocols that have to be observed to ensure safety of employees, Regulator members and stakeholders.

The secretariat quickly adapted to the new normal in holding quarterly Regulator and Regulator sub-committee meetings including the Annual General Meeting and stakeholder engagements, virtually.

Undertaking the tariff assessment 'roadshows' stakeholder engagement enabled the Regulator to reduce the number of sessions to a provincial level covering KwaZulu-Natal, Eastern Cape, Western Cape, and Gauteng as opposed to municipal level meetings in these provinces.. The Tribunal hearings were also conducted virtually which resulted in Record of Decision being issued in September 2020. To a large extent business processes proceeded normally under the new circumstances ensuring delivery on the annual performance plan and the achievement of all Administration KPI's.

International and local travel restrictions, coupled with the restrictions of gatherings as the result of the pandemic, led to the transfer of all planned engagements to virtual platforms and the cancellation of extensive training and development for staff and new Regulator members. The outcome of this was a 13.27% under expenditure of the budget for this programme as travel including subsistence allowance, catering, venue hire, training and development and international travel could not take place.



OUTCOME	OUTPUT	OUTPUT INDICATOR	AUDITED ACTUAL PERFORMANCE 2018/2019	AUDITED ACTUAL PERFORMANCE 2019/2020	PLANNED ACTUAL TARGET 2020/2021	ACTUAL ACHIEVEMENT 2020/2021	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT 2020/2021	REASON FOR DEVIATION	
The running of an efficient and effective administration system.	All Corporate Services Policies reviewed on an annual basis.	IT, HR, and Finance policies reviewed by the Accounting Officer and approved by the Regulator.	<b>Achieved.</b>		<b>Achieved.</b> Policies reviewed and approved by the Regulator. Policies signed off by the Accounting Authority.	Annual review of organisational policies. Submit a report on these to the Regulator for approval.	<b>Achieved.</b> Policies reviewed and approved by the Regulator. Policies signed off by the Accounting Authority.	None.	N/A
	Organisational and employee performance improved.	Organisational performance monitored and reported on to the Regulator quarterly.	<b>Achievement of all targets</b> set in the Annual Performance Plan.		<b>Achieved.</b> Quarterly reports against planned performance were submitted to DoT and the Regulator.	Quarterly reports against planned performance were submitted to DoT and the Regulator.	<b>Achieved.</b> Quarterly reports against planned performance were submitted to DoT and the Regulator.	None.	N/A
		Employee PMS monitored and enhanced by conducting half year and final employee performance reviews to be provided to the Accounting Officer.	Assessment of employee performance to improve organisational efficiency and performance.		<b>Achieved.</b> Half year and final employee performance assessment performed.	Half year and final employee performance assessment performed.	<b>Achieved.</b> Half year and final employee performance assessment performed.	None.	N/A
	Align organisational and employee performance management system with strategy and APP.	Organisational performance monitored and reported on to the Regulator quarterly.	Monitoring employee performance in order to achieve alignment with strategic objectives		<b>Achieved.</b> Employee performance monitored and reported on in the quarterly management report to the Regulator.	Employee performance monitored and reported on in the quarterly management report to the Regulator.	<b>Achieved.</b> Employee performance monitored and reported on in the quarterly management report to the Regulator..	None.	N/A
	HR management and ongoing skills development of members and staff to enhance the effectiveness and efficiency of the organisation.	Regulator members and staff matters dealt with and training attendance on Regulatory matters reported annually.	Assessment of employee performance to improve organisational efficiency and performance.		<b>Achieved.</b> Secretariat and Regulator members received training during the year.	Secretariat and Regulator members received training during the year.	<b>Achieved.</b> Secretariat and Regulator members received training during the year.	None.	N/A

**Strategy to overcome areas of underperformance**

The public entity achieved all the set targets under the Administration programme.

**Reporting on the Institutional Response to the COVID-19 Pandemic**

The Ports Regulator put in place a plan to respond to the COVID-19 pandemic in line with the

Disaster Management Act and Regulations from 01 April 2020 until 31 March 2021. The institutional response focused first and foremost on protecting Regulator staff from exposure to the virus; secondly on complying with COVID-19 protocols as part of government and the country's efforts to minimise the spread of the virus; thirdly ensuring that port users were able to access the services that they expect from the Regulator; and

finally to effectively communicate any adjustment to services, where applicable.

The Regulator's immediate response was to develop a COVID-19 Business Continuity Plan (BCP) in consultation with staff, which allowed staff to work remotely and outlined the safety protocols that would be followed by all staff, Regulator members, as well as other stakeholders

when engaging with Ports Regulator of SA. The BCP, which was subsequently adjusted as required, took into account and outlined the organisation's response protocols to all five lockdown alert levels and working from home scenarios for employees.

COVID-19 and related Disaster Management Regulations took effect at the point that the

Tribunal function – suspended during the 2019/2020 financial year due to an absence of Regulator members – was to restart. The restart of this quasi-judicial function and its service to the maritime sector, began after a brief delay while the PRSA put in place the virtual platforms required for consultations and conducting hearings.

The Regulator procured Personal Protective Equipment (PPE) in compliance with Treasury Guidelines and submitted PPE procurement reports to the National Treasury as required.

### Linking performance with budgets

The Regulator underspent its administration budget as the COVID-19 regulations restricted meetings and travel which put most of the organisations planned face-to-face activities on hold or alternatively transferred them to online virtual platforms.

These included training and development, stakeholder engagements, Board oversight and outreach programmes to each of the commercial ports, and the holding of Tribunal hearings, which would normally be in person at the Regulator's offices. Quarterly governance meetings by Regulator members at Board and subcommittee level to review the implementation of the APP and address any strategic matters facing the organisation in compliance with PFMA, were held virtually.

In response to the uncertainty around how government would respond to COVID-19 requirements and the consequent impact they had on the fiscus, and a possible reduction in budgets and allocations to entities, the filling of vacant posts, which had been advertised at the time of lockdown, was put on hold. As a result of the above the Regulator was unable to fully spend its allocated 2020/2021 annual budget resulting in an under expenditure on the Administration budget.



## ADMINISTRATION BUDGET EXPENDITURE

PROGRAMME / ACTIVITY / OBJECTIVE	2020/2021			2019/2020		
	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE
	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)
Administration	15 250	13 461	2 059	14 706	13 483	1 223
<b>TOTAL</b>	<b>15 250</b>	<b>13 461</b>	<b>2 059</b>	<b>14 706</b>	<b>13 483</b>	<b>1 223</b>



Pilot boat

## PROGRAMME 2:

# Economic Regulation

The Economic Regulation Programme had numerous achievements during the year under review, and continued to expand the level of sophistication with which economic regulation was implemented in the South African ports system.

The Regulator published a number of reports, methodologies and decisions during the year. These included an update of the Port Sector Review and a number of internal research and methodology development projects conducted to further enhance and rationalise the setting of port infrastructure and services tariffs.

The implementation of the 2019/2020 Tariff Methodology, the last under the 2018/19–2020/2021 multi-year methodology, was set in the context of the COVID-19 pandemic and its potential impact on port operations and revenue.

While the NPA applied for a 19.74% increase in tariffs for the financial year 2021/21 and indicative tariffs of -0,29% and -7,86% in the two outer

years, the Regulator applied the tariff methodology, considered submissions from port users and the prevailing economic conditions to arrive at a balanced decision on appropriate tariffs for 2021/2022.

In its Record of Decision (RoD) published on 30 November 2020, the Regulator approved a below inflation, average fixed tariff that remained unchanged for 2020/2021 and the indicative tariffs for the two subsequent years.

The tariff was differentiated with a 10% decrease in cargo dues for export containers whilst import container cargo dues decreased by 3%. Some increases, aligned with the implementation of the tariff trajectory as set out in the Tariff Strategy published in 2015, and updated in 2020 that aim

to correct the inherent cross subsidies in the tariff book, saw marine coal and magnetite tariffs increase by 5%. All other tariffs remained unchanged.

In order to provide a continuous update on the implementation of the Tariff Strategy, and the changes to base tariffs due to changes in port structure, volume forecasts etc., the Regulator continued to implement the updated Tariff Strategy that reflects the revalued Regulatory Asset Base.

In addition, updated base rates for the 2021/2022 financial year were published in the RoD reflecting transparent tariff trajectories for different

commodity and cargo types, as these provide an indication of the tariff trajectory during the estimated 10-year implementation period, in current terms. This is a continuation towards a truly cost reflective tariff book. Already the publication of cost reflective tariffs over the past four RoD's has increased the level of transparency in the methodology and port tariff development process.

The review of the multi-year tariff methodology which was adopted and published in February 2020, will support the Regulator's consistency in the application of economic regulation of South African Port infrastructure through the implementation of the third multi-year (three-year)

methodology applicable to the 2021/2022–2023/2024 tariff years. The consistent application and refinement of the methodology saw not only the full implementation of the Valuation of Assets Methodology, but also the introduction of a more focused WEGO calculation as well as a “downtime adjuster” which aims to compensate port users for preventable downtime in the port system.

The ninth iteration of the Global Port Pricing Report was published in 2020/2021 as well as a number of internal research reports, most of which feeds into the decision making of the Regulator and contributed greatly to the quality of decision

making by the Regulator. The continued clean-up of the tariff book and implementation of the Tariff Strategy will ensure not only that the underlying costs of providing public infrastructure is appropriate but also incentivises more efficient operations as well as effective expansion and development of the port system.

## ECONOMIC REGULATION | PROGRAMME / SUB-PROGRAMME



OUTCOME	OUTPUT	OUTPUT INDICATOR	AUDITED ACTUAL PERFORMANCE 2018/2019	AUDITED ACTUAL PERFORMANCE 2019/2020	PLANNED ACTUAL TARGET 2020/2021	ACTUAL ACHIEVEMENT 2020/2021	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT 2020/2021	REASON FOR DEVIATION
Ongoing implementation of economic regulation of ports (price, access, and institutional structure).	Conduct research on the economic contribution of the South African port system in the South African motor vehicle manufacturing logistics chain.	Publish logistics research report.	<b>Achieved.</b> Report finalised and submitted to RegCom.	<b>Achieved.</b> Report finalised and submitted to RegCom	Research report on automotive logistics chain.	<b>Achieved.</b> Report finalised and submitted to RegCom	None.	N/A
	Complete tariff assessment in accordance with the multi-year tariff methodology and publish record of decision.	RoD and Tariff book published.	<b>Achieved.</b> Tariff book published.	<b>Achieved.</b> Tariff book published.	Implement the approved tariff methodology and Tariff strategy through the annual tariff decision.	<b>Achieved.</b> Tariff book published.	None.	N/A
	Conduct a regulatory impact assessment on port regulation in the South African port system.	Regulatory impact assessment completed.	<b>Achieved.</b> Regulatory impact assessment on port tariffs complete.	<b>Achieved.</b> Regulatory impact assessment on port tariffs complete.	Regulatory impact assessment on port tariffs complete.	<b>Achieved.</b> Regulatory impact assessment on port tariffs complete.	None.	N/A
	Conduct a market concentration analysis on the South African ports system.	Market concentration report finalised.	<b>Achieved.</b> Report on market concentration in the port sector completed.	<b>Achieved.</b> Report on market concentration in the port sector completed.	Report on market concentration in the port sector completed.	<b>Achieved.</b> Report on market concentration in the port sector completed.	None.	N/A
	Perform lease management consultation and analysis.	Report on lease management.			Lease Management Review.	<b>Achieved.</b> Lease Management Review completed.	None.	N/A



OUTCOME	OUTPUT	OUTPUT INDICATOR	AUDITED ACTUAL PERFORMANCE 2018/2019	AUDITED ACTUAL PERFORMANCE 2019/2020	PLANNED ACTUAL TARGET 2020/2021	ACTUAL ACHIEVEMENT 2020/2021	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT 2020/2021	REASON FOR DEVIATION	
	Report on coastwise cargo flows and vessel movements.	Report on coastwise cargo flows and vessel movements.	N/A		N/A	Report on coastwise cargo flows and vessel movements.	<b>Achieved.</b> Report on coastwise cargo flows and vessel movements completed.	None.	N/A
	Update and publish a Port Sector Review covering all commercial ports in the South African ports system.	Publish Port Sector Review	<b>Achieved.</b> Ports Sector Review completed.		<b>Achieved.</b> Ports Sector Review completed.	Port Sector Review	<b>Achieved.</b> Ports Sector Review completed.	None.	N/A
	Research paper on tariff methodologies for regulatory tariff setting in freight logistics transport.	Report finalised.	N/A		N/A	International review of regulatory methodologies in freight logistics transport.	International review of regulatory methodologies in freight logistics transport.	None.	N/A

### Strategy to overcome areas of underperformance

The public entity achieved all the set targets on the Economic Regulation programme.

### Linking performance with budgets

The programme underspent its budget by R4,346 million, this under expenditure relates to the budget for employee costs. There was a delay in the appointment of the Manager Policy, Strategy & Research as a result of COVID-19 national lockdown, and a research analyst resigned in December 2020. The planned engagements (meetings/workshops etc.) with Regulator members and

other stakeholders could not take place as a result of the national lockdown. This included tariff assessment roadshows which play a crucial role in the core business of the Regulator. These roadshows and other engagements were undertaken virtually which enabled the Economic Regulation programme to achieve its set targets despite under spending on its budget.

### Staff posts

The post of Manager: Policy, Strategy and Research was filled in February 2021 and the Research Analyst post will be filled during the 2021/2022 financial year.



### ECONOMIC REGULATION BUDGET EXPENDITURE

PROGRAMME / ACTIVITY / OBJECTIVE	2020/2021			2019/2020		
	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE
	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)
Economic Regulation	8 123	3 777	4 346	7 735	3 804	3 931
<b>TOTAL</b>	<b>8 123</b>	<b>3 777</b>	<b>4 346</b>	<b>7 735</b>	<b>3 804</b>	<b>3 931</b>



Maydon Wharf berth 1-2



Ngqura container terminals

### PROGRAMME 3:

# Industry Development

The Industry Development unit continues to facilitate the Regulator's consultation process through a stakeholder engagement programme that focuses on the Regulator's key processes in economic regulation of the port system.

This includes:

- continuous engagement with stakeholders and monitoring of port operational efficiency through the Weighted Efficiency Gains from Operations (WEGO);
- quarterly monitoring of the NPA's expenditure on their capital projects (CAPEX); and
- transformation in SA terminals, commercial leases and licenses, and various port activities as licensed, in line with the National Ports Act

of 2005 objective of promoting the development of an effective and productive South African port industry that is capable of contributing to the economic growth and development of the country.

The need for transformation of the SA port system to ensure that access through the provision of port infrastructure and related services to black owned companies, companies owned by women and that people from rural areas and townships benefit from ports, is evidenced by the trends that emerge from the Regulator's review of the B-BBEE standing of companies contracted for different activities and functions in the port system.

The Regulator's annual tariff application public hearings were held virtually immediately after the NPA submitted its 2021/2022–2023/24 tariff application on 01 August 2020. The roadshows were held in separate virtual sessions for KwaZulu-Natal and Eastern Cape on 31 August 2020, and one session for the Western Cape on 01 September 2020.

A stakeholder engagement report was published on the Regulator's website after the roadshows reflecting concerns, comments and inputs by port users on different aspects of the NPAs tariff application. Some of the issues raised included:

- concerns over the NPA's long outstanding Island View strategy which emphasises opportunities for black economic empowerment investments;
- the NPA's continued under spending on CAPEX even with the introduction of the 'game-changer' intervention in response to concerns raised by the Regulator and port users in previous years;

- the impact of developments of other ports in the continent in relation to the long awaited container capacity initiatives and repositioning (e.g. berth deepening, Maydon Wharf, Bayhead, Dig Out Port, and Salisbury Island);
- measures taken by the NPA to enforce oversight role over TPT's performance; and
- lack of efficiency in port operations.

Industry Development conducted a five-year public regulatory review in line with regulatory principle 22, by seeking and obtaining public submissions on the quality and relevance of its regulatory policies and methods. The feedback received from the 2020 stakeholder survey indicates that most stakeholders are satisfied with the Regulator's conduct and believe that the Regulator's decisions are of high quality and are satisfactory. This can be seen with the stakeholder ratings of the PRSA on neutrality or independence; responsiveness, and on quality of decisions.

NEUTRALITY OR INDEPENDENCE	TARIFF	TRIBUNAL
The Regulator's conduct or decision appeared neutral	73, 17%	63, 41%
The Regulator's conduct and decisions appeared slightly biased	13, 82%	13, 82%
The Regulator's conduct and decisions appeared biased	7, 32%	4, 88%
N/A	5, 69%	17, 89%

RESPONSIVENESS OF THE PRSA	TARIFF	TRIBUNAL
Responded within a reasonable time period	51, 22%	43, 90%
Responded within legislated timeframes	43, 09%	39, 84%
Did not respond within a reasonable time period	4, 07%	11, 38%
Did not respond at all	1, 63%	4, 88%

QUALITY OF DECISIONS	TARIFF	TRIBUNAL
The decision was of a high quality	41, 46%	27, 64%
The decision was of a satisfactory quality	44, 72%	43, 90%
The decision was poorly taken	5, 69%	6, 5%
N/A	8, 13%	21, 95%



To better understand the efficiencies at port level, Industry Development completed the annual analysis of Terminal Operator Performance Standard (TOPS) and KPI information which tracked terminal performance over the past three years (2017/18–2019/2020).

The TOPS analysis keeps the Regulator abreast of progress on and challenges in port operations, as they relate to setting performance targets relative

to optimal terminal performance standards, given installed capacities. The analysis outcomes are shared with port users through the PCC KPI sub-committee. Although it is not the main consideration, the analysis influences the WEGO process and the assignment of weights to the relevant key indicators.

Extensive consultation with port users represented by PCC KPI sub-committees in each

port and with the NPA resulted in the retention of the five WEGO KPIs for the 2021/2022 period with the necessary adjustment to the weights to reflect areas of focus by the NPA and terminal operators to drive operational improvements, especially with the long awaited award and penalty system of the NPA due to be implemented during 2021/2022.

Industry Development, together with Legal Department, continued to monitor the implementation of B-BBEE in the ports sector and made recommendations on changes to be made in the National Ports Act Regulations of 2007, issued in terms of section 80(1)(a),(c),(d),(f) and (g) of the Act, and related processes to enable real transformation in the port system

## INDUSTRY DEVELOPMENT | PROGRAMME / SUB-PROGRAMME



OUTCOME	OUTPUT	OUTPUT INDICATOR	AUDITED ACTUAL PERFORMANCE 2018/2019		AUDITED ACTUAL PERFORMANCE 2019/2020	PLANNED ACTUAL TARGET 2020/2021	ACTUAL ACHIEVEMENT 2020/2021	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT 2020/2021	REASON FOR DEVIATION
Engage stakeholders and monitor provision of infrastructure and facilities; and promotion of efficiencies in the port system.	Implementation of stakeholder engagement plan and knowledge management plan.	Quarterly reports on stakeholder engagement.	<b>Achieved.</b> Four Quarterly stakeholder engagement reports.		<b>Achieved.</b> Four Quarterly stakeholder engagement reports.	Quarterly stakeholder engagement report.	<b>Achieved.</b> Four Quarterly stakeholder engagement reports.	None.	N/A
		Public regulatory review.	Not applicable for this year.		Not applicable for this year.	Public regulatory review with regulatory impact assessment.	<b>Achieved.</b> One Public regulatory review report.	None.	N/A
		Report on engagements with Department of Transport on coastal shipping and developments on regional maritime transport matters in support of Oceans Economy and other Ministerial maritime priorities.	Not applicable for this year.		Not applicable for this year.	Quarterly reports.	<b>Achieved.</b> One Report on support provided to DoT on coastal shipping.	None.	N/A
		Port Economic Regulation Knowledge Management System.	Not applicable for this year.		Not applicable for this year.	Framework for Knowledge Management System developed and approved.	<b>Achieved.</b> PRSA Economic Regulation Knowledge Management Framework developed.	None.	N/A
	Monitor and report on port performance.	Report covering the ongoing monitoring of port performance.	<b>Achieved.</b>		<b>Achieved.</b>	Report on SA port performance: WEGO, TOPS, MOPS, ROPS, HOPS.	<b>Achieved.</b> One Report on monitoring of equity of access – assessment of trends with B-BBEE.	None.	N/A



OUTCOME	OUTPUT	OUTPUT INDICATOR	AUDITED ACTUAL PERFORMANCE 2018/2019	AUDITED ACTUAL PERFORMANCE 2019/2020	PLANNED ACTUAL TARGET 2020/2021	ACTUAL ACHIEVEMENT 2020/2021	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT 2020/2021	REASON FOR DEVIATION	
	Monitor and report on equity of access in port infrastructure and services as per strategy.	Report: monitoring equity of access in port facilities and services and development of strategy.	Achieved.		Achieved.	Monitor and report on implementation of equity of access strategy.	Achieved. One Report on monitoring of equity of access – assessment of trends with B-BBEE.	None.	N/A
	Liaison with NPA and Department of Transport on transformation initiatives to include rural areas, townships and relevant transformation requirements	Publish Port Sector Review	Not applicable for this year.		Not applicable for this year.	Report on support provided to the Department of Transport on rural, township, and other focus areas for transformation.	Achieved. One Report on support provided to the Department of Transport on rural, township, and other focus areas for transformation .	None.	N/A
	Monitor infrastructure productivity and/or efficiency targets for existing infrastructure.	Report: non-simulated efficiency/productivity targets for existing infrastructure and adequacy of infrastructure.	Achieved.		Achieved.	Draft report with proposed non-simulated productivity/ efficiency targets on selected terminals.	Not achieved.	Procurement process hampered by COVID-19 restrictions.	Procurement started in Quarter 4 for completion in 2021/2022.
	Assessment of Authority's CAPEX programme.	CAPEX Assessment report.				CAPEX assessment report per quarter.	Achieved. Four Quarterly CAPEX assessment reports.	None.	N/A

### Strategy to overcome areas of underperformance

The entity could not proceed with one project during the year as a result of the effects of COVID-19. The project was deferred to the following financial year, and the procurement process for the project was in progress by the end of March 2021. The entity will ensure that the project is finalised on time in the 2021/2022 financial year.

### Linking performance with budgets

The entity could not spend the entire budget for the Industry Development programme as a result of COVID-19 related implications. The Industry Development programme is focused on issues of stakeholder engagement which includes attendance of PCC and NPCC; Board and/or staff outreach programmes to the various ports;

engagements with the DoT in support of the Minister of Transport's priorities for building the maritime sector. This included supporting the Department in the planning and hosting of the World Maritime Day Parallel Event in Durban scheduled for October 2020; PRSA staff participating in career guidance/awareness events hosted by the DoT and/or the Transport Education and Training Authority (TETA) in order to contribute to the maritime sector skills pipeline broadly, and economic regulation specifically. The World Maritime Day Parallel event could not take place due to lockdown and international travel restrictions, and allocated funds for the event were unspent.

All costs relating to planned and ad-hoc stakeholder engagements were therefore not incurred. There was also a delay with filling the Manager:

### INDUSTRY DEVELOPMENT BUDGET EXPENDITURE



PROGRAMME / ACTIVITY / OBJECTIVE	2020/2021			2019/2020		
	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE
	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)
Economic Regulation	7 259	3 792	3 467	6 818	3 826	2 992
<b>TOTAL</b>	<b>7 259</b>	<b>3 792</b>	<b>3 467</b>	<b>6 818</b>	<b>3 826</b>	<b>2 992</b>

Industry Development position as a result of the pandemic. The position was advertised in February 2020 but the recruitment process had to be put on hold owing to the hard lockdown implemented by the government. During the last

quarter of the financial year, the budget for the post of Executive Manager: Industry Development was not spent as the incumbent was promoted to the post of CEO of the Ports Regulator.

## PROGRAMME 4:

# Tribunal

Section 30(2)(a) of the National Ports Act states that “the Regulator must hear appeals and complaints contemplated in sections 46 and 47, respectively, and investigate complaints contemplated in section 48”. Complaints management, appeals and hearings are conducted in line with the 2009 Directives issued in terms of Section 30(3) of the Act.

Pursuant to the appointment of Regulator Members in June 2020, the Tribunal function began, once again, to be effectively and efficiently run. In the early days of the COVID-19 lockdown period, between March and August 2020, no matters were heard in-person by the Tribunal, despite the active matters being ready for both pre-hearings and hearings which were indefinitely deferred.

Effective from September 2020 virtual hearings were held and a total of six matters were disposed off by way of issuance of Records of

Decision and settlement reached by the parties. All pending matters before the Regulator are and will be heard by the Tribunal or settled through alternative dispute resolution measures during 2021/2022 financial year.

### Strategy to overcome areas of underperformance

The public entity achieved all the set targets for the Legal and Compliance programme.

### Reporting on the Institutional Response to the COVID-19 Pandemic

The entity in response to the COVID-19 pandemic and lockdown restrictions implemented virtual Tribunal hearings. The virtual hearings allowed the entity to deliver Records of Decision in September 2020 and more decisions will be issued in future in this manner as the pandemic is still affecting the business activities.

### Linking performance with budgets

As Regulator members had not been appointed during 2019/2020 financial year Tribunal hearings were suspended. When regulator members were appointed in June 2020 Regulator members prioritised clearing the Tribunal backlog and the appointment of a Senior Counsel, in terms of section 50(a) of the Act to assist Regulator members in the complex matters before the Tribunal. The sourcing of a Senior Counsel not only resulted in a more efficient and effective handling of matters, it also increased expenditure on the Tribunal.

The savings achieved in other programmes, as a result of COVID-19 lockdown requirements, were reprioritised and allocated to this objective, thereby ensuring budget availability to enable the acceleration of the Tribunal cases and activities. This resulted in the original budget being over-spent as reported below. All the KPI's for the programme were met. There were also changes in the staff complement of the Legal Department with the termination of employment of the Manager: Legal, Compliance and Tribunal, Adv. Sohana Goordeen effective 25 October 2020.



### LEGAL AND COMPLIANCE BUDGET EXPENDITURE

PROGRAMME / ACTIVITY / OBJECTIVE	2020/2021			2019/2020		
	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE
	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)
Tribunal	5 058	7 914	(2 856)	4 974	1 915	3 059
<b>TOTAL</b>	<b>5 058</b>	<b>7 914</b>	<b>(2 856)</b>	<b>4 974</b>	<b>1 915</b>	<b>3 059</b>

## TRIBUNAL | PROGRAMME / SUB-PROGRAMME



OUTCOME	OUTPUT	OUTPUT INDICATOR	AUDITED ACTUAL PERFORMANCE 2018/2019	AUDITED ACTUAL PERFORMANCE 2019/2020	PLANNED ACTUAL TARGET 2020/2021	ACTUAL ACHIEVEMENT 2020/2021	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT 2020/2021	REASON FOR DEVIATION
Operating an effective and efficient tribunal to hear complaints and appeals under the National Ports Act.	Optimised operational efficiency of the hearing panel.	Report on performance assessment of case management, adjudication of matters, and decision-making.	<b>Achieved.</b> Four Quarterly Tribunal Reports to the Regulator.	<b>Achieved.</b> Four Quarterly Tribunal Reports to the Regulator.	Tribunal supported by the Secretariat to operate an efficient hearing panel on complaints and appeals and report quarterly on case management, adjudication, and decision-making of the Tribunal.	<b>Achieved.</b> Four Quarterly Tribunal Reports to the Regulator.	None.	N/A
		Number of Complaints and Appeals Guide developed.	N/A	N/A	One Complaints and Appeals Guide	<b>Achieved.</b> One Complaints and Appeals Guide.	None.	N/A



Ore loading at Saldanha Bay

## PROGRAMME 5:

# Compliance Monitoring

The Compliance function of the Ports Regulator is enabled by Section 30(1)(c) of the National Ports Act which states that “the main functions of the Regulator are to monitor the activities of the Authority to ensure that it performs its functions in accordance with this Act”.

This is one of the key functions of ensuring that the Authority complies with the Act and its broader legislative framework, including the National Ports Regulations, 2007 issued in terms of section 80(1)(a),(c),(d),(f) and(g) of the Act.

The Ports Regulator in fulfilling this role also strives to ensure compliance with the broader legislative framework applicable and relevant to its environment, including key pieces of legislation as contained in its Regulatory Universe, such as, the National Ports Act, 2005 (Act No. 12 of 2005),

Public Finance Management Act, 1999 (Act No. 1 of 1999, as amended), the Labour Relations Act, 1995 (Act No. 6 of 1995), Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) as well as any other relevant and applicable legislation.

Quarterly, the Ports Regulator reviews data, information and documents submitted by the Authority, covering the following key areas:

- The NPA as a corporate entity;
- Sections 56, 57, 65 and 66 agreements, licences and lease agreements, respectively;
- B-BBEE compliance;
- Section 79 Directives issued; and
- General Compliance in terms of Section 72(4) agreements.

The Regulator’s approach to monitoring across the port system is to engage and work with the NPA on an ongoing basis on its compliance, and findings are reviewed to enable improved and increased compliance. The primary purpose of compliance monitoring is to determine the extent to which the Authority has met the requirements embodied in all Chapters of the National Ports Act, along with the 2007 Regulations, save for Chapter 5 of the Act.

The Ports Regulator is also required on an ongoing basis, to examine all agreements, leases and licenses of port terminals, port services, and port facilities, provided by the Ports Authority within its

domain as port landlord, to ensure the Act has been adhered to.

The Ports Regulator aims to ensure that compliance monitoring of the port industry operations and development is a joint process of compliance monitoring and regulation of the port sector. The Ports Regulator further aims to ensure that the NPA is compliant with the Act.

In the financial year under review, quarterly compliance review reports and quarterly B-BBEE compliance implementation reports, were submitted and approved by the Chief Executive Officer and the Regulator.

All the reports compiled ensure that the Ports Regulator plays its oversight role, effectively and efficiently, identifies, prevents, and corrects any non-compliance risks with the applicable laws, regulations, company policies etc. The compliance reports also pronounce on whether or not the Authority executes its activities in line with the requirements of the National Ports Act and its Regulations.

### PRSA’s Regulatory Compliance

Section 51(1)(h) of the Public Finance Management Act (PFMA) provides that “an accounting authority for a public entity – must comply, and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity”.

Compliance with all relevant and applicable legislation, regulations, standards and codes is imperative to the Ports Regulator, and as a result the organisation has managed to strengthen its compliance systems with the aim of fully complying with the applicable regulatory frameworks.

This process of strengthening compliance has further led to the development and approval of a compliance management framework, a compliance register, policies and procedures that govern the operating activities of the organisation as it aims to achieve its output in line with its Strategic Objectives and Annual Performance Plan, which are reviewed annually.



OUTCOME	OUTPUT	OUTPUT INDICATOR	AUDITED ACTUAL PERFORMANCE 2018/2019	AUDITED ACTUAL PERFORMANCE 2019/2020	PLANNED ACTUAL TARGET 2020/2021	ACTUAL ACHIEVEMENT 2020/2021	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT 2020/2021	REASON FOR DEVIATION
Monitoring the port industry and its compliance with the National Ports Act and other Regulatory Instruments to ensure access to, and competition within, the port system.	Improved levels of compliance with the Act by the NPA.	Number of compliance monitoring conducted.	<b>Achieved.</b> Four Quarterly Compliance Review Reports to the Regulator and 1 x Annual S.30 (5) report for the Executive Authority.	<b>Achieved.</b> Four Quarterly Compliance Review Reports to the Regulator and 1 x Annual S.30 (5) report for the Executive Authority.	Five Quarterly Compliance Monitoring reports.	<b>Achieved.</b> Four Quarterly Compliance Review Reports to the Regulator and 1 x Annual S.30 (5) report for the Executive Authority.	None.	N/A
	Improved levels of equity access in the ports system by HD Is in accordance with the relevant Regulatory instruments.	Number of B-BBEE Compliance reviews conducted.	<b>Achieved.</b> One Annual B-BBEE Compliance Review Report to the Regulator.	<b>Achieved.</b> One Annual B-BBEE Compliance Review Report to the Regulator.	One Annual B-BBEE Compliance Review Report to the Regulator.	<b>Achieved.</b> One Annual B-BBEE Compliance Review Report to the Regulator.	None.	N/A
		Number of research projects on long-term leases prejudicial to historical disadvantaged group as per section 67 (1) (c) of the National Ports Act.	N/A	N/A	Four Quarterly Legal Research Reports.	<b>Achieved.</b> One Legal Research Project Report on long-term leases	None.	N/A
	Aligned and improved legal instruments.	Number of engagements with DoT on the legislative development regarding S.80(1)(e) Transitional Regulations read with S.3(2) of the Act.	N/A	N/A	Four Legislative Development Quarterly Reports.	<b>Achieved.</b> Four Quarterly Progress Reports submitted to the CEO/Regulator on the legislative development regarding S.80(1)(e) Transitional Regulations read with S.3(2) of the Act.	None.	N/A
		Number of engagements with the DoT and the DTIC on legislative development regarding new B-BBEE Maritime Sector Codes.	N/A	N/A	Four Legislative Development Quarterly Reports.	<b>Achieved.</b> Four Quarterly Progress Reports submitted to the CEO/Regulator on legislative development regarding new B-BBEE Maritime Sector Codes.	None.	N/A
		Number of engagements with the DPE on legislative development regarding Corporatisation of NPA (Section 3(2) of the National Ports Act).	N/A	N/A	Four Legislative Development Quarterly Reports	<b>Achieved.</b> Four Quarterly Progress Reports submitted to the CEO/Regulator on the status of corporatisation of the NPA.	None.	N/A



OUTCOME	OUTPUT	OUTPUT INDICATOR	AUDITED ACTUAL PERFORMANCE 2018/2019	AUDITED ACTUAL PERFORMANCE 2019/2020	PLANNED ACTUAL TARGET 2020/2021	ACTUAL ACHIEVEMENT 2020/2021	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT 2020/2021	REASON FOR DEVIATION	
Monitoring the port industry and its compliance with the National Ports Act and other Regulatory Instruments to ensure access to, and competition within, the port system.	Aligned and improved legal instruments.	Number of engagements with DoT on the legislative development regarding the implementation of the ERT Bill.	N/A		N/A	Four Legislative Development Quarterly Reports.	<b>Achieved.</b> Four Quarterly Progress Reports submitted to the CEO/Regulator on the legislative development regarding the implementation of the ERT Bill.	None.	N/A
		Number of draft amendments of the National Ports Regulations, 2007.	N/A		N/A	One amended National Ports Regulations.	<b>Achieved.</b> One reviewed National Ports Regulations.	None.	N/A
		Number of draft amendments of the National Ports Directives, 2009.	N/A		N/A	One amended National Ports Directives.	<b>Achieved.</b> One reviewed National Ports Directives.	None.	N/A
Ensuring good governance and sustainability of the organisation.	Governance and compliance framework in place for the organisation.	Governance and compliance checklist reported on quarterly to the Regulator.	<b>Achieved.</b> Good governance practices established and implemented throughout the organisation,		<b>Achieved.</b> Good governance practices established and implemented throughout the organisation,	Ensuring good governance and compliance of the organisation.	<b>Achieved.</b> Good governance practices established and implemented throughout the organisation,	None.	N/A

**Strategy to overcome areas of underperformance**

The public entity achieved all the outputs for this programme.

**Linking performance with budgets**

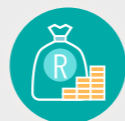
There was under expenditure for the programme as a result of delays on the appointment processes for vacant funded positions in the department, also owing to the effects of the COVID-19 pandemic. The savings from this programme were reprioritised to the Tribunal programme.

**MONITORING AND COMPLIANCE BUDGET EXPENDITURE**



PROGRAMME / ACTIVITY / OBJECTIVE	2020/2021			2019/2020		
	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE
	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)
Monitoring & Compliance	4 392	1 676	2 716	4 001	3 388	613
<b>TOTAL</b>	<b>4 392</b>	<b>1 676</b>	<b>2 716</b>	<b>4 001</b>	<b>3 388</b>	<b>613</b>

# Revenue Collection



## SOURCES OF REVENUE

SOURCES OF REVENUE	2020/2021			2019/2020		
	ESTIMATE	ACTUAL AMOUNT COLLECTED	(OVER)/UNDER COLLECTION	ESTIMATE	ACTUAL AMOUNT COLLECTED	(OVER)/UNDER COLLECTION
	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)
Government Grants and Subsidies	38 822	38 822	0	36 774	36 774	0
Interest income	1 530	1 098	(432)	1 460	1 399	(61)
Sale of Goods and Services	0	10	10	0	0	0
Other income	0	0	0	0	277	277
<b>TOTAL</b>	<b>40 352</b>	<b>39 930</b>	<b>422</b>	<b>38 234</b>	<b>38 450</b>	<b>216</b>

The Ports Regulator's baseline allocation and operations are financed from three revenue sources in line with the section 42 of the National Ports Act, Act 12 of 2005, namely: transfers from the fiscus, interest income, and fees paid for lodgement of complaints and appeals.

The Regulator's full allocated budget and quarterly transfers for financial year 2020/2021 were received from the Department of Transport. Due to the limited budget and on motivation for retention of the small allocations relative to the task at hand, the Regulator was allowed to retain its 2021/2022 Baseline allocation of R42.1 million.

From March to May/June 2020 the country was under hard lockdown with restrictions imposed on activities to minimise COVID-19 infection rates, as the country attempted to strike a balance between saving lives and livelihoods. The resultant slow-down in economic activity had a negative effect on the economy, which prompted the South African Reserve Bank to revise the interest rate downward by three percentage points to 3.5% to ease the impact of the virus on the economy.

Accordingly, the interest earned from the investment of surplus funds and transfers yet to be utilised, were lower than what was estimated at the beginning of the financial year. In addition, delays in the receipt of transfers for the first and second quarters of the financial year resulted in reduced

balance on invested funds and a further under recovery on interest income. The lower interest income did not have a material impact on the Regulator's ability to carry out its commitments as there were sufficient funds available from previously retained surpluses.

To improve the funding of its functions and relieve the full burden on the fiscus, the Regulator developed a funding model, which aims to expand the revenue sources of the organisation and assign some of the burden for regulation to the users and direct beneficiaries of the regulatory intervention. This would be achieved by introducing a regulatory charge on revenue raised by the NPA as is done by other regulatory bodies in the country to augment their revenue generating ability.

To date the required legislative amendments for the implementation of the funding model have been put in abeyance by the Department of Transport in favour of the Single Transport Economic Regulation (STER) whose enabling legislation caters for a hybrid funding model. Until the Transport Economic Regulator Bill is passed and the Ports Regulator becomes a part of the STER, and its funding provisions or the provisions of the National Ports Act are amended to include raising revenue through a regulatory charge, the Ports Regulator's ability to raise revenue will remain focused on transfers from the DoT and the interest earned from invested surplus revenues.



Durban Container Terminal's straddle carriers

# Capital Investment

During the 2020/2021 financial year the Ports Regulator did not have infrastructure investments or projects which would be capital in nature. The Ports Regulator investment is only in Property, Plant & Equipment which comprises computer equipment, vehicles, and furniture and fittings.

The expenditure on these items mainly comprises the replacement of aged assets identified during the asset count. An asset count is conducted twice a year as part of the maintenance and updating of the asset register with both numerical and physical verification of assets contained in the asset register. Any assets that are identified to be damaged during the asset verification exercise are revised down in terms of their fair value/recoverable amount as required by GRAP 17.

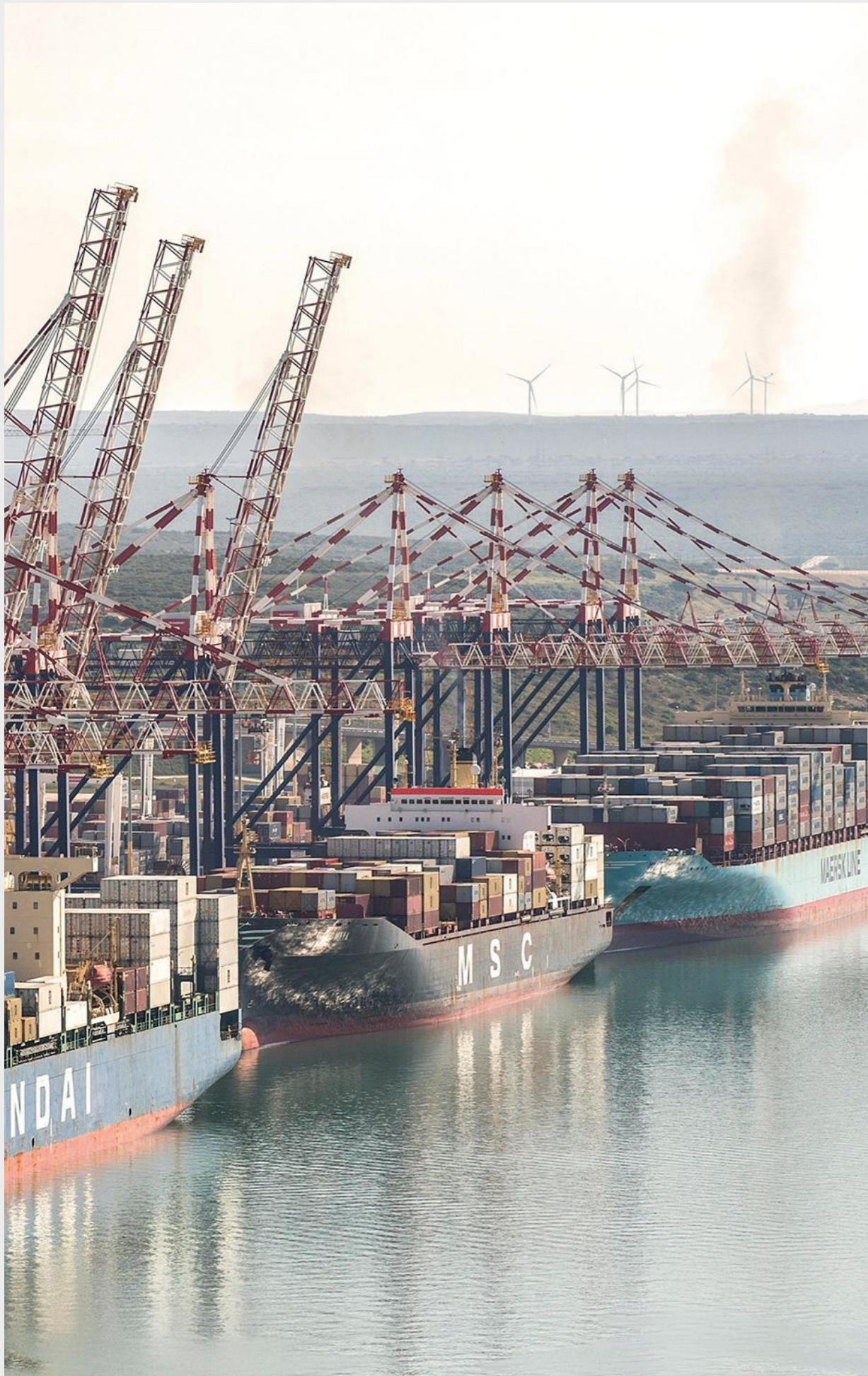
During the asset count for 2020/2021 all assets were accounted for. This includes a laptop that was lost through theft where a case was opened and reported to the entity's insurance company.

Some of the Regulator's assets that had been retained beyond their useful life were disposed of, in line with the asset management policy. Most of the Regulator's assets were in fair to good condition and were retained except for those assets that were disposed of in line with the asset management policy. There were no major repairs and maintenance done on assets during 2020/2021.



## INFRASTRUCTURE PROJECTS

INFRASTRUCTURE PROJECTS	2020/2021			2019/2020		
	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE	BUDGET	ACTUAL EXPENDITURE	(OVER)/UNDER EXPENDITURE
	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)
Property, Plant, and Equipment	0	421	(421)	0	377	(377)
<b>TOTAL</b>	<b>0</b>	<b>421</b>	<b>(421)</b>	<b>0</b>	<b>377</b>	<b>(377)</b>



Port of Ngqura

# PART C



## GOVERNANCE

### PART C GOVERNANCE: 60–87

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# Introduction

The Members of the Regulator are guided in the performance of their governance functions by the Constitution of the Republic of South Africa, 1996; the National Ports Act, 2005; the Public Finance Management Act, 1999 (as amended); the King IV Code on Corporate Governance in South Africa, 2016 (King IV Report) and other applicable prescripts.

As a Schedule 3A Public Entity, the Ports Regulator is responsible, in terms of section 195 of the Constitution of South Africa 1996, to ensure that the democratic values and principles enshrined in the Constitution, including a high standard of professional ethics, are promoted and maintained.

The Ports Regulator's Board is the entity's focal point and custodian of corporate governance. The Regulator Members must uphold the organisational values and display the ethical characteristics of integrity, competence, responsibility, accountability, fairness and transparency in the performance of their duties and functions.

The Regulator subscribes to the principles and practices of King IV Report in order to achieve the four desired governance outcomes of ethical culture, good performance, effective control and legitimacy.

## Effective leadership

The Regulator members lead the organisation in an ethical and effective manner by ensuring the implementation of good corporate governance through its various governance structures, strategies, processes, procedures and various prescripts such as delegations of authority, charters, codes of conduct and policies.

In 2020/2021 the Regulator ensured its commitment to good corporate governance and sustainability was at the forefront of the organisation by implementing a Governance and Compliance Checklist, aligned to the principles and practices of King IV Report.

Quarterly Governance Compliance Reports were submitted to the Regulator, in which disclosures were made in terms of the Regulator's governance practices and explaining how the Regulator was implementing the principles of the King IV Report. The disclosures made in the Governance Compliance Reports are an important instrument to monitor, evaluate and make an informed

assessment of the Regulator's overall governance performance.

The organisation generally performed well in terms of governance practices, which was strengthened by the appointment of the new Regulator Members for three years, effective June 2020. The Interim Board finalised and approved policies of the organisation during their committee and Board meetings in May 2020.

## New appointments

All the newly appointed Members, possess the necessary skills and experience to serve as Regulator members to determine the tariffs of the National Ports Authority; sit as full members of the hearing panels on appeal and complaints matters; oversee the compliance functions undertaken by the secretariat in monitoring the NPAs performance in line with the Act, and provide strategic direction and oversight on the various research and assessments projects implemented by the Secretariat in strengthening regulatory economics, port pricing and efficiency research, as well as run an efficient and effective secretariat.

The Regulator appointed three suitably qualified, fit and proper persons to serve in the Audit and Risk Committee (ARC) in the capacities of an independent Chairperson and independent Members bolstered by a further two members of the Regulator. With the expiry of the CEOs contract in October 2020 the Minister appointed, with Cabinet approval, the organisation's new CEO effective 1 January 2021, to ensure organisational continuity and stability at the executive level. The Ports Regulator is committed to continually striving to strengthen and improve its governance practices, processes and procedures

## Portfolio Committee

As a Schedule 3A Public Entity in terms of the PFMA, the Regulator Reports to Parliament through the Minister of Transport. The organisation's Strategic Plan and Annual Performance Plan

2020/2021 were submitted to the Portfolio Committee on Transport (PCOT) in March 2020 and in July 2020 when changes to two objectives were made; namely removal of reporting on the Regulator's proposed amendments to the National Ports Act and provision on funding sources, and the change in project delivery dates due to the anticipated effects of COVID-19 on operations and SCM processes.

## Performance evaluation

The Regulator's performance against the Strategic Plan and Annual Performance Plan is evaluated by the PCOT, the National Council of Province's (NCOP) Committee on Transport, Public Service and Administration, Public Works and Infrastructure and/or the Select Committee on Public Accounts (SCOPA).

The Committees analyse the Annual Financial Statements and performance information and the Regulator, led by the Chairperson and/or the Minister of Transport, appears before, presents and clarifies its performance to Parliament through the Committee proceedings as scheduled. With COVID-19 affecting normal programming of Committees, the Regulator appeared and presented the 2019/2020 Annual Report and AFS to the NCOP Committee in February 2021.

## PCOT Commendation

The Committee noted and commended the entity on achieving all its objectives and noted the positive feedback provided by port users on the satisfaction survey. They further commented on the challenges with improving overall service delivery in the freight system due to the institutional framework, location and split of functions for freight transport between the Departments of Transport and Public Enterprises.

This matter affects regulation but is the purview of the Department of Transport with the Ports Regulator seeking further support from Committee members for the implementation of section 3(2) of

the National Ports Act, which would see government complying with the Act, 14 years after the Act was passed, and the Single Transport Economic Regulator Bill, which aims to strengthen regulation across the transport sector. This will, for the first time, provide a framework for regulation of port terminals including Transnet Port Terminals (TPT) on price and /or operational performance based on determination of market concentration.

## Performance issue

In addition to recommendations to improve reporting formats, Committee members' main issue with the Regulator's performance was with regards to consequence management and processes to ensure that the irregular expenditure by the entity, as reported by the AGSA, is addressed and does not recur.

The Regulator reported on the determination test undertaken by internal auditors which confirmed the irregular expenditure but found that it was a result of non-compliance to SCM processes, but it did not result in the loss of service, value for money or corruption. Condonation was granted by National Treasury and disciplinary action was taken against the staff member who allowed the irregular expenditure to occur.

## Financial stability

The matter of financial sustainability of the Regulator and adequacy of budgets with its imminent absorption into STER were raised and discussed. However, as these are matters for the Department as the custodian of the STER and the Regulator, the matters were left for the attention of the Department with the Regulator committing to work within the frameworks of the Department to ensure a smooth transition when STER is established. Other matters that the Committee highlighted which the Regulator has taken on board are regarding empowerment of youth, women and people with disabilities

# Executive Authority

In terms of the National Ports Act 2005, the Minister of Transport is the Executive Authority of the Ports Regulator as per the PFMA and Regulations. The Minister appoints the Ports Regulator Board members and the Chief Executive Officer, who is responsible for the management of the day-to-day affairs of the organisation.

It is common governance practice for the Regulator to sign a performance agreement with the Minister of Transport which outlines the responsibilities, delegations and expectations that the Regulator must respond to.

The Minister appointed Regulator Board Members, representing the requisite mix of

qualifications - competence and experience in accounting, economics, law, regulation, shipping and public and development administration – in June 2020 for a three-year term.

An induction meeting was held with the Minister in June 2020 and thereafter the Regulator Members signed a performance agreement which governs the relationship between the entity and the Executive Authority, and articulates the respective parties' roles and responsibility, undertakings and obligations whilst outlining planning, budgeting and reporting requirements and timelines for the entity.

## REPORTS SUBMITTED TO THE EXECUTIVE AUTHORITY DURING THE 2020/2021 FINANCIAL YEAR



REPORT	ISSUES RAISED	DATE OF SUBMISSION
Section 30(5) report on transformation in the port system through implementation of B-BBBE by the National Ports Authority (NPA).	Trends in the implementation of B-BBEE by the NPA which highlights compliance with set B-BBBEE targets, but very limited traction with transformation proxied by ownership and/or participation of black and women owned companies, or management of port terminal operations; commercial leases and licenses and port activities as licensed (stevedoring, vessel registration agents, bunker and diving).  Recommendations to facilitate the transformation agenda in the maritime sector through the finalisation and implementation of Maritime Transport and Services Sector Codes with targets for participation of black, women and youth owned companies.	May 2020
Quarter 1: Performance Report and Financial Statements	Quarterly targets and expenditure reported on	July 2020
Quarter 2: Performance Report and Financial Statements	Quarterly targets and expenditure reported on	October 2020
Quarter 3: Performance Report and Financial Statements	Quarterly targets and expenditure reported on	January 2021
Quarter 4 Performance Report and Financial Statements	Quarterly targets and expenditure reported on	April 2021
Submission on the Department of Public Enterprises (DPE) study and process on the corporatisation of the NPA.	Report on engagements between the Ports Regulator Board and the DPE, on the DPE's report on impact assessment on the corporatisation of the NPA on Transnet and its operating divisions.	October 2020
Presentation of the Annual Report and AFS of the Ports Regulator of South Africa at the Annual General Meeting.	The 2019/2020 Annual Report and AFS were adopted by the Deputy Minister of Transport, representing the Executive Authority, together with resolutions on the appointment and remuneration of the Independent Audit Committee.	November 2020
Request for retention of Ports Regulator's 2021/2022 Baseline Allocation.	Motivation for the Minister to reverse the reduction of the baseline allocation to the Ports Regulator as per allocation letter to enable the entity to retain its limited annual allocations, which ultimately will be part of the baseline for expanded functions under the STER.	January/ February 2021

# The Accounting Authority

The Ports Regulator is the Accounting Authority and as the governing body is responsible and accountable for the governance and the overall performance of the organisation, establishing good corporate governance and risk management. The role of the Ports Regulator includes but is not limited to:

- Providing effective leadership on an ethical foundation.
- Acting as the focal point for and custodian of corporate governance.
- Effectively performing the functions as more fully set out in section 30 of the National Ports Act, 2005.
- Considering and approving the strategic and business plans of the entity.
- Assuming responsibility for the performance of the entity.
- Ensuring an effective and independent Audit & Risk Committee is in place.
- Assuming responsibility for the governance of risk and IT governance.
- Ensuring an effective risk-based Internal Audit.
- Ensuring compliance with all applicable laws and regulatory instruments.
- Setting and evaluating the overall policy for the development, improvement and operation of the Ports Regulator.

## Board Charter

As recommended in Principle 6 of King IV Report, the Ports Regulator has a Charter in place which is reviewed and approved on an annual basis to ensure that it remains relevant. The Charter provides for the Board's composition, roles and responsibilities as well as the requirements for its meeting procedures and its code of conduct. The Ports Regulator confirms that during the period under review, it satisfactorily discharged its duties and obligations as contained in the Charter.

In line with the Board Charter, members of the Regulator act as the focal point for, and the custodian of, corporate governance by managing its relationship with the Executive Authority (the Minister of Transport), managing as the link with the Secretariat and industry stakeholders in accordance with sound corporate governance principles set out in the King IV Codes and the PFMA.

Members of the Regulator perform the functions

set out in section 30 of the National Ports Act including:

- Exercising economic regulation of the ports system in line with government's strategic objectives by considering and determining the overall port infrastructure, facilities and services tariffs raised by the National Ports from shipping lines, cargo owners, lessees and terminal operators in each of the country's commercial ports based on the established tariff methodology and tariff strategy. It is the Regulator's responsibility to regulate the provision of adequate, affordable and efficient port services and facilities. To ensure the consistent application of the principles of the National Ports Act, the Regulator must promote regulated competition and negotiate and conclude an agreement with the Competition Commission.
- Promoting equity of access to ports and to services and facilities provided in ports, constituting hearing panels to hear and decide on complaints and appeals, to provide port users and parties who may be adversely affected by any decision, action or inaction of the Authority the necessary recourse.
- Monitoring the Authority to ensure that it complies with the National Ports Act.

The Members of the Regulator as a collective and in the respective committees are responsible for overseeing the development of the organisation's Strategic Plan and Annual Performance Plan including budgets, pricing mechanisms, policies and financing arrangements and approval thereof.

The members of the Regulator ensure that the organisational strategies will result in sustainable outcomes for the Secretariat as well as regulated industry; identify key performance and risks areas; must approve contracts for major works and purchases subject to section 54 of the PFMA; ensure that the Ports Regulator has an effective and independent audit committee; be responsible for the governance of risk and setting the tone for the values of the organisation including the principles of ethical business practice and of being a responsible corporate citizen. The Ports Regulator embraces, is governed by and aims to comply with the principles espoused in the King Codes of Good Practice IV as summarised in the table starting on the next page.

SUMMARY OF APPLICATION OF KING IV PRINCIPLES

 KING IV PRINCIPLE	 DESCRIPTION OF PRINCIPLE	 COMPLIANCE	 APPLICATION OF PRINCIPLE (practices implemented)
Principle 1: <b>Leadership</b>	The Ports Regulator/Accounting Authority should lead ethically and effectively.	✓	The Regulator Charter and Code of Ethics and Business Conduct set out the ethical responsibilities. Members are also required to submit specific and general declarations of interest.
Principle 2: <b>Organisational Ethics</b>	The Ports Regulator/Accounting Authority should govern the ethics of the organisation in a way that supports the establishment of an ethical culture.	✓	The Regulator is responsible for institutionalising the entity's ethical standard. The organisation has the following mechanisms/policies/procedures in place which advocate ethical behaviour such as a Code of Ethics and Business Conduct, SCM Policy, Fraud Prevention Policy, and a Whistleblowing Policy. Staff must submit annual declarations of interest and an annual declaration in terms of the Code of Ethics.
Principle 3: <b>Responsible Corporate Citizenship</b>	The Ports Regulator/Accounting Authority should ensure the organisation is and is seen to be a responsible corporate citizen.	✓	The Regulator is committed to open and transparent stakeholder engagements and relationships, and receives quarterly reports on Stakeholder activities from Management.
Principle 4: <b>Strategy and Performance</b>	The Ports Regulator/Accounting Authority 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 Regulator is responsible for Strategy and Performance management, and approves the Annual Performance Plan and Strategic Plan.
Principle 5: <b>Reporting</b>	The Ports Regulator/Accounting Authority 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 Regulator ensures that the Annual Report complies with the National Ports Act, 2005, the PFMA, 1999, the Treasury Regulations, 2005 and any other applicable regulatory instrument. The plan provides adequate information on the organisation's performance, our short, medium and long terms prospects
Principle 6: <b>Primary role and responsibilities of the Governing Body</b>	The Ports Regulator/Accounting Authority should serve as the focal point and custodian of corporate governance in the organisation.	✓	The roles and responsibilities of the Regulator are contained in a Regulator Charter. The Charter provides for delegations to sub-committees such as the Audit and Risk Committee, Regulatory Committee and Human Resource and Remuneration Committee. Each Committee has its own Terms of Reference which are approved by the Regulator. The Regulator's comprehensive delegation of authority framework ensures effective decision making by the Secretariat whilst retaining the Regulators accountability and responsibility for achieving the outcomes of the organisation as defined in the Act.

SUMMARY OF APPLICATION OF KING IV PRINCIPLES CONTINUED

 KING IV PRINCIPLE	 DESCRIPTION OF PRINCIPLE	 COMPLIANCE	 APPLICATION OF PRINCIPLE (practices implemented)
Principle 7: <b>Composition of the Governing Body</b>	The Ports Regulator/Accounting Authority 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 Regulator has the required knowledge, skills, experience, diversity and independence to effectively discharge its mandate.
Principle 8: <b>Committees of the Governing Body</b>	The Ports Regulator/Accounting Authority 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 Regulator has delegated certain functions to three sub-committees, with each sub-committee governed by a Terms of Reference.
Principle 9: <b>Evaluations of the performance of the Governing Body</b>	The Ports Regulator/Accounting Authority 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.	✓	A Performance Evaluation Questionnaire is developed and all Regulator Members are required to complete and return the questionnaire to the Company/Regulator Secretary for evaluation and reporting. Performance Evaluations are ordinarily conducted on an annual basis.
Principle 10: <b>Appointment and delegation to management</b>	The Ports Regulator/Accounting Authority should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.	✓	A Delegation of Authority Framework is currently in place.
Principle 11: <b>Risk Governance</b>	The Ports Regulator/Accounting Authority should govern risk in a way that supports the organisation in setting and achieving its strategic objectives.	✓	In terms of the Regulator Charter, the Regulator is responsible for the governance of risk. A Risk Management Policy is in place. A Risk Register is developed each year, and Management submits Risk Management Reports to ARC on a quarterly basis.
Principle 12: <b>Technology and Information Governance</b>	The Ports Regulator/Accounting Authority should govern technology and information in a way that supports the organisation setting and achieving its strategic objectives.	✓	Management submits Quarterly IT Governance Reports to ARC.
Principle 13: <b>Compliance Governance</b>	The Ports Regulator/Accounting Authority 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.	✓	Compliance is monitored by the Audit Committee and Management.

SUMMARY OF APPLICATION OF KING IV PRINCIPLES CONTINUED

KING IV PRINCIPLE	DESCRIPTION OF PRINCIPLE	COM-PLIANCE	APPLICATION OF PRINCIPLE (practices implemented)
Principle 14: <b>Remuneration Governance</b>	The Ports Regulator/Accounting Authority 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 Human Resource & Remuneration Committee provides oversight on HR matters. The PRSA has a Remuneration & Rewards Policy and Short Term Incentive Policy in place. The Regulator approved that pay progression provisions be included in the Remuneration & Rewards Policy to further incentivise employees.
Principle 15: <b>Assurance</b>	The Ports Regulator/Accounting Authority 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.	✓	The ARC assists the Regulator with this responsibility. An external Internal Audit service provider is contracted to provide assurance services to the Audit and Risk Committee on reported performance of the organisation.
Principle 16: <b>Stakeholders</b>	In the execution of its governance role and responsibilities, the Ports Regulator/Accounting Authority should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interest of the organisation over time.	✓	The Industry Development Department is responsible for stakeholder engagement, and is required for each quarter to submit a Stakeholder Engagement Report to the Regulatory Committee. The department also reported on stakeholder feedback from the five-year Public Regulatory Review conducted in 2020.
Principle 17: <b>Institutional Investors</b>	The governing body of an institutional investor organisation should ensure that responsible investment is practiced by the organisation to promote the good governance and the creation of value by the companies in which it invest.	N/A	Not applicable.

# Composition of the Board

In terms of the National Ports Act 2005, the Minister of Transport is responsible for appointing persons to serve as Members of the Ports Regulator. An Interim Board was appointed by the Minister in November 2019 – comprised of members from the previous Board who had served only one term – which led the organisation in the first two months of the 2020/2021 financial year.

The re-appointment of Members assisted in providing continuity, skills and experience, especially in terms of making integral decisions with regards to the National Ports Authority Annual Tariff Application and reviewing the multi-year Tariff Methodology and Tariff Strategy and allowing for proper governance of the Regulator.

The Interim Ports Regulator comprised of seven

Non-Executive Members and the CEO in his capacity as an ex officio Member as contemplated in section 29 of the National Ports Act, 2005. The term of the Interim Board ended in May 2020 and Cabinet approved the Minister of Transport's appointment of new Regulator Members and Chairperson effective June 2020 to serve for a period not exceeding three years. The Board comprised ten members with the CEO as an ex officio member.

In accordance with Principle 7 of King IV Report, Members represented a diversity of knowledge, skills, experience, age, culture, race and gender in its membership. The Interim Ports Regulator comprised of Members who had suitable qualifications and experience as contemplated in section 31 (4) of the National Ports Act, 2005.

## INTERIM PORTS REGULATOR BOARD

TERM ENDED MAY 2020



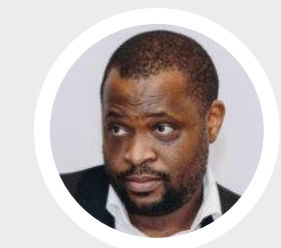
T. Mufamadi



Prof. D. Thwala



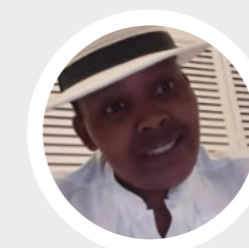
A. Hirachund



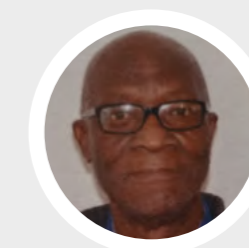
M. Madiya



G. Taylor



Adv. G. Thimane



L. Mabandla

THE ACCOUNTING AUTHORITY/BOARD



NAME	DESIGNATION	DATE APPOINTED	DATE RESIGNED	QUALIFICATIONS	AREA OF EXPERTISE	BOARD DIRECTORSHIPS	OTHER COMMITTEES AND/OR TASK TEAMS	NUMBER OF MEETINGS ATTENDED
Mr. Zolani Kgosietsile Matthews	Regulator Chairperson	1 June 2020	4 March 2021	BA (Honours), Master's Degree in Political Science	Economics, Commerce, Public Management, International Relations, Strategy, Politics	Board Member at JSE Listed Companies, Zarclear Holdings Limited and ENX Group Limited (Audit & Risk Committee Member), ICASA Councillor	—	12/13
Mr. Adam Ashraf	Audit and Risk Committee member	1 June 2020	6 November 2020	Masters Degree in Town Planning & Regional Planning	Built Environment in Transportation Planning and Economic Development, Public Management, Commerce	CEO of Mandela Bay Development Agency, SA Cities Network, Former President of South African Planning Institute (SAPI)	Audit & Risk Committee member, Human Resources & Remuneration Committee Member	10/13
Mr. Zola Fihlani	Audit and Risk Committee member, Chairperson of Human Resources & Remuneration Committee	1 June 2020	N/A	Chartered Accountant (CA) SA	Commerce, Economics, Public Management	Board Member at the Department of International Relations and Cooperation, SIU, Richards Bay Industrial Development Zone, Civil Aviation Authority, Gauteng Partnership Fund, Gauteng Gambling Board	Audit & Risk Committee Member, Chairperson of Human Resources & Remuneration Committee, Hearing Panelist	13/13
Ms Kenosi Selane	Audit and Risk Committee member	1 June 2020	N/A	Chartered Accountant (CA) SA, MBA	Finance, Economics and Commerce	Chairperson of the Economic Regulating Committee at ACSA, and Air Traffic Navigation Services (ATNS)	Audit & Risk Committee Member, Hearing Panelist	13/13
Ms Leanda-Marsha Mtshali	Audit and Risk Committee member, Human Resources & Remuneration Committee member	1 June 2020	N/A	Bachelor of Laws (LLB), Post Graduate Diploma in Corporate Law, Admitted Attorney, Conveyancer and Notary Public of the High Court of SA & Director at Vilakazi Chilwane Inc	Corporate Commercial Law, Risk Management, Regulatory Compliance, Property and Conveyancing Law, Corporate Governance, Trust Law and Notarial Law.	Board Member at Companies Tribunal, Ditsong Museums of SA, Palaborwa Foundation NPO, Public Service Commission and the National Radioactive Waste Disposal Institute	Audit & Risk Committee Member, Human Resources & Remuneration Committee Member, Regulatory Committee Member, Hearing Panelist	12/13
Ms. Zandile Kabini	Human Resources & Remuneration Committee member	1 June 2020	N/A	B Com (Honours in Informatics)	ICT, Commerce, Corporate Strategy and Execution	Board Member at Road Traffic Management Corporation, SADC Groundwater Management Institute and Broadband Infraco.	Human Resources & Remuneration Committee member, Hearing Panelist	13/13
Dr. Tshisikhawe Munyama	Regulatory Committee Chairperson	1 June 2020	N/A	PhD in Economics	Economics, Commerce, Ports, Shipping Industry, Public and Development Management	—	Regulatory Committee Chairperson, Hearing/Tribunal Chairperson	13/13

THE ACCOUNTING AUTHORITY/BOARD CONTINUED



NAME	DESIGNATION	DATE APPOINTED	DATE RESIGNED	QUALIFICATIONS	AREA OF EXPERTISE	BOARD DIRECTORSHIPS	OTHER COMMITTEES AND/OR TASK TEAMS	NUMBER OF MEETINGS ATTENDED
Ms. Sekgothadi Kabelo	Regulatory Committee member	1 June 2020	N/A	Bachelor of Laws (LLB), Practiced as an Advocate at the JHB Society of Advocates, Currently a Director at KVA Attorneys	Commercial Law	—	Regulatory Committee Member, Hearing Panelist	13/13
Ms. Siphokazi Matolengwe	Regulatory Committee member	1 June 2020	N/A	National Diploma in Maritime Studies, Currently studying towards the Professional Qualifying Exams in Maritime	Shipping Industry, Commerce and Ports	—	Regulatory Committee Member, Hearing Panelist	13/13
Mr. Mthunzi Madiya	Regulatory Committee member	1 June 2020	N/A	BComm (Honours), BPhil (Honours) (Maritime Economic Studies), Bachelor of Social Science (Honours) Post Graduate Diploma (Business Management), Commercial Capability Certificate (GIBS), Port Management Certificate (Antwerp Ports Authority, Belgium)	Maritime Transport Ports Authorities and Ports Operation, Liquid Bulk Business Ports Infrastructure & its Commerce, Stakeholder Management Project Development and Management	Member of SAMSA since 2015, Maritime Industry Development Sub-Committee, Head Operation Phakisa Ocean Economy-Maritime Transport and Manufacturing, Chairperson of National Ports Consultative Committee & Ports Consultative Committee	Regulatory Committee Member	13/13

# Regulator Board Committees

The Regulator's functions have been delegated to three committees which met to dispense their respective functions during the 2020/2021 financial year as reported below.

- Audit & Risk Committee (ARC)
- Human Resource & Remuneration Committee (HR & REMCO)
- Regulatory Committee (RegCom)

The Board Chairperson assigns members to each of the committees and appoints a committee

chairperson taking into account the requisite necessary skills, expertise, knowledge, capacity and experience to perform their functions and duties efficiently and effectively.

Each committee is governed by formal terms of reference or charter, which is reviewed annually and approved by the Regulator. The charter deals with matters of composition, roles and responsibilities, meeting procedures and reporting.

# Audit and Risk Committee

The Audit and Risk Committee is a statutory committee that provides independent assurance, oversight and assistance in respect of internal controls, governance and risk management.

The committee is responsible for monitoring internal control systems and processes to ensure that the Ports Regulator's interests and assets are protected and that the organisation complies with financial management prescripts in line with the PFMA and its Regulations. The ARC operates in terms of an approved ARC Charter with members expected to carry the following functions:

- Review the Annual Financial Statements and annual report and make recommendations to the Ports Regulator.
- Oversight of risk management.
- Review and assess internal controls.
- Review compliance with performance management and reporting systems.
- Review and approve Internal Audit Plan.
- Review findings and recommendations of external auditors.

- Review effectiveness of compliance monitoring.
- Provide necessary reports and reporting.
- Assess effectiveness of combined assurance.
- Review ARC Charter and Internal Audit Charter.

During the 2020/2021 financial year the Audit and Risk Committee reviewed and discussed the Audited Annual Financial Statements before submission to the AGSA for audit and to be included in the Annual Report; reviewed accounting policies and practices as reported in the Annual Financial Statements; and reviewed and recommended changes to the Annual Financial Statements and the Annual Report as presented by the PRSA Management for the year ending 31 March 2021.

## AUDIT & RISK COMMITTEE

NUMBER OF MEETINGS HELD	NUMBER OF MEMBERS	NAMES OF MEMBERS
5	6	<ul style="list-style-type: none"> <li>• <b>Ms. Desiree Sipiwe Nage</b> (Independent Non-Executive and Chairperson, ARC.)</li> <li>• <b>Mr. Luyanda Mansfield Mangquku</b> (Independent Non-Executive)</li> <li>• <b>Mr. Junaid Bhayat</b> (Independent Non-Executive)</li> <li>• <b>Mr. Adam Ashraf</b> (Non-Executive Member – appointed effective June 2020 – resigned effective 6 November 2020)</li> <li>• <b>Mr. Zola Fihlani</b> (Non-Executive – appointed effective June 2020)</li> <li>• <b>Ms. Kenosi Selane</b> (Executive Member – appointed effective June 2020)</li> <li>• <b>Ms. Leanda-Marsha Mtshali</b> (Non-Executive Member – appointed effective February 2021.)</li> <li>• <b>Ms. Anjue Hirachund</b> (Non-Executive – term expired in May 2020)</li> </ul>



# Human Resources & Remuneration Committee

The Human Resource & Remuneration Committee was comprised of three members and met on five occasions during the period under review.

The role of the Human Resource and Remuneration Committee is to assist the Regulator with:

- Governance and control of human resource and remuneration strategies, processes, procedures and HR activities within the organisation
- Ensuring fair and transparent conditions of services and employee benefits
- Ensuring effective human resource related policies and procedures are in place
- Overseeing the execution of the Human Resource Strategy
- Conducting an annual review of policies, procedures and remuneration structures

The Committee deliberated on, considered and recommended the following documents and policies which were approved by the Regulator:

- Amendments to the Leave and Working Hours Policy to include legislative developments
- Amendments to the PRSA Conditions of Service
- Amendments to the PRSA Rewards and Remuneration Policy to include provisions relating to pay progression
- Annual Report 2019/2020
- Annual Performance Plan 2021/2022

## HUMAN RESOURCES & REMUNERATION COMMITTEE



NUMBER OF MEETINGS HELD	NUMBER OF MEMBERS	NAMES OF MEMBERS
5	3	<ul style="list-style-type: none"> <li>• Mr. Zola Fihlani, (Non-Executive)</li> <li>• Ms. Leanda-Marsha Mtshali (Non-Executive – appointed effective February 2021)</li> <li>• Ms. Zandile Kabini (Non-Executive)</li> </ul>

# Regulatory Committee

The Regulatory Committee is comprised of five members and met on six occasions during the period under review.

The role of the Regulatory Committee is to assist the Regulator with:

- Monitoring the National Ports Authority's compliance with the National Ports Act.
- Maintaining oversight of the Regulatory and Tribunal functions of the Regulator.
- Providing oversight of economic regulation as it relates to the tariff application process.
- Oversight of access to and ensuring transformation in the ports sector.
- Regulating the provision of adequate, affordable and efficient ports services and facilities.

Highlights of the activities of the Regulatory Committee for the year under review included:

- Reviewing the Committee's Terms of Reference.
- Announcement of the Tariff Decision on the

NPAs 2021/2022-2023/24 Tariff Application.

- Engagements with the Department of Transport and Public Enterprises on the processes towards the implementation of section 3(2) of the National Ports Act i.e. the corporatisation of the NPA with particular emphasis and focus on the implications in relation to the exercise of the regulatory mandate and the implementation of the Valuation of Assets Methodology.
- Workshopped, reviewed and obtained Board approval for five research reports covering efficiencies in SA ports, port pricing and studies on industry structure to better understand regulatory imperatives in expanding the Regulator's mandate and in preparation for STER.

## REGULATORY COMMITTEE



NUMBER OF MEETINGS HELD	NUMBER OF MEMBERS	NAMES OF MEMBERS
6	5	<ul style="list-style-type: none"> <li>• Dr. Tshisikhawe Victor Munyama (Non-Executive)</li> <li>• Ms. Leanda-Marsha Mtshali (Non-Executive)</li> <li>• Ms. Sekgothadi Kabelo (Non-Executive)</li> <li>• Ms. Siphokazi Matolengwe (Non-Executive)</li> <li>• Mr. Mthunzi Madiya (Non-Executive)</li> </ul>

# Hearing Panels/Tribunals

The Ports Regulator is delegated, in terms of section 49 of the Act to constitute hearing panels for complaints and appeals lodged with the Regulator against the Ports Authority in line with

section 46 and 47 of the Act. Members of the Regulatory Committee also serve on hearing panels.



# Remuneration of Board members

Subject to section 31(7) of the National Ports Act, Members of the Ports Regulator are appointed on such terms and conditions and are entitled to such remuneration as the Minister of Transport may, with the concurrence of the Minister of Finance determine.

In terms of Principle 6 of King IV report, the Regulator has adopted a Remuneration policy for members which is underpinned by principles of transparency, accountability and fairness; sets the tone for ethical behaviour by Regulator members, and an Independent Audit Committee ensures that remunerative practices are in accordance with the provisions of the National Ports Act, the PFMA, National Treasury Regulations and periodic instructions that National Treasury issues.

Members are remunerated for attendance of Board, Committee, and ad-hoc or special meetings and the time spent preparing for the meetings. Members are also reimbursed for any travel/business expenses incurred in undertaking work of the Regulator. Remuneration is disclosed in the

Annual Financial Statements. There is no other remuneration paid to the members except for meetings actually attended.

Mr. Mthunzi Madiya, is an employee of the Department of Transport and in line with section 31(7) of the National Ports Act, is not remunerated.

Mr. Ashraf Adams is an employee of the Mandela Bay Development Agency and his remuneration was paid to his Agency.

From October 2020, the Chairperson of the Regulator, Mr. Zolani Kgosietsile Matthews, was appointed full-time Commissioner at ICASA, which is a Public Entity. Accordingly, his remuneration from the Ports Regulator's Board ceased.

## REMUNERATION FOR REGULATOR MEMBERS FOR THE YEAR UNDER REVIEW



NAME	REMUNERATION (R'000)	OTHER ALLOWANCES	OTHER RE-IMBURSEMENTS	TOTAL (R'000)
Z. Fihlani	258	0	0	258
V. Munyama	386	0	0	386
Z. Kabini	221	0	0	221
S. Matolengwe	310	0	0	310
K. Selane	287	0	0	287
M. Madiya	0	0	0	0
Z. Vilakazi	227	0	0	227
S. Kabelo	296	0	0	296
A. Adams	143	0	0	143
Z. Matthews	143	0	0	143
D. Thwala	31	0	0	31
T. Mufamadi	1	0	0	1
A. Hirachund	33	0	0	33
<b>TOTAL</b>	<b>2 336</b>	<b>0</b>	<b>0</b>	<b>2 336</b>

# Risk Management

The Ports Regulator developed a Risk Management Policy, Risk Management Strategy, Combined Assurance Framework and Risk Appetite & Risk Tolerance Framework which combined provides guidelines for the identification, effective and efficient management of the organisation's strategic as well as operational risks.

During the period under review, the Accounting Authority, Senior Management and Internal Audit met to discuss the strategic and operational risks faced by the entity which resulted in the formulation of the 2020/2021 risk register. The Chief Financial Officer, in the capacity as Chief Risk Officer, reports on the approved risk register. The 2021/2022 risk register was developed and approved by the Regulator in March 2021.

The risk register is continually monitored by management and risk management. Reporting is a standing item at EXCO and on the Audit & Risk Committee meetings agenda where, the designated Chief Risk Officer reports on risk mitigation and effectiveness thereof as well as identified new or potential risks facing the organisation.

The entity's Risk Management plans have been effective in that it has managed to achieve 97.14% of its planned targets on the Annual Performance Plan. This was achieved despite the absence of a Regulator for most part of the financial year. The Regulator has also maintained high ratings as evidenced from stakeholder feedback in the 2020 Public Regulatory Review.

# Internal Control Unit

With a staff complement of 22 and a small Financial Management function overseeing a total budget of about R40million, the Ports Regulator has not established an internal control unit as the

size of the entity has not merited the establishment of one. However, this is expected to change in future in line with the entity's expected growth and revised organogram.

# Internal Audit and Audit Committees

The Ports Regulator's Internal Audit functions were performed by Morar Incorporated whose three-year contract ends in May 2021.

Internal Audit assists the entity to accomplish its objectives by assisting in providing assurance of internal controls, performance information, evaluation and improvement of risk management and governance processes.

Internal Audit undertakes independent reviews, including of organisational compliance with policies, process and codes and assessing how the entity is performing in terms of its internal controls and organisational performance as set out in the Annual Performance Plan.

A risk based three-year coverage plan as well as an Internal Audit Plan for the 2020/2021 financial year was developed and approved by the ARC

Guided by the Internal Audit Charter, Internal Audit reports to the Audit and Risk Committee where it presents its quarterly reports as per the agreed audit plan. Internal Audit reports administratively to the Chief Executive Officer. Through the ARC, the Board also reviews the work of Internal Audit on a quarterly basis.

Internal Audit executed and completed all the audits as per the approved Internal Audit Plan and issued audit reports for each completed assignment.

Findings from audit reports were presented to management, and tracked to determined progress by management in attending to findings. At the end of the financial year, all findings except for one had been resolved/closed by management.

## INTERNAL AUDIT ASSIGNMENTS THAT WERE PERFORMED DURING THE YEAR

COVERAGE	IMPLEMENTATION PERIOD
Planning and administration Performance information Compliance with laws and regulations Human resource management UIF determination test Audit Committee	Quarter 1   April to June 2020
Performance information Governance review Determination test for irregular expenditure Risk Register action plan test Human resource management Audit Committee	Quarter 2   July to September 2020
Performance information Information technology Follow-up audit Annual risk assessment workshop Supply chain and expenditure management Review of Annual Financial Statements and Annual Performance Information Audit Committee	Quarter 3   October to December 2020
	Quarter 4   January to March 2021

## THE MEMBERS, QUALIFICATION & ATTENDANCE OF AUDIT AND RISK COMMITTEE MEETINGS IN THE 2020/2021 FINANCIAL YEAR



NAME	QUALIFICATIONS	INTERNAL OR EXTERNAL	IF INTERNAL, POSITION IN THE PUBLIC ENTITY	DATE APPOINTED	DATE RESIGNED	NUMBER OF MEETINGS ATTENDED
Ms. Desiree Sipiwe Nage, Independent Non-Executive Chairperson	B.Com (Accounting), CIA – Certified Internal Auditor, CCSA – Certified Control Self Assessor	External	N/A	22 January 2020	N/A	5/5
Mr. Luyanda Mangquku, Independent Non-Executive Member	B.Compt, Bachelor of Accounting Sciences (Honours), Master in Business Leadership (MBL), B.Com (Honours) (Accounting), Chartered Accountant (SA)	External	N/A	22 January 2020	N/A	4/5
Mr. Junaid Bhayat, Independent Non-Executive Member	Bachelor of Commerce, Bachelor of Commerce (Honours) (Accounting), Master of Business Administration (MBA), Chartered Accountant (SA), Registered Auditor (IRBA)	External	N/A	22 January 2020	N/A	5/5
Mr. Ashraf Adam, Non-Executive Member	Master's Degree in Town Planning & Regional Planning	External	N/A	1 June 2020	6 November 2020	2/4
Mr. Zola Fihlani, Non-Executive Member	Chartered Accountant (CA) SA	External	N/A	1 June 2020	N/A	3/4
Ms Kenosi Selane, Non-Executive Member	Chartered Accountant (CA) SA, MBA	External	N/A	1 June 2020	N/A	2/4
Ms Leanda-Marsha Mtshali, Non-Executive Member	Bachelor of Laws (LLB), Post Graduate Diploma in Corporate Law, Admitted Attorney, Conveyancer and Notary Public of the High Court of SA & Director at Vilakazi Chilwane Inc	External	N/A	February 2021	N/A	2/4

# Compliance with Laws and Regulations

Quarterly reports are submitted to the ARC and Regulator in respect of compliance with the Public Finance Management Act, 1999. The secretariat submits the Governance and Compliance checklist

to the ARC which highlights the entity's compliance status as well as flagging areas that need the attention of the ARC and Regulator.

# Fraud and Corruption

The Ports Regulator has adopted a Fraud Prevention Policy and Whistleblowing Policy.

There were no incidents of fraud, corruption or irregularity committed by employees and/or Regulator members during the period under review.

Employees are also required to submit annual declaration of interests. In addition, each year employees are provided with a copy of the PRSA Code of Ethics and Business Code Policy and required to sign an annual declaration. These declarations are submitted to the HR Department.

Regulator members are required to declare any conflict of interest at every meeting, and written

declarations are submitted to the Company/Regulator Secretary who maintains a Declaration of Interest Register.

Management provides quarterly reports to the Regulator and the Executive Authority on matters of fraud and corruption, if any.

The Compliance Framework, Fraud Prevention Policy and Whistle Blowing Policy that has been implemented are designed to allow early detection of fraud and corruption as well as steps to be taken should any fraud be identified

# Minimising Conflict of Interest

The Ports Regulator follows Treasury Guidelines on Supply Chain Management (SCM) to reduce and minimise conflict of interest in SCM. In particular, the prescripts of three committee systems are followed to ensure separation between the Bid Specification Committee and Bid Evaluation Committee from the Bid Adjudication Committee and ultimate approval of procurement of goods and services.

Due to the size of the organisation and the multiple functions performed by the CFO and the SCM specialist, the lack of separation of functions creates a potential for conflict of interest. This will be addressed through a review of the structure of the organisation and the development of a fully-fledged SCM department.

The Regulator has approved and adopted a SCM Policy which is annually reviewed to ensure alignment with the latest National Treasury updates as well as best practice in SCM. The SCM policy also has a provision for managing conflict of interest and the guidelines that need to be followed should any conflict be identified.

All employees who are involved in the SCM processes are trained annually as required by Treasury Regulations. The training is aimed at highlighting the significance, amongst other things, of managing conflicts of interest on all bids. All employees involved in SCM are required to submit annual declaration of interests and to declare their interest when evaluating bids.

The internal auditors as well as external auditors perform tests during the SCM audit to check if all employees have declared their interest and also perform a Companies and Intellectual Property Commission check for any possible link between the Ports Regulator suppliers and the employees at the Ports Regulator.

There were no conflicts of interest that were detected and/or declared during the financial year and the audit processes did not identify any such conflicts

# Code of Conduct

The Ports Regulator has adopted a Code of Conduct and Business Ethics Policy. The Code applies to both Regulator Members and employees. The spirit of the Code is to support the highest standards of ethical and good business conduct.

The purpose of the Code is to provide guidelines to the Members and employees as to what is expected from them from an ethical point of view, both in their individual conduct and their

relationships with both internal and external stakeholders. The CEO ensures that all employees sign an annual declaration as required by the Code.

Any employee who contravenes the Code shall be dealt with in accordance with the provisions of the PRSA Disciplinary and Grievance Policy, and any Member who contravenes the Code shall be dealt with in accordance with their appointment in terms of the National Ports Act, 2005.

# Health, Safety and Environmental issues

With a small and young staff complement, the Ports Regulator places a high premium on the wellness of its employees, which is addressed in the Health, Safety and Environmental Policy and through its preferred employee wellness provider, ICAS.

The Ports Regulator appointed two employees as Health & Safety Officers, and capacitated them to execute their respective functions and duties efficiently by providing them with externally facilitated training on the responsibilities of the Health & Safety Officer in the workplace as well as procurement of relevant resources.

The COVID-19 pandemic, presented safety concerns for employees and Personal Protective

Equipment (PPE) was procured, and replenished as required, during the year to ensure that all employees were safe on occasions where they worked in the office or when visiting the office.

All the Ports Regulator's responses were based on the COVID-19 BCP which outlined all the safety protocols that had to be observed to ensure safety and security of employees, Regulator Members and stakeholders. The Executive Committee was assisted by the COVID-19 Co-ordinator in implementing, monitoring and updating responses as and when required in line with the different alert levels periodically announced by the President. There were no on-duty incidents to report for the period under review

## Company/Regulator Secretary

Ports Regulator Members were supported by a Company/Regulator Secretary, Ms. Kathleen Hall, who assisted the Regulator Members in carrying out their functions and duties, and strengthened the governance structures and practices of the organisation. Ms Hall resigned at the end of the calendar year (31 December 2020) and the Executive Manager: Legal, Adv. Lesedi Boihang was appointed as Acting Company/Regulator Secretary pending the appointment of the permanent Company/Regulator Secretary.

The Company/Regulator Secretary assists the Regulator in providing guidance and support with regards to the Members' roles and responsibilities.

The Members have full access to the services and advice of the Company/Regulator Secretary.

The Company/Regulator Secretary carries out the following duties which includes, but is not limited to: reviewing Charters/Terms of Reference annually; advising the Regulator on governance issues; ensuring the Regulator receives adequate information to make informed decisions; maintaining registers; acting as secretary to all meetings; overseeing induction and training; monitoring and communication of Regulator decisions; facilitating the Annual General Meeting and liaising with the Executive Authority regarding Regulator matters.

## Social Responsibility

The Ports Regulator did not undertake any social responsibility activities during the financial year because of funding constraints. As the Ports Regulator's operations are financed by transfers from the fiscus, the cost containment measures adopted by government limit the Regulator's ability to stretch its budget to perform social

responsibility activities. In previous years, staff volunteered time and resources to implement identified social responsibility projects. As funding normalises and the Regulator defines appropriate social responsibility projects that would advance social and developmental goals in the maritime sector, allocations will be made

# Audit Committee Report

We are pleased to present our report for the financial year ended 31 March 2021.

### Audit Committee Responsibility

The Audit Committee reports that it has complied with its responsibilities arising from Section 51 (1)(a)(ii) of the Public Finance Management Act and Treasury Regulation 27.1. The Audit Committee also reports that it has adopted appropriate formal terms of reference as its Audit Committee Charter, has regulated its affairs in compliance with this charter and has discharged all its responsibilities as contained therein, except that we have not reviewed changes in accounting policies and practices.

The Audit and Risk Committee supports the Accounting Authority in discharging its Corporate Governance responsibilities in relation to:

- Review of disclosures in the Annual Report.
- Financial reporting.
- Internal control.
- Business ethics and fraud prevention policies.
- Risk Management.
- Ensuring integrity and effectiveness of internal audit function.

The Audit and Risk Committee is responsible for approving the external audit strategy and fees. The Audit and Risk Committee further monitors the application of our financial resources.

### Enterprise Risk Management

The Accounting Authority is responsible for entrenching risk management governance through effective leadership. Management accounts to the Accounting Authority for the integration of risk management into the PRSA daily operations and for the implementation and monitoring of the risk management process.

The Audit and Risk Committee considers all risk matters and provides advice and guidance on the overall risk management system, with particular attention on risks that have been measured as above acceptable tolerance levels.

The Audit and Risk Committee further independently monitors the effectiveness of the risk management system and reports to the Accounting Authority accordingly.

The PRSA has implemented an integrated internal risk management strategy through which risks and opportunities are identified on an ongoing basis. This strategy is underpinned and guided by the following key principles:

- A strong and solid risk culture is a critical pillar of good governance;
- Consideration of real and potential risks in decision making processes;
- The acceptance that risk management is mandatory;
- Continuously monitoring of the risk exposure as impacted by the changing internal and external environments;
- Acceptance that accountability for risk management cannot be deferred or shifted; and
- The importance of maintaining appropriate balance between risk and control.

### Enterprise Risk Management Governance

The Audit and Risk Committee is responsible for the oversight of the risk management function. Management has designed and implemented controls to manage the risks faced by the PRSA. Management reports to the Audit and Risk Committee on PRSA's management of risk, and has advised management on a continual basis on the best risk management practices. This would include monitoring the progress on the implementation of future mitigation strategies to provide assurance that PRSA is effectively managing their risks.

The PRSA conducted their Annual Risk Assessment and the Annual Strategic and Operational Risk Register was approved and adopted by the Ports Regulator. The Audit and Risk Committee has reviewed the strategic and operational risk registers, considered new and emerging risks, and has satisfied itself of the risk mitigating measures employed to ensure risks are within tolerable levels.

The PRSA ensures progress in the management of risks through its risk monitoring activities. It is committed to improving its risk performance on an ongoing basis, where high risk areas are targeted through focused resources and effort.

### Fraud and Corruption Prevention Strategy

The PRSA has implemented a Fraud and Corruption Prevention Strategy as part of the overall governance strategy. The effectiveness of the Fraud and Corruption Prevention Strategy is monitored on an ongoing basis. Management is responsible for the prevention of incidents and occurrences of fraud and corruption, and does this through the design, implementation and monitoring of a sound system of internal control.

A risk assessment with specific focus on fraud and corruption is conducted annually and monitoring and reporting is done continually.

### The Effectiveness of Internal Control Systems

The system of controls within the PRSA is designed to provide reasonable assurance that assets are safeguarded and that liabilities and working capital are properly managed in line with the PFMA and the protocol on corporate governance. This is achieved by a risk-based internal audit plan, Internal Audit assessing the adequacy of controls mitigating the risks and the Audit and Risk Committee monitoring the implementation of corrective actions.

From our review of the reports of the Internal Auditors, the Audit Report on the Annual Financial Statements and the Management Report of the Auditor-General of South Africa (AGSA), we can conclude that the system of internal control as applied over financial and non-financial matters and enterprise risk management at the PRSA is satisfactory. The Committee has noted Management's commitment to address the lack of control effectiveness, where they exist. The Committee will be monitoring Management's progress in resolving these issues on a regular basis.

### Internal Audit

We are satisfied that the internal audit function has operated effectively, that it has addressed the risks pertinent to the PRSA in its audits and has assisted the PRSA with value adding services to ensure that both financial and operational objectives are achieved.

Internal Audit has completed all of the planned Internal Audit projects, the following internal audit work was completed during the year under review:

- Risk assessment
- Performance information review – Quarters 1 to Quarter 4
- Compliance with laws and regulations review
- Human resources management review
- Governance review
- Information technology review
- Follow up audits – AGSA and Internal Audit Findings
- Supply Chain Management review
- Asset management review
- Financial management review
- Review of the AFS

The following were areas of concern and the below remedial action was taken by management:

- The controls regarding the contract register were incomplete and needed improvement. A contract register was developed and is completed with the necessary information to be of use to the Audit and Risk Committee, including the contract start and end dates to ensure that appropriate processes are initiated in advance of contract expiry;
- Deviations which led to the irregular expenditure findings in the prior year. Management developed and delivered quarterly reports to ARC on the deviations register.

### In-Year Management and Monthly/Quarterly Report

The public entity reports monthly and quarterly to the Department of Transport and Treasury as required by the PFMA and Treasury Regulation 16 and in line with the reporting obligations agreed to in the Performance Agreement between the Minister and the Board.

### Evaluation of Financial Statements

The Audit and Risk Committee has:

- reviewed and discussed the audited Annual Financial Statements for the year ending 31 March 2021 to be included in the Annual Report;
- reviewed the AGSA's Management Report and Management's response thereto;
- reviewed accounting policies and practices as reported in the Annual Financial Statements;
- reviewed the PRSA's processes for compliance with legal and regulatory provisions;
- reviewed the information on predetermined objectives as reported in the Annual Report.

### Auditor's Report

We have on a quarterly basis reviewed the PRSA's implementation plan for audit issues raised in the prior year. The Audit and Risk Committee has met with the AGSA to ensure that there are no unresolved issues that emanated from the regulatory audit. Corrective actions on the detailed findings raised by the AGSA were monitored by the Audit and Risk Committee on a quarterly basis and all matters raised were resolved by financial year end.

The Audit & Risk Committee concurs and accepts the Clean Audit Opinion as issued by the AGSA for the financial year ended the 31 March 2021. We also accept and concur with the conclusions of the Auditor-General on the annual financial statements and is of the opinion that the audited annual financial statements be accepted and read together with the report of the AGSA.

### Appreciation

The Audit and Risk Committee wishes to acknowledge the dedication and work performed by the Chief Executive Officer, Management and Officials of the PRSA. The Audit and Risk Committee wishes to express its appreciation to Management, the AGSA and the Internal Audit Unit for the co-operation and information they have provided to enable us to discharge our responsibilities.



**Ms Desiree Sipiwe Nage**

Chairperson: Audit and Risk Committee  
Ports Regulator of South Africa  
30 July 2021

# B-BBEE Compliance Performance Information

The following table has been completed in accordance with the compliance to the B-BBEE requirements of the B-BBEE Act of 2013 and as

determined by the Department of Trade and Industry.

### COMPLIANCE TO THE B-BBEE REQUIREMENTS OF THE B-BBEE ACT OF 2013



CRITERIA	RESPONSE YES / NO	DISCUSSION
Determining qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law.	No	The Ports Regulator does not issue licenses, concessions or authorisation in respect of economic activity as part of its functions nor in the port system.
Developing and implementing a preferential procurement policy.	No	The Regulator's procurement processes are in line with the Preferential Procurement Policy Act, and its Regulations which have been internalised in the Supply Chain Management Policy.
Determining qualification criteria for the sale of state-owned enterprises.	No	The Ports Regulator is not involved in the sale of state-owned enterprises.
Developing criteria for entering into partnerships with the private sector.	No	The Ports Regulator's functions and scope of work does not include partnerships with the private sector.
Determining criteria for the awarding of incentives, grants and investment schemes in support of Broad Based Black Economic Empowerment.	No	The Ports Regulator does not award incentives, grants or investment schemes in support of B-BBEE. The organisation follows the SCM prescripts and criteria for scoring of tenders and price quotes in procurement of goods and services.



East London river port

# PART D

## HUMAN RESOURCE MANAGEMENT

PART D  
HUMAN RESOURCE MANAGEMENT: 88–99

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Aerial view of the Port of Cape Town

# Introduction

## Overview of Human Resources Matters

The overall approved staff complement of the Ports Regulator comprises 27 posts, of which 22 were funded and filled. The small staff complement is a function of the organic growth of the organisation and has been defined by what was possible within the constraints of limited budget allocations, and uncertainties around the establishment of the Single Economic Transport Regulator (STER) and the absorption of the Ports Regulator into the STER.

Government's 2014 – 2019 Medium Term Strategic Framework (MTSF) committed to the establishment of STER by December 2019, with the Transport

Economic Regulator Bill (TERB) making provision for the Ports Regulator as the nucleus of the STER.

These developments, which are still underway created uncertainty in terms of permanence of the staffing and provisioning for the Ports Regulator which, coupled with a low starting baseline, have perpetuated the HR limitations in the organisation.

The Regulator has not built full capacity in its corporate services and financial management departments. Currently corporate services is staffed by the Chief Financial Officer who is also the Corporate Services Manager and Chief Risk Officer

of the organisation. A Specialist is singularly responsible for Human Resources, IT and Supply Chain Management, a general finance administrator and general administrator.

The structure is not compliant with Treasury Guidelines for effective financial management functions, and presents challenges with avoidance of conflict of interest where one staff member plays multiple roles. The limitation of the current structure became apparent during 2020/2021 with the organisation ramping up on SCM processes and in Human Resources with the hiring of the CEO and filling of the six vacancies.

The proposed organogram which takes account of the need for appropriate division of labour and

separation of functions envisages the current staff complement growing from 27 to about 60, which is still a fraction of other benchmarked economic regulators in the country.

This will enable a more effective human resource development, with HR appropriately planning, designing, implementing and monitoring strategies to develop and support the PRSA staff and enhance their ability to excel in carrying out their functions. The proposal is still to be approved by the Minister of Transport in line with the provisions of the National Ports Act.

Human Resource priorities during 2020/2021 were to fill the vacancies in the funded positions; engage with the DoT to obtain the Minister's approval for the expanded organogram whilst appreciating that not all posts would be funded instantly.

Due to COVID-19, the focus for most of the year was to ensure that current staff members were taken care of and to minimise the impact of COVID-19 on staff and operations as much as possible. This was to ensure that the organisation achieved the targets set in the APP and, importantly, the Record of Decision on the NPA's 2021/2022 – 2023/24 Tariff Application would not be delayed.

The small staff complement of the Regulator has been characterised by a high work ethic and a high performance culture, and despite its limited resources, both financial and human capital, the Regulator delivered a 97.14% achievement of targets on the annual performance plan.

The Regulator reviewed its HR policies, with special focus on leave, reward and recognition, conditions of service and Delegations of Authority policies. The revision ensured that the leave policy was aligned to the latest legislative updates regarding leave.

The Reward and Recognition policy was reviewed to increase the incentives for employees who perform beyond expectations. The Regulator's philosophy is that when employees excel – and deliver on their targets - these employees must be rewarded in order to encourage them to continue and achieve targets the future.

The Conditions of Service were reviewed and aligned to the current business environment and to the latest legislative updates, as these have not been updated since first approved and implemented in July 2011.

The Delegation of Authority was reviewed to align the powers and responsibilities of the Chief Executive Officer/ Accounting Officer, to the National Ports Act as well as the PFMA, and to include relevant policy requirements from the organisation's approved policies and procedures.

During the financial year under review employees underwent training and development in line with the Regulator's belief in developing its workforce. Although its financial resources were insufficient to address all the entity's training needs, management did its best to ensure that employees received training that allowed them to advance their technical knowledge in their area of speciality.

The Regulator's revised organogram was submitted to the Executive Authority for approval as required by the National Ports Act. When the revised organogram is approved, it will allow the Regulator to enhance its employee complement on core programmes, and the administration department to ensure proper segregation of portfolios. The revised organogram will allow the Regulator to better prepare itself for STER

The filling of vacant management positions was prioritised during the year. The recruitment process for the positions of Manager for Industry Development and Manager Policy, Strategy & Research (PSR) were put on hold with the outbreak of COVID-19 in March 2020. They were eventually filled and started work in January 2021 and February 2021 respectively. These positions were filled by candidates from outside the organisation.

The CEO appointment process was initiated in July 2020, in advance of the expiry, in October 2020, of the 12-month extension of the then CEO, Mr Mahesh Fakir. The appointment of the new CEO, Ms Johanna Mulaudzi, who was acting CEO from October 2020 to January 2020, was approved by Cabinet in December 2020.

These management positions are critical, as these employees are responsible for executing the annual performance plan as well as the mandate of the entity under the leadership of the CEO.

### Employee Performance Management Framework

The Regulator has an employee management framework in place to manage employee performance. The framework is designed in such a way that it encourages a high performance culture.

At the beginning of the financial year, employees completed their performance agreements, which are informed by the output from the annual performance plan. Half-year performance assessments are undertaken in October as a monitoring tool to ensure that all employees are on track to achieve the set targets for the financial year.

Final performance assessments are undertaken in March and performance bonuses are paid to those employees who have achieved their targets and qualify for a bonus. Employee performance is critical as it affects an employee's ability to progress on the salary scales. An employee who achieves a score above 4.5 qualifies for a performance bonus and salary progression which is then implemented in May at the start of the new financial year.

### Employee Wellness Programme

The Regulator complies with the country's labour practices which include providing employee wellness services to employees. To this end an employee wellness service provider, ICAS, was appointed ensure that the employees had an independent party that they could engage on needs and be assisted on personal and professional challenges, which may directly or indirectly affect their well being and ultimately productivity and job satisfaction.

In addition to services rendered by phone to members and their immediate family members, or those they reside with, ICAS socialises the employees on the services that they provide including finances, mental health in the workplace and balancing work and family matters, among other topics, through in-house presentations and periodic emails sent to staff on a range of topics and services.

The effectiveness of such services is dependent on the uptake by employees. While more needs to be done to improve the uptake, employees do make use of the services provided. During the pandemic ICAS provided support and information brochures to assist employees deal with the impact of the pandemic on their family and lives during hard lockdown.

This included support for those who lost their jobs; sources of credible information on the virus; availability of health facilities for those who contracted the virus and also information on how to act when close family members have contracted the virus. This service continues to be shared with employees as new variants of the virus continue to affect and impact people.

### Policy Development

As the Accounting Authority, responsible for setting the tone for proper governance of the organisation, the Regulator through the secretariat bears responsibility for the development of appropriate policies and strategies. The Regulator has a set of approved policies and procedures in place. These policies were reviewed to ensure alignment with any legislative changes or updates or changes in the business environment. The HR policy review is the responsibility of Human Resources, and recommended by the Human Resource & Remuneration Committee to the Regulator for final approval. The internal audit which is outsourced also assisted in the review of the policies to ensure that they comply with current legislation and are aligned to each other where necessary.

### Achievements

The Regulator filled top management positions both senior and executive. All four executive management positions are filled as well as manager positions which assisted to strengthen the performance of the entity.

The Regulator also managed to implement its training plan for the financial year. The training is aimed at improving the academic and technical understanding of the different areas of speciality for all employees. The set targets for the employees were achieved for the financial year which resulted on the 97.14% achievement on the annual performance plan targets.

### Challenges faced by the Regulator

As highlighted earlier, the challenges faced by the Regulator in HR relate to the adequacy of staffing and provisioning thereof. The proposed organogram aims to address this in a way that also prepares the organisation for assimilation into STER.

The Regulator experienced some delays in the appointment of management employees as a result of COVID-19. The delay was caused by the hard lockdown put in place by the government. The positions were advertised in February 2020 but were only filled in December 2020. This also affected the finalisation of other positions at Specialist level owing to COVID-19.

### Future HR Plans/Goals

The establishment of STER and absorption of the Ports Regulator staff therein remains a focus of any future HR plan. Engagements with the Department of Transport on the business case for STER are ongoing.

In the immediate future under the current configuration, the plan is to utilise the retained surplus to insource capacity to enhance the corporate services functions so that administration can provide adequate and timely support to other functions. This insourcing will be through time based contracts.

A review of the Human Resource Development Policies to develop an appropriate and responsive HR Strategy for the organisation and ensure effective employee development, performance management and remuneration is also to be undertaken.



# Human Resource Oversight Statistics

## PERSONNEL COST BY PROGRAMME



PROGRAMME	TOTAL EXPENDITURE FOR THE ENTITY (R'000)	PERSONNEL EXPENDITURE (R'000)	PERSONNEL EXPENDITURE AS A % OF TOTAL EXPENDITURE	NUMBER OF EMPLOYEES	AVERAGE PERSONNEL COST PER EMPLOYEE (R'000)
Administration	13 461	7 162	53.21%	8	892.25
Economic Regulation	4 397	3 710	84.38%	5	742.00
Tribunal	8 534	2 479	29.05%	2	1 239.50
Industry Development	4 426	3 531	79.78%	5	706.20
Monitoring	2 296	1 330	57.93%	2	665
<b>TOTAL</b>	<b>33 114</b>	<b>18 212</b>		<b>22</b>	<b>849.59</b>

## PERSONNEL COST BY SALARY BAND



LEVEL	PERSONNEL EXPENDITURE (R'000)	% OF PERSONNEL EXPENDITURE TO TOTAL PERSONNEL COST	NUMBER OF EMPLOYEES	AVERAGE PERSONNEL COST PER EMPLOYEE (R'000)
Top Management	9 583	52.62%	5	1 916.60
Senior Management	2 358	12.95%	4	589.50
Professional Qualified	4 295	23.58%	7	613.57
Skilled	1 533	8.42%	4	383.25
Semi-skilled	232	1.27%	1	232.00
Unskilled	211	1.16%	1	211.00
<b>TOTAL</b>	<b>18 212</b>	<b>100%</b>	<b>22</b>	<b>657.65</b>

## PERFORMANCE REWARDS



LEVEL	PERFORMANCE REWARDS	PERSONNEL EXPENDITURE (R'000)	% OF PERFORMANCE REWARDS TO TOTAL PERSONNEL COST
Top Management	1 256	9 583	13.11%
Senior Management	0	2 358	0%
Professional Qualified	257	4 295	5.98%
Skilled	97	1 533	6.33%
Semi-skilled	13	232	5.60%
Unskilled	14	211	6.64%
<b>TOTAL</b>	<b>1 637</b>	<b>18 212</b>	<b>8.99%</b>

## TRAINING COSTS



PROGRAMME / ACTIVITY / OBJECTIVE	PERSONNEL EXPENDITURE (R'000)	TRAINING EXPENDITURE (R'000)	TRAINING EXPENDITURE AS A % OF PERSONNEL COST	NUMBER OF EMPLOYEES TRAINED	AVERAGE TRAINING COST PER EMPLOYEE
Administration	7 162	185	2.58%	9	20.56
Economic Regulation	3 710	111	3.01%	3	55.5
Tribunal	2 479	26	1.05%	2	13.0
Industry Development	3 531	74	2.10%	4	18.5
Monitoring	1 330	25	1.88%	2	12.5
<b>TOTAL</b>	<b>18 212</b>	<b>421</b>		<b>22</b>	<b>20.31</b>

## EMPLOYMENT AND VACANCIES



PROGRAMME	2019/2020 NUMBER OF EMPLOYEES	2020/2021 APPROVED POSTS	2020/2021 NUMBER OF EMPLOYEES	2020/2021 VACANCIES	% OF VACANCIES
Administration	8	10	9	1	11.11%
Economic Regulation	3	6	5	1	20%
Tribunal	2	2	2	0	0%
Industry Development	5	6	5	1	20%
Monitoring	3	3	3	0	0%
<b>TOTAL</b>	<b>21</b>	<b>27</b>	<b>24</b>	<b>3</b>	<b>10.22%</b>

## EMPLOYMENT AND VACANCIES BY LEVELS



LEVEL	2019/2020 NUMBER OF EMPLOYEES	2020/2021 21 APPROVED POSTS	2020/2021 NUMBER OF EMPLOYEES	2020/2021 VACANCIES	% OF VACANCIES
Top Management	1	5	5	0	0%
Senior Management	4	5	4	1	25%
Professional Qualified	4	6	6	0	0%
Skilled	10	9	7	2	28.57%
Semi-skilled	2	1	1	0	0%
Unskilled	1	1	1	0	0%
<b>TOTAL</b>	<b>22</b>	<b>27</b>	<b>24</b>	<b>3</b>	<b>8.93%</b>

The secretariat advertised posts for senior management in February 2020 but due to the COVID-19 pandemic and the hard lockdown from 26 March 2020, there were significant delays in filling these vacant funded positions, as the secretariat could not proceed with normal recruitment processes and had adapted to working from home, which added further delays to the shortlisting process.

Furthermore, the secretariat took a prudent step to wait for the Minister of Finance's Adjusted Budget on 24 June 2020 as it could potentially result in the reduction of the baseline. A reduction in the baseline would require reprioritisation of the filling of posts because of the permanence of the effects on the baseline allocation. The adjustment budget was tabled on 24 June 2020 and the Regulator's baseline allocation was not affected. The interviews were ultimately held virtually in November/December 2020 after the first wave of COVID-19 subsided and successful candidates started working in January and February 2021 respectively.

The two management positions were filled by external candidates. Although in each case an internal candidate was amongst the shortlist, they were operating at specialist level and below. Their limited exposure to and limited demonstrable management experience resulted in more qualified/experienced external candidates being appointed.

The two internal candidates have since enrolled to complete TETA's International Leadership Development Program (IEDP) offered by GIBS, University of Pretoria. The programme is designed for transport sector employees aspiring to management in their organisations or the general transport sector. It together with other developmental programmes and opportunities in management functions should assist in closing some of the gaps in managerial understanding and empower internal candidates.

The Ports Regulator's capacity development and HR planning must address issues of staff development whilst constrained by the structure and budgetary allocations i.e. talent management, leadership development and pursuit of baseline allocation to sustain efforts to attract and retain staff.

The salary benchmarking exercise which is undertaken every five years to ensure that Ports Regulator employee remuneration packages are competitive was implemented in 2017/18. Since then only inflation linked cost of living adjustments have been approved by the Regulator. In the absence of pay progression employee remuneration can be outpaced by developments in the market thus affecting the Regulator's ability to attract and retain skilled employees.

## EMPLOYMENT CHANGES



SALARY BAND	EMPLOYMENT AT BEGINNING OF PERIOD	APPOINTMENTS	TERMINATIONS	EMPLOYMENT AT END OF PERIOD
Top Management	5	1	2	4
Senior Management	2	2	2	2
Professional Qualified	7	0	1	6
Skilled	4	0	0	4
Semi-skilled	1	0	0	1
Unskilled	1	0	0	1
<b>TOTAL</b>	<b>20</b>	<b>3</b>	<b>5</b>	<b>18</b>

## REASONS FOR STAFF LEAVING



REASON	NUMBER	% OF TOTAL NUMBER OF STAFF LEAVING
Death	0	0%
Resignation	2	50%
Dismissal	0	0%
Retirement	0	0%
Ill Health	0	0%
Expiry of Contract	1	25%
Voluntary Termination	1	25%
<b>TOTAL</b>	<b>4</b>	<b>100%</b>

The employee undergoing disciplinary proceedings opted for voluntary termination of her employment contract and the hearing did not proceed. The employment contract with the employee was terminated voluntarily effective 25 October 2020.

The previous CEO's employment contract ended on 31 October 2020.

Two employees resigned in December 2020 to pursue different career aspirations.

## LABOUR RELATIONS: MISCONDUCT AND DISCIPLINARY ACTION



NATURE OF DISCIPLINARY ACTION	NUMBER
Verbal Warning	0
Written Warning	1
Final Written Warning	0
Dismissal	0

## EQUITY TARGET AND EMPLOYMENT EQUITY STATUS: MALE



MALE								
LEVEL	AFRICAN		COLOURED		INDIAN		WHITE	
	CURRENT	TARGET	CURRENT	TARGET	CURRENT	TARGET	CURRENT	TARGET
Top Management	2	2	0	0	1	1	1	1
Senior Management	0	0	0	0	0	0	0	0
Professional Qualified	2	3	0	0	0	1	0	0
Skilled	2	3	0	0	0	0	0	0
Semi-skilled	0	1	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>6</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>

## EQUITY TARGET AND EMPLOYMENT EQUITY STATUS: FEMALE



FEMALE								
LEVEL	AFRICAN		COLOURED		INDIAN		WHITE	
	CURRENT	TARGET	CURRENT	TARGET	CURRENT	TARGET	CURRENT	TARGET
Top Management	1	1	0	0	0	0	0	0
Senior Management	2	2	0	0	1	1	1	1
Professional Qualified	3	3	0	1	2	2	0	0
Skilled	2	2	0	0	0	0	0	0
Semi-skilled	1	1	0	0	0	0	0	0
Unskilled	1	1	0	0	0	0	0	0
<b>TOTAL</b>	<b>10</b>	<b>10</b>	<b>0</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>1</b>

## EQUITY TARGET AND EMPLOYMENT EQUITY STATUS: DISABLED



LEVEL	DISABLED STAFF			
	MALE		FEMALE	
	CURRENT	TARGET	CURRENT	TARGET
Top Management	0	0	0	0
Senior Management	0	0	0	0
Professional Qualified	0	0	0	0
Skilled	0	0	0	0
Semi-skilled	0	0	0	0
Unskilled	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>



Port of Durban Z-shape Durban Container Terminal Piers 1 and 2

# PART E

## ANNUAL FINANCIAL STATEMENTS

### PART E ANNUAL FINANCIAL STATEMENTS: 100-129

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FOR THE YEAR ENDED  
31 MARCH 2021

# Accounting Authority's Responsibilities and Approval for the year ending 31 March 2021



Manganese Ore

## General information

<b>Country of Incorporation</b>	South Africa
<b>Nature of Business</b>	Economic Regulation
<b>Business Address</b>	11 <sup>th</sup> Floor, The Marine Building, 22 Dorothy Nyembe Street Durban, 4001
<b>Postal Address</b>	Private Bag X54322, Durban, 4000
<b>Bankers</b>	Standard Bank of South Africa
<b>Website</b>	www.portsregulator.org
<b>Bankers</b>	Standard Bank Limited
<b>Auditors</b>	Auditor-General of South Africa
<b>Controlling Entity</b>	Department of Transport
<b>Preparer of Financial Statements</b>	The financial statements were compiled internally by Mr Thokozani Mhlongo

The Regulator Members are responsible for the maintenance of adequate accounting records and the preparation and integrity of the financial statements and related information. The auditors are responsible for reporting on the fair presentation of the financial statements.

The financial statements have been prepared in accordance with Generally Recognised Accounting Practice (GRAP) issued by the Accounting Standards Board in accordance with Section 91 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA)

The Regulator Members are also responsible for the system of internal financial controls. These are

designed to provide reasonable, but not absolute, assurance as to the reliability of the financial statements, and to adequately safeguard, verify and maintain accountability of the assets, and prevent and detect misstatements and loss.

Nothing has come to the attention of the Members to indicate any material breakdown in the functioning of these controls, procedures and systems during the year under review.

The financial statements for the year ended 31 March 2021 set out on page 108 to 129 were approved by the Regulator on 28<sup>th</sup> May 2021.

Ms Mukondeleli Johanna Mulaudzi  
Chief Executive Officer | Accounting Officer  
30 July 2021

Dr. Tshisikhawe Victor Munyama  
Accounting Authority  
30 July 2021

# The Report of the Auditor-General to Parliament on the Ports Regulator of South Africa

## REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS

### Opinion

1. I have audited the financial statements of the Ports Regulator of South Africa set out on pages 108 to 129, which comprise the statement of financial position as at 31 March 2021, the statement of financial performance, statement of changes in net assets, statement of cash flows and the statement of comparison of budget and actual amounts for the year then ended, as well as notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Ports Regulator of South Africa as at 31 March 2021, and its financial performance and cash flows for the year then ended in accordance with South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No.1 of 1999) (PFMA).

### Basis for opinion

3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the Auditor-General's responsibilities for the audit of the financial statements section of this auditor's report.
4. I am independent of the entity in accordance with the (IESBA) International Ethics Standards Board for Accountants' international code of ethics for professional accountants (including International Independence Standards) as well as other ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.

5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### Responsibilities of the accounting authority for the financial statements

6. The board of directors, which constitutes the accounting authority, is responsible for the preparation and fair presentation of the financial statements in accordance with the SA Standards of GRAP and the requirements of the PFMA, and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.
7. In preparing the financial statements, the accounting authority is responsible for assessing the entity's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so.

### Auditor-general's responsibilities for the audit of the financial statements

8. My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

9. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

## REPORT ON THE AUDIT OF THE ANNUAL PERFORMANCE REPORT

### Introduction and scope

10. In accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objective for selected objectives presented in the annual performance report. I performed procedures to identify material findings but not to gather evidence to express assurance.
11. My procedures address the usefulness and reliability of the reported performance information, which must be based on the entity's approved performance planning documents. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the entity enabled service delivery. My procedures do not extend to any disclosures or assertions relating to the extent of achievements in the current year or planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
12. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for objective 2: economic regulation on pages 39 to 43 presented in the annual performance report of the entity for the year ended 31 March 2021.
13. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the re-

ported performance information to determine whether it was valid, accurate and complete.

14. I did not identify any material findings on the usefulness and reliability of the reported performance information for the selected objective.

### Other matter

15. I draw attention to the matter below.

### Achievement of planned targets

16. The annual performance report on pages 27 to 59 includes information on the achievement of planned targets for the year and management's explanations provided for the under and over-achievement of targets.

## REPORT ON THE AUDIT OF COMPLIANCE WITH LEGISLATION

17. In accordance with the PAA and the general notice issued in terms thereof, I have a responsibility to report material findings on the entity's compliance with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance.
18. I did not identify any material findings on compliance with the specific matters in key legislation set out in the general notice issued in terms of the PAA.

## OTHER INFORMATION

19. The accounting authority is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the financial statements, the auditor's report thereon and those selected objectives presented in the annual performance report that have been specifically reported on in the auditor's report
20. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.
21. In connection with my audit, my responsibility is to read the other information and, in doing

so, consider whether the other information is materially inconsistent with the financial statements and the selected objectives presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

22. The other information I obtained prior to the date of this auditor's report is the chairperson of the board's foreword and the chief executive officer's foreword, and the report of the audit committee is expected to be made available to me after 31 July 2021.
23. If, based on the work I have performed on the other information that I obtained prior to the date of this auditor's report, I conclude that there is a material misstatement of this other information, I am required to report that fact. I have nothing to report in this regard.
24. When I do receive and read the audit committee report, if I conclude that there is a material misstatement therein, I am required to communicate the matter to those charged with governance and request that the other information be corrected. If the other information is not corrected, I may have to retract this auditor's report and re-issue an amended report as appropriate. However, if it is corrected this will not be necessary.

#### INTERNAL CONTROL DEFICIENCIES

25. I considered internal controls relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. I did not identify any significant deficiencies in internal control.

AUDITOR GENERAL

The Auditor-General

Pietermaritzburg

30 July 2021



AUDITOR - GENERAL  
SOUTH AFRICA

## Annexure: Auditor-General's Responsibility for the Audit

1. As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the financial statements and the procedures performed on reported performance information for selected objectives and on the entity's compliance with respect to the selected subject matters.

#### Financial Statements

2. In addition to my responsibility for the audit of the financial statements as described in this auditor's report, I also:
  - identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control.
  - obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control
  - evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the board of directors, which constitutes the accounting authority.
  - conclude on the appropriateness of the accounting authority's use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists relating to events or conditions that may cast significant doubt on the ability of the Ports Regulator of South Africa to continue as a going concern. If I conclude that a material

uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify my opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor's report. However, future events or conditions may cause an entity to cease operating as a going concern

- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation

#### Communication with those charged with governance

3. I communicate with the accounting authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.
4. I also provide the accounting authority with a statement that I have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and, where applicable, actions taken to eliminate threats or safeguards applied.

# Annual Financial Statements

## STATEMENT OF FINANCIAL POSITION FOR THE YEAR ENDED 31 MARCH 2021

	NOTES	2021 (R'000)	2020 (R'000)
<b>ASSETS</b>			
<b>Non-current assets</b>		2 137	2 158
Property, plant and equipment	8	1 784	1 799
Intangible asset	9	7	13
Loans and receivables	10	346	346
<b>Current assets</b>		36 852	29 196
Trade and other receivables	11	128	102
Cash and cash equivalents	12	36 724	29 094
<b>TOTAL ASSETS</b>		38 989	31 354
<b>LIABILITIES</b>			
<b>Current liabilities</b>		1 812	984
Trade and other payables	13	1 113	377
Provisions	15	699	607
<b>TOTAL LIABILITIES</b>		1 812	984
<b>NET ASSETS</b>			
<b>CAPITAL AND RESERVES</b>			
Accumulated surplus		37 177	30 370
<b>TOTAL NET ASSETS</b>		37 177	30 370
<b>TOTAL NET ASSETS AND LIABILITIES</b>		38 989	31 354

## STATEMENT OF FINANCIAL PERFORMANCE FOR THE YEAR ENDED 31 MARCH 2021

	NOTES	2021 (R'000)	2020 (R'000)
<b>REVENUE</b>			
Revenue from non-exchange transactions	2	38 822	36 774
Government grants and subsidies		38 822	36 774
Revenue from exchange transactions	3	10	277
Sale of goods and rendering of services		10	-
Other income		-	277
<b>TOTAL REVENUE</b>		38 832	37 051
<b>EXPENDITURE</b>			
Administration expenses	5	988	1 607
Amortisation and depreciation	8 & 9	382	534
Staff costs	6	18 212	17 548
Audit fees	26	440	370
Legal fees	27	5 435	248
Operating Lease	14	1 812	1 631
Other operating expenses	7	3 505	4 538
Regulator members' remuneration	17	2 336	158
<b>TOTAL EXPENDITURE</b>		33 110	26 634
Finance income	4	1 098	1 399
<b>OTHER GAINS/ (LOSSES)</b>			
Gain / (loss) on disposal of assets		(13)	-
<b>SURPLUS/ (DEFICIT) FOR THE PERIOD</b>		6 807	11 816



**STATEMENT OF CHANGES IN NET ASSETS FOR THE YEAR ENDED 31 MARCH 2021**

	NOTES	ACCUMULATED SURPLUS (R'000)
Opening balance at 01 April 2019		18 554
Surplus/(Deficit) for the year		11 816
Opening balance at 01 April 2020		30 370
Surplus/(Deficit) for the period		6 807
<b>Closing balance as at 31 March 2021</b>		<b>37 177</b>

**STATEMENT OF CASH FLOW FOR THE YEAR ENDED 31 MARCH 2021**

	NOTES	2021 (R'000)	2020 (R'000)
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Receipts</b>		<b>38 832</b>	<b>37 051</b>
Transfers received	2	38 822	36 774
Sale of goods and services	3	10	-
Other income		-	277
<b>Payments</b>		<b>(31 926)</b>	<b>(26 545)</b>
Employee cost	6	(18 212)	(17 548)
Suppliers and other payments		(13 714)	(8 997)
<b>Net cash flows from operations</b>		<b>6 906</b>	<b>10 506</b>
Interest paid		-	-
Finance income		1 098	1 399
<b>Net cash flow available from operating activities</b>	16	<b>8 004</b>	<b>11 905</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Property, plant and equipment	8	(426)	(377)
Intangible assets	9	-	-
Proceeds from De-recognition of Property, plant and equipment		52	5
Other movements		-	-
<b>Net cash flows from investing activities</b>		<b>(374)</b>	<b>(372)</b>
Net increase/(decrease) in cash and cash equivalents		7 630	11 533
Cash and cash equivalents at beginning of the year		29 094	17 561
<b>Cash and cash equivalents at end of year</b>		<b>36 724</b>	<b>29 094</b>

## STATEMENT OF COMPARISON TO BUDGET FOR THE YEAR ENDED 31 MARCH 2021

ECONOMIC CLASSIFICATION	APPROVED BUDGET	ADJUSTMENTS	FINAL APPROVED BUDGET	ACTUAL	VARIANCE
	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)
<b>REVENUE</b>					
Transfers	38 822	0	38 822	38 822	0
Interest Received	1 530	0	1 530	1 098	(432)
Sale of goods and services	0	0	0	10	10
Other income	0	0	0	0	0
Reserves	0	0	0	0	0
Gain on disposal	0	0	0	0	0
	<b>40 352</b>	<b>0</b>	<b>40 352</b>	<b>39 930</b>	<b>(422)</b>
<b>EXPENSES</b>					
Depreciation & Amortisation	481	0	481	382	99
Compensation of employees	21 511	0	21 511	18 212	3 299
Goods & Services	18 360	0	18 360	14 516	3 844
Loss on disposal of assets	0	0	0	13	(13)
	<b>40 352</b>	<b>0</b>	<b>40 352</b>	<b>33 123</b>	<b>7 229</b>
<b>SURPLUS/(DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6 807</b>	<b>6 807</b>
<b>CAPITAL BUDGET</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>426</b>	<b>426</b>
	0	0	0	426	426

Please refer to Note 21 of the Annual Financial Statements for detailed variance analysis between budget and actual amounts.

Please refer to Note 16 of the annual financial statements for a reconciliation of budget and actual Cash Flow Statement.

# Notes to the Financial Statements for the year ending 31 March 2021

## 1 Accounting Policies

### 1.1 Basis of preparation

The annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention unless specified otherwise.

These annual financial statements have been prepared in accordance with Generally Recognised Accounting Practice (GRAP), issued by the Accounting Standards Board in accordance with Section 91 of the Public Finance Management Act, 1999 (Act No.1 of 1999) (PFMA).

The principal accounting policies, applied in the preparation of these annual financial statements, are set out below. These accounting policies are consistent with those applied in the preparation of the prior year annual financial statements, unless specified otherwise. Details of any changes in the accounting policies are provided in notes.

When the presentation or classification of items in the annual financial statements is amended, prior period comparative amounts are also reclassified and restated, unless such comparative reclassification and / or restatement is not required by a Standard of GRAP. The nature and reason for such reclassifications and restatements are also disclosed.

Assets, liabilities, revenues and expenses have not been offset except when offsetting is required or permitted by a Standard of GRAP.

The accounting policies applied are consistent with those used to present the previous year's financial statements, unless explicitly stated. The details of any changes in accounting policies are explained in the relevant policy.

The statement of cash flow has been prepared in accordance with the direct method.

Management has made judgements when applying the useful life and residual values for property, plant and equipment, books and intangible assets. These judgements were made

based on management's view of the future use of each class of assets as well as carrying amounts for each class of assets. This has resulted in the Accounting Policies being applied similar to the previous financial year except where separate disclosure has been made for the effect of the change in the useful lives.

The Ports Regulator when finalising the Annual Financial Statements at the reporting date did not have any class of assets and/or liabilities that had a significant risk attached to it, which may cause material adjustment to the carrying amount of the assets or liabilities in the following financial year.

### 1.2 Presentation currency

All amounts have been presented in the currency of the South African Rand (R) which is also the functional currency of the Ports Regulator.

### 1.3 Rounding

Unless otherwise stated all financial figures have been rounded up to the nearest one thousand Rand (R'000).

### 1.4 Standards, amendments to standards and interpretations issued but not yet effective

The following Standards of GRAP and / or amendments thereto have been issued by the Accounting Standards Board, but will only become effective in future periods or have not been given an effective date by the Minister of Finance: GRAP 104 financial instruments which is not yet effective, Directive 14 on the application of Standards of GRAP by public entities that apply IFRS® standards effective 01 April 2021, Guideline on Accounting for landfill sites which is not yet effective.

### 1.5 Property, plant and equipment (PPE)

Property, plant and equipment are tangible non-current assets that are held for use in the production or supply of goods or services, rental to others, or for administrative purposes and are expected to be used during more than one year.

Items of property, plant and equipment are initially recognised as assets on acquisition date and are initially recorded at cost where acquired through

exchange transactions. However, when items of property, plant and equipment are acquired through non-exchange transactions, those items are initially measured at their fair values as at the date of acquisition.

The cost of an item of property, plant and equipment is the purchase price and other costs directly attributable to bring the asset to the location and condition necessary for it to be capable of operating in the manner intended by the entity. Trade discounts and rebates are deducted in arriving at the cost at which the asset is recognised. The cost also includes the estimated costs of dismantling and removing the asset and restoring the site on which it is operated.

Depreciation is calculated on the depreciable amount, using the straight-line method over the estimated useful life of the assets. Components of assets that are significant in relation to the whole asset and that have different useful lives are depreciated separately. The depreciable amount is determined after taking into account an asset's residual value, where applicable for the entity

Office furniture and fittings: 15 years  
Computer equipment: 10 years  
Motor vehicles: 7 years

The depreciation method used reflects the pattern in which the asset's future economic benefits or service potential are expected to be consumed by the entity. The depreciation method applied to an asset is reviewed, at least, at each reporting date. If there has been a significant change in the expected pattern of consumption of the future economic benefits or service potential embodied in the asset, the method is changed to reflect the changed pattern. Such a change is accounted for as a change in an accounting estimate.

The entity assesses at each reporting date whether there is any indication that the entity's expectations about the residual value and the useful life of an asset have changed since the preceding reporting date. If any such indication exists, the entity revises the expected useful life and/or residual value accordingly. The change is accounted for as a change in an accounting estimate.

The depreciation charge for each period is recognised in surplus or deficit unless it is included in the carrying amount of another asset.

Items of property, plant and equipment are derecognised when the asset is disposed of or when there are no further economic benefits or service potential expected from the use of the asset.

The gain or loss arising from the derecognition of an item of property, plant and equipment is included in surplus or deficit when the item is derecognised. The gain or loss arising from the derecognition of an item of property, plant and equipment is determined as the difference between the net disposal proceeds, if any, and the carrying amount of the item.

Property, plant & equipment (PPE) carrying amount is reviewed at each balance sheet date to ensure that the estimated useful life and depreciation method is still relevant for the future use of PPE. The carrying amount of PPE is also tested if it is still above the recoverable amount to ensure that there are no impairment losses that need to be recognised in the Statements of Financial Performance. The impairment losses are tested as per the requirements of GRAP 21. PPE is not a Cash-generating Asset in terms of GRAP 26 and this is referenced when testing for impairments.

#### 1.6 Books

Books consist of library material that is used by the entity for the research, legal and economic regulation activities. Books are recognised at cost upon acquisition. There are subsequent measurements that occur every year for each book until the book has reached its useful life. Subsequent measurements are done using the cost model. Reviews are carried out at the end of each financial year. Upon derecognition, the gain/loss is included in the surplus or deficit for the period.

Books: 8 years

The books carrying amount is reviewed at each balance sheet date to ascertain if the estimated useful life and depreciation method is still relevant for the future use of the books. The carrying amount of the books is also tested if it is still above the recoverable amount to ensure that there are no impairment losses that need to be recognised in the Statements of Financial Performance. The impairment losses are tested in reference to GRAP 21.

#### 1.7 Intangible assets

An intangible asset is an identifiable non-monetary asset without physical substance. The entity recognises an intangible asset in its Statement of

Financial Position only when it is probable that the expected future economic benefits or service potential that are attributable to the asset will flow to the entity and the cost or fair value of the asset can be measured reliably.

Intangible assets are initially recognised at cost. Where an intangible asset is acquired by the entity for no or nominal consideration (i.e. a non-exchange transaction), the cost is deemed to be equal to the fair value of that asset on the date acquired.

The cost of an intangible asset is amortised over the useful life where that useful life is finite. The amortisation expense on intangible assets with finite lives is recognised in the Statement of Financial Performance in the expense category consistent with the function of the intangible asset.

Amortisation is charged to write off the cost of intangible assets over their estimated useful lives using the straight-line method.

Computer Software: 10 years

The carrying amount of the intangible asset is reviewed at each balance sheet date to determine if the amortisation period and the amortisation method is still applicable and relevant to the entity's foreseeable future. The carrying amount is also reviewed to determine if any impairment losses should be recognised in the statement of financial performance. The impairment would be recognised if there's evidence to suggest that the carrying amount is lower than the recoverable amount for the intangible asset. The impairment losses are tested in reference to GRAP 21.

#### 1.8 Provisions

Provisions are recognised when:

- An entity has a present obligation as a result of a past event;
- It is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and
- A reasonable estimate can be made of the obligation.

#### 1.9 Leases

The Ports Regulator is a lessee for the office accommodation.

Assets subject to operating leases, i.e. those leases where substantially all of the risks and rewards of ownership are not transferred to the lessee through the lease, are not recognised in the

Statement of Financial Position. The operating lease expense is recognised over the course of the lease arrangement.

Operating lease payments are recognised in the statement of financial performance on a straight-line basis over the term of the lease.

#### 1.10 Financial instruments

Financial instruments are initially recognised at cost.

##### 1.10.1 Trade and other receivables

Trade and other receivables are categorised as financial assets: loans and receivables and are initially recognised at fair value and subsequently carried at amortised cost. Amortised cost refers to the initial carrying amount, plus interest, less repayments and impairments. Amounts that are receivable within 12 months from the reporting date are classified as current.

##### 1.10.2 Trade and other payables

Financial liabilities consist of trade payables and borrowings. They are categorised as financial liabilities held at amortised cost, are initially recognised at fair value and subsequently measured at amortised cost which is the initial carrying amount, less repayments, plus interest.

#### 1.11 Budget information

The budget of the entity is prepared on a cash basis while the annual financial statements are prepared on an accrual basis. The budget covers the period from 01 April at the beginning of each period until 31 March being the end of the period.

The budget is prepared based on the appropriations from Parliament and a reconciliation is included in the statement of comparison to budget.

#### 1.12 Going concern

The financial statements of the entity are presented on a going concern basis. This is as a result that the assets of the entity exceed its liabilities as at 31 March 2021. Based on this, there is no uncertainty regarding the continued existence of the entity for the foreseeable future. It must be noted that the entity relies on transfers from the appropriation to fund its operations, therefore there is no doubt regarding the funding of the future operations of the entity and the ability to realise its assets and settle its liabilities.

The Executive Authority is in the process of establishing a Single Transport Economic Regulator (STER), and it must be noted that, in terms of the gazetted STER Bill (February 2018), the Ports Regulator will be the core of the STER when it is formed. This eliminates any uncertainty regarding the continued existence of the Ports Regulator.

#### 1.13 Cash and cash equivalents

Cash includes cash with banks. Cash equivalents are short-term highly liquid investments, readily convertible into known amounts of cash, which are held with registered banking institutions and are subject to an insignificant risk of changes in value.

#### 1.14 Fruitless and wasteful expenditure

Fruitless and wasteful expenditure is expenditure that was made in vain and would have been avoided had reasonable care been exercised. Fruitless and wasteful expenditure is accounted for as expenditure in the Statement of Financial Performance and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.

#### 1.15 Revenue recognition

Revenue from non-exchange transactions arise when the entity either receives value from another entity without directly giving approximately equal value in exchange, or gives value to another entity without directly receiving approximately equal value in exchange.

An asset that is recognised as a result of a non-exchange transaction is recognised at its fair value at the date of the transfer. Consequently, revenue arising from a non-exchange transaction is measured at the fair value of the asset received, less the amount of any liabilities that are also recognised due to conditions that must still be satisfied.

Revenue from exchange transactions refers to revenue that accrues to the entity directly in return for services rendered or goods sold, the value of which approximates the consideration received or receivable, excluding indirect taxes, rebates and discounts.

Revenue from exchange transactions is only recognised once all of the following criteria have been satisfied:

a) The entity retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;

b) The amount of revenue can be measured reliably; and

c) It is probable that the economic benefits or service potential associated with the transaction will flow to the entity and the costs incurred or to be incurred in respect of the transaction can be measured reliably.

#### 1.16 Related parties

The entity has processes and controls in place to aid in the identification of related parties. A related party is a person or an entity with the ability to control or jointly control the other party, or exercise significant influence over the other party, or vice versa, or an entity that is subject to common control, or joint control. Related party relationships where control exists are disclosed regardless of whether any transactions took place between the parties during the reporting period.

#### 1.17 Irregular expenditure

Irregular expenditure is expenditure that is contrary to the Public Finance Management Act (PFMA) and the Public Office Bearers Act (Act No. 20 of 1998) or is in contravention of the entity's supply chain management policies. Irregular expenditure excludes unauthorised expenditure. Irregular expenditure is accounted for as expenditure in the Statement of Financial Performance and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.

#### 1.18 Employee costs

Employee costs represent the actual expenditure for basic salaries, employer contributions, allowances and performance bonuses. The pension benefits are administered by the Government Pensions Administrations Agency; the Ports Regulator contributes to the agency with the balance coming from employees as per the rules governing pension. Medical aid benefits are administered by Discovery Medical Aid and the Ports Regulator contributes towards the medical aid service provider. The group life benefits are administered by Liberty Life, all benefits as per the conditions of service are available to employees.

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021

	2021 (R'000)	2020 (R'000)
<b>2 Transfers and subsidies</b>		
Department of Transport	38 822	36 774
<b>3 Sale of goods and services</b>		
Sale of goods & services	10	-
Other income	-	277
Other income for prior year consists of R270 000 received by the entity for a favourable judgement by the court. R7 000 was received by the entity for the African Rail 2019 event where the CEO was a guest speaker.		
<b>4 Finance income</b>		
Interest income – Standard Bank	1 098	1 399
<b>5 Administrative expenses</b>		
Bank charges	20	19
Internal audit	192	316
Stationery and printing	333	409
Stakeholder engagement	158	332
Subscriptions	31	20
Training and staff development	240	321
Venues and facilities	14	190
	<b>988</b>	<b>1 607</b>
<b>6 Staff costs</b>		
Salaries and wages	15 519	14 651
Performance bonus/awards	1 637	1 798
Employer contributions	1 056	1 099
	<b>18 212</b>	<b>17 548</b>

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021

	2021 (R'000)	2020 (R'000)
<b>7 Other operating expenses</b>		
Advertising	269	49
Audit committee fees	161	26
Catering	8	89
Communication costs	310	160
Computer expenses	827	792
Consultants	786	158
Consumables	20	8
Couriers and delivery charges	4	5
Data and information storage	15	21
Movement in leave pay provision	92	74
Insurance	171	139
Maintenance and repairs	87	23
Motor vehicle expenses	3	11
Municipal services	232	243
Parking	216	218
Security	8	7
Training & development - Members	181	20
Travel, subsistence and disbursements staff	111	2 462
Travel, subsistence and disbursements Regulator members	4	33
	<b>3 505</b>	<b>4 538</b>

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021

8 Property, plant and equipment

2021	COST (R'000)	ACCUMULATED DEPRECIATION (R'000)	CARRYING VALUE (R'000)
Computer equipment	1 753	(927)	826
Office furniture and fittings	1 007	(728)	279
Books	76	(55)	21
Motor vehicle	987	(329)	658
	<b>3 823</b>	<b>(2 039)</b>	<b>1 784</b>
2020	COST (R'000)	ACCUMULATED DEPRECIATION (R'000)	CARRYING VALUE (R'000)
Computer equipment	2 222	(1 596)	626
Office furniture and fittings	1 025	(677)	348
Books	76	(50)	26
Motor vehicle	987	(188)	799
	<b>4 310</b>	<b>(2 511)</b>	<b>1 799</b>

RECONCILIATION OF PROPERTY, PLANT AND EQUIPMENT FOR 31 MARCH 2021

	OPENING CARRYING VALUE (R'000)	DERECOGNI- TION (R'000)	ADDITIONS (R'000)	DEPRECIATION (R'000)	CLOSING CARRYING VALUE (R'000)
Computer equipment	626	(55)	417	(162)	826
Office furniture & fittings	348	(10)	9	(68)	279
Motor Vehicle	799	-	-	(141)	658
Books	26	-	-	(5)	21
	<b>1 799</b>	<b>(65)</b>	<b>426</b>	<b>(376)</b>	<b>1 784</b>

RECONCILIATION OF PROPERTY, PLANT AND EQUIPMENT FOR 31 MARCH 2020

	OPENING CARRYING VALUE (R'000)	DERECOGNI- TION (R'000)	ADDITIONS (R'000)	DEPRECIATION (R'000)	CLOSING CARRYING VALUE (R'000)
Computer equipment	627	(5)	316	(312)	626
Office furniture & fittings	357	-	59	(68)	348
Motor Vehicle	940	-	-	(141)	799
Books	28	-	2	(4)	26
	<b>1 952</b>	<b>(5)</b>	<b>377</b>	<b>(525)</b>	<b>1 799</b>

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021

GRAP 17 requires the entity to review the useful life for all classes of property, plant and equipment. The Regulator reviewed the useful lives and changed the estimates for computer equipment. The reason for the change of the estimate was as a result of the assets being kept beyond their initial estimated useful lives. The Regulator revised the residual values to zero percent since the majority of assets are kept until the end of their useful lives and there's no intention to sell the assets at the end of their useful lives. The Regulator also could not reliably estimate the value of the sale to be realised at the end of an asset's useful life.

### 9 Intangible assets

2021	COST (R'000)	ACCUMULATED AMORTISATION (R'000)	CARRYING VALUE (R'000)
Computer software	331	(324)	7
	<b>331</b>	<b>(324)</b>	<b>7</b>

2020	COST (R'000)	ACCUMULATED AMORTISATION (R'000)	CARRYING VALUE (R'000)
Computer software	393	(380)	13
	<b>393</b>	<b>(380)</b>	<b>13</b>

### RECONCILIATION OF INTANGIBLE ASSETS AT 31 MARCH 2021

	OPENING CARRYING VALUE (R'000)	DERECOGNI- TION (R'000)	ADDITIONS (R'000)	AMORTISA- TION (R'000)	CLOSING CARRYING VALUE (R'000)
Computer software	13	-	-	(6)	7
	<b>13</b>	<b>-</b>	<b>-</b>	<b>(6)</b>	<b>7</b>

### RECONCILIATION OF INTANGIBLE ASSETS AT 31 MARCH 2020

	OPENING CARRYING VALUE (R'000)	DERECOGNI- TION (R'000)	ADDITIONS (R'000)	AMORTISA- TION (R'000)	CLOSING CARRYING VALUE (R'000)
Computer software	22	-	-	(9)	13
	<b>22</b>	<b>-</b>	<b>-</b>	<b>(9)</b>	<b>13</b>

GRAP 31 requires the useful life and the amortisation method to be reviewed at the end of each period. The Regulator changed the estimate of the useful life of the intangible assets after realising that the assets will be kept for a period longer than had previously estimated. It was noted that these assets are still in use and incorporates future economic benefit that can still be recognised by the Regulator through the use of each asset as per the accounting policy of the entity.

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021

	2021 (R'000)	2020 (R'000)
<b>10 Loans and receivables</b>		
<b>Non-current</b>		
Deposit for car parking and lease	346	346
<b>11 Trade and other receivables</b>		
Prepaid expenditure	104	97
Accrued income	24	5
	<b>128</b>	<b>102</b>
<b>12 Cash and cash equivalents</b>		
<b>Bank balances</b>		
Standard bank cheque account	120	238
Standard bank Investment account	36 604	28 856
	<b>36 724</b>	<b>29 094</b>
<b>13 Trade and other payables</b>		
Accruals	1 089	353
Discovery medical aid	24	24
	<b>1 113</b>	<b>377</b>

The entity has considered payables discounting as required by the Standards of GRAP, the entity has a policy and is required by legislation to pay all outstanding invoices within the 30 days period. This has resulted in the payables discounting not being necessary to be applied.

### 14 Operating lease commitments

The Ports Regulator entered into a three-year operating lease agreement with Delta Property Fund that commenced on 1 October 2019 for R139 496.62 per month including VAT with an escalation clause of 8% annually. The lease will expire on 30 September 2022.

Minimum lease payments due		
- not later than one year	1 880	1 741
- later than one year and not later than five years	976	2 856
- later than five years	-	-
	<b>2 856</b>	<b>4 597</b>

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021

	2021 (R'000)	2020 (R'000)
<b>Expenditure for the year</b>	<b>1 812</b>	<b>1 631</b>
<b>15 Provisions</b>		
Carrying amount at the beginning of the period	607	587
Additional provisions made in the current period	92	74
Amount utilised in the current period	–	(54)
<b>Carrying amount at the end of period</b>	<b>699</b>	<b>607</b>
Provisions comprises the value of leave days owing to employees as at 31 March 2021.		
<b>16 Cash generated from operations</b>		
Surplus/(Deficit) for the period	6 807	11 816
<b>Non-cash items</b>	<b>1 196</b>	<b>89</b>
Depreciation	376	525
Amortisation	6	9
(Gain) / Loss on sale of assets	13	–
<b>Working capital changes</b>		
Increase / (Decrease) in payables	736	(440)
(Decrease) / Increase in provisions	92	20
(Increase) / Decrease in receivables	(26)	(23)
(Increase) / Decrease in inventory	–	–
Other working capital movements	–	(2)
<b>Net cash flow from operating activities</b>	<b>8 004</b>	<b>11 905</b>

Reconciliation of Cash Flow Statement

Item	Budget	Actual	Variance
Cash flows from Operating Activities	479	8 004	7 525
Cash flows from Investing Activities	0	374	374
Cash flows from Financing Activities	0	0	0

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021

Reasons for Variance:

Cash flows from investing activities were budgeted at R0.00 since the actual transfers from the appropriation to the Regulator are not sufficient to fund operations and capital expenditure. Furthermore, the entity did not have any plans to replace or acquire assets in the 2020/2021 financial year. The assets that were acquired were as a result of operational requirements during the financial year that necessitated the acquisition of such assets.

Cash flows from operating activities are higher compared to the budget as a result of significant difference in actual interest income for the year being lower than budgeted for. The decrease in interest rate had an impact on interest income generated. The COVID-19 pandemic presented challenges in operations, as such a number of planned activities for the year could not be performed resulting in a positive surplus of funds, thus resulting in operating expenditure being lower than what was budgeted for.

		2021 (R'000)	2020 (R'000)
<b>17 Regulator Members' Remuneration</b>	<b>NUMBER OF INDIVIDUALS</b>		
Members	08*	2 336	158

There is a current total of 08 Regulator Members.  
A total number of 18 meetings were held during the year.  
\*The following members were appointed effective 01 June 2020.  
\*\*Mr A. Adams resigned effective 06 November 2020.  
\*\* Mr Z. Matthews resigned effective 04 March 2021.

Member			
*Z. Fihlani		258	–
*V Munyama		386	–
*Z Kabini		221	–
*S. Matolengwe		310	–
*K. Selane		287	–
*M. Madiya		–	–
*Z. Vilakazi		227	–
*S. Kabelo		296	–
**A. Adams		143	–
**Z. Matthews		143	–
D. Thwala		31	45
T. Mufamadi		1	22
A. Hirachund		33	91
		<b>2 336</b>	<b>158</b>

**NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021**

		2021 (R'000)	2020 (R'000)
<b>18 Executive Members' Remuneration</b>	<b>NUMBER OF INDIVIDUALS</b>		
Members	5	9 572	9 177
<b>Johanna Mulaudzi *( Chief Executive Officer)</b>			
Basic Salary		1 150	897
Performance Bonus		172	120
Taxable Allowance		726	524
Medical Aid Allowance		41	38
Acting Allowance		188	-
<b>TOTAL</b>		<b>2 277</b>	<b>1 579</b>

\*Johanna Mulaudzi was appointed as the Chief Executive Officer effective 01 January 2021.

**Mahesh Fakir \*\*( Chief Executive Officer)**

Basic Salary		1 181	1 932
Taxable Allowance		507	780
Performance Bonus		523	537
Leave Paid Out		43	-
Travel Allowance		4	48
<b>TOTAL</b>		<b>2 258</b>	<b>3 298</b>

\*\*Mr Mahesh Fakir's term of employment came to an end on 30 October 2020

**Thokozani Mhlongo (Chief Financial Officer)**

Basic Salary		980	932
Performance Bonus		237	237
Taxable Allowance		581	525
Medical Aid Allowance		72	67
<b>TOTAL</b>		<b>1 870</b>	<b>1 762</b>

**Lesedi Boihang ( Legal Executive Manager)**

Basic Salary		1 245	945
Performance Bonus		161	-
<b>TOTAL</b>		<b>1 406</b>	<b>945</b>

**NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021**

	NUMBER OF INDIVIDUALS	2021 (R'000)	2020 (R'000)
<b>Chris Lotter ( Policy, Strategy &amp; Research Executive Manager)</b>			
Basic Salary		1 589	1 466
Performance Bonus		172	127
<b>TOTAL</b>		<b>1 761</b>	<b>1 593</b>

The Executive Management are regarded as key management personnel in terms of GRAP 20 Related Parties. This disclosure must be read as part of Note 25 on Related Party Transactions.

**19 Contingent liabilities**

In terms of section 53(3) of the PFMA, a public entity may not accumulate surplus funds without approval from the National Treasury. Approval has been requested from the National Treasury to retain surplus amounting to R35 040 000; however, the entity is still awaiting approval.

The Ports Regulator's Records of Decision have been taken on judicial review on two of the tribunal cases being Sunrise Energy (Pty) Ltd vs the Ports Regulator of SA, Avedia Energy (Pty) Ltd and Others (the Sunrise matter) and Siyakhuphuka Investment Holdings (Pty) Ltd vs Ports Regulator of SA, Transnet SOC and Others (the Siyakhuphuka matter).

PKX Attorneys are the Ports Regulator's Attorneys of Record for both matters.

The cases were taken on judicial review as the Applicants are arguing for the issued Tribunal Record of Decision on each case to be set aside. The merits of each case cannot be disclosed in this note since both matters are before the courts and such disclosure may jeopardise the position of the Ports Regulator when presenting its merits before the courts.

Nevertheless, it is prudent to note that the Sunrise matter has been set down for hearing in September 2021 at the Durban High Court and the Siyakhuphuka matter has been scheduled to be heard in May 2022 at the Pietermaritzburg High Court.

At the time of finalising the Annual Financial Statements (AFS), the outcome of both court cases was unknown and therefore no amount has been disclosed in the AFS as a contingent liability.

**20 Recognised subsequent events**

There were no post balance sheet date events as at 31 March 2021 that required amendment to the annual financial statements or disclosure on the notes to the financial statements.



## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021

### 21 Reconciliation of budget surplus/deficit with Statement of Financial Performance

The Ports Regulator presents its approved budget on a cash basis and the financial statements on the accrual basis.

ECONOMIC CLASSIFICATION	REASON FOR VARIANCE
Revenue	
Transfers	N/A
Interest Received	Interest is based on the investment balance kept by the entity
Sundry Income	N/A.
Sale of Goods & Services	There were five complaints/appeals that were submitted to the entity during the financial year.

#### Expenses

Depreciation & Amortisation	Difference was caused by some planned purchases that did not take place.
Staff Costs	Unspent expenditure arose due to delays in the appointment of funded vacancy posts and resignations that took place during the year.
General Expenses	The entity was allowed to retain unspent surplus funds; therefore the majority of expenditure was on projects that were partly funded by the unspent funds.

#### Capital Budget

Property Plant and Equipment	New office telephone system and IT hardware was purchased for new Regulator Members, new staff and executive management.
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		2021 (R'000)	2020 (R'000)
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### 22 Irregular expenditure

Opening balance		2 398	1 477
Irregular expenditure current year		-	921
Less: Amounts condoned		(2 398)	-
Less: Amounts recoverable		-	-
Less: Amounts not recoverable		-	-
Adjustment to prior period		-	-
<b>Irregular expenditure</b>		<b>-</b>	<b>2 398</b>

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021

The entity received approval for the condonation requested from the National Treasury for the opening balance of irregular expenditure incurred due to material non-compliance with procurement legislation in the 2019/2020 financial year. During the 2020/2021 financial year, the entity did not incur any Irregular expenditure.

### 23 Taxation

No provision is made for taxation as the entity is exempt from taxation as per Section 10 (1) of the Income Tax Act, No. 58 of 1962.

	2021 (R'000)	2020 (R'000)
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### 24 Risk Management

#### Interest rate risk

As the entity has no significant interest-bearing assets, the entity's income and operating cash flows are substantially independent of changes in market interest rates.

#### Liquidity risk

The entity's risk to liquidity is a result of the funds available to cover future commitments. The entity manages liquidity risk through an ongoing review of future commitments and credit facilities.

Cash flow forecasts are prepared and adequately utilised borrowing facilities are monitored.

The entity relies solely on transfers from the parent Department of Transport. These transfers are transferred by the department to the entity at the beginning of each quarter to fund the cash flows for that specific quarter. Any delays in transfers may cause cash flow risks to the entity. The table below analyses the entity's financial liabilities into relevant maturity groupings based on the remaining period at the Statement of Financial Position to the contractual maturity date. The amounts disclosed in the table are the contractual undiscounted cash flows

#### Not later than one month

Payables	1 113	377
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#### Maximum credit risk exposure

Credit risk consists mainly of cash deposits, cash equivalents. The entity only deposits cash with major banks with high quality credit standing and limits exposure to any one counter-party.

The financial assets carried at amortised cost expose the entity to credit risk. The value of the maximum exposure to credit risk are as follows for each of classes of financial assets at amortised cost:

Cash and cash equivalents	36 724	29 094
Trade and other receivables from exchange transactions	128	102

The entity has sufficient insurance cover and sufficient funds to service its financial liabilities.

## 25 Related party transactions

There were related party transactions relating to the transfers of funds from the Department of Transport to Ports Regulator as per the voted funds in the appropriation statement:

		2021 (R'000)	2020 (R'000)
<b>Description of transaction</b>			
Transfers from the Department of Transport		38 822	36 774
<b>26 Audit Fees</b>			
Audit fees relates to the payments made to the Auditor General for the Regularity audit.		440	370
<b>27 Legal Fees</b>			
Legal fees constitute Tribunal proceedings		5 435	248

## 28 Change in accounting estimates

As required by GRAP Standards, the useful lives of all assets were reassessed by management at year end. The Regulator changed the accounting estimates for IT equipment and intangibles from the previous estimates which resulted in the extension of the useful life, as it is probable that these assets incorporate future economic benefit that can still be recognised by the Regulator.

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDING 31 MARCH 2021

The effect of the change in accounting estimates is as follows:

	2021 (R'000)
<b>Statement of financial performance</b>	
Computer equipment - Depreciation	(108)
Computer software - Amortisation	(6)
<b>Statement of Financial position</b>	
Computer equipment - Accumulated depreciation	108
Computer software - Accumulated amortisation	6
	<b>Future Periods (R'000)</b>
<b>Future Effect on Statement of Financial Performance</b>	
Computer equipment - Depreciation	101
Computer software - Amortisation	1
<b>Future Effect on Statement of Financial Position</b>	
Computer equipment - Accumulated depreciation	(101)
Computer software - Accumulated amortisation	(1)

