



Five Year Public Regulatory Review (2015/16)

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1. INTRODUCTION

1.1 PURPOSE

The Regulatory Review is a principle set out in the Regulatory Principles (Department of Transport: 2009) which states on periodic regulatory review:

'The Ports Regulator will seek public submissions every 5 years on the quality and relevance of its regulatory policies and methods. These shall be aligned with the re-basing cycles, and other regulatory development cycles.'

Over the previous five years of operation, the Ports Regulator has matured in its methodologies and practices to an extent that it is worthy of a regulatory review. The year 2015 marked 5 years since the Regulator conducted its first tariff review and heard its first complaint. Therefore, it is prudent to review the quality and relevance of the decisions taken and to re-assess the regulatory environment to ensure that decisions remain relevant going forward. This regulatory review will further inform the ongoing discussions on the creation of the Single Transport Economic Regulator (STER) as outlined in the Medium Term Strategic Framework 2014 -19 (MTSF) as well as discussions around the amendments to the National Ports Act (12 of 2005), its Directives and Regulations.

While this review has been conducted internally, invaluable assistance has been given by the Department of Planning, Monitoring and Evaluation at the Presidency (the DPME). In line with government's outcomes based approach to service delivery, the DPME outlined a methodology for conducting program evaluation for government departments which is applicable, with adjustments, to this, the Regulator's evaluation. The National Evaluation Framework methodology has been combined with that outlined in the Regulatory Principles to create the overall purpose of the review from an implementation evaluation perspective, i.e. *to assess the quality and relevance of the Ports Regulator's regulatory activities and outputs and whether these are likely to lead towards the achievement of the Ports Regulator's desired outcomes.*

1.2 SCOPE

The review will cover the time since the organisation was first created (in legislation) by the National Ports Act (12 of 2005) but will focus in particular on the last 5 operational years (2009-2014). The Ports Regulator has spent the previous five years developing activities and outputs and is, therefore, not yet able to fully measure the impact of these outputs. For this reason, the scope of the review will not include an impact evaluation but rather an assessment of these activities and outputs. In 2015/16, the Ports Regulator has included the 'Ports Sector Review' in its Annual Performance Plan. The Ports Sector Review partly aims to be the barometer that measures impacts on the ports sector. The five-year iteration of this review will, therefore, be better placed to conduct an impact assessment in the future.

Besides marking the first five years of operation of the Regulator, this review aligns with two important re-basing initiatives, namely: The adoption of the first multi-year tariff methodology in 2014/15, as well as the publishing of the Tariff Strategy in July 2015 which significantly reforms port tariffs over the next 10 years.

This review aligns as well with the end of term of the Members of the Regulator in September 2015 and, as a result, furthermore serves to review the recent history of the organisation, with recommendations for the next five years. It will document where the Ports Regulator has come from, where it is going and what is required to get there.

1.3 INTENDED USERS

The intended users of the review are:

- The **Secretariat of the Ports Regulator** who will use the review to better understand their processes and desired outcomes;
- The **Members of the Ports Regulator** who can use the review to ensure that all port stakeholders are better served through the work of the Regulator;
- The **Department of Transport** who can use the review to enable legislative reform and to capacitate the Regulator to be more effective; and
- The **Department of Planning, Monitoring and Evaluation** can use the review as a precedent for the evaluation of the work of regulatory bodies in line with the requirement of the 2014 – 19 Medium Term Strategic Framework and the National Development Plan.
- Port Stakeholders who can use the review to better understand the work of the Regulator and participate in its future initiatives.

1.4 METHODOLOGY

The evaluation was to assess in the view of port users, the quality and relevance of the Regulator's regulatory activities and outputs and whether these are likely to lead towards achievement of the Regulator's desired outcomes. The evaluation has been carried out by the Secretariat of the Ports Regulator. To ensure objectivity and quality, the Ports Regulator has sought assistance of the Department of Performance Monitoring and Evaluation in developing the Terms of Reference (TOR) and methodology as well as the peer review of the final report. The Ports Regulator has used the principles of the National Evaluation System which build on international good practice.

The Methodological Framework was developed by the Ports Regulator, under the guidance of the DPME and peer reviewed by a PhD candidate, focussed on evaluation methodology at the University of Cape Town. The Framework includes a set of evaluation questions and sub-questions targeted at achieving the purpose of the review along with the research methodology most appropriate to answer these questions. The methodological approach and pillars are outlined under the headings that follow.

Literature Review

A literature review of legislation, policy and academic papers on economic regulation in South Africa was conducted in order to assess the current and future context of economic regulation in South Africa. A review of the Strategic Plans and Annual Reports of the Ports Regulator for the previous 8 years was conducted and, with some extracts from these, informs the write-up of Chapter 2 – Overview and establishment of the Ports Regulator.

Interviews

Interviews were conducted internally and with external stakeholders. Internal interviews were conducted with each unit of the Ports Regulator in order to establish an overview of the work of the Ports Regulator and an understanding of the challenges and gaps from the perspective of those working within. Fifteen external interviews were conducted with port academics, the founding Chairman and CEO of the Ports Regulator, industry associations and government officials.

Thirteen interviews were conducted from 11 May 2015 to 17 August 2015, as part of the Regulatory Review, which the Ports Regulator is conducting to assess the service it provides with regard to the economic regulation of South African commercial ports. The table below details the interviews completed. These include two previous Members of the Ports Regulator and a former govern official who was involved in the setting up of the Regulator, three industry associations, a fellow South African infrastructure regulator, two government officials and four port academics.

Table 1: PRSA evaluation interviewees

Organisation	Name	Capacity	Date Interviewed
Gun Metal	Riad Khan	Previous CEO of the Ports Regulator	11 May 2015
South African Association of Ship Owners and Agents (SAASOA)	Peter Besnard	CEO of SAASOA	13 July 2015
National Energy Regulator of South Africa (NERSA)	Rod Crompton	National Infrastructure Regulator representative	15 July 2015
South African Association of Freight Forwarders (SAAFF)	Dave Watts	SAAFF representative	20 July 2015
National Ports Authority	Mpumi Dweba	Former Deputy Director responsible for Maritime Policy at the Department of Transport	24 July 2015
National Treasury	Marissa Moore	Chief Director: Infrastructure	4 August 2015
Ports Regulator of South Africa	Gloria Serobe	Regulator Chairperson	4 August 2015
Centre for Competition, Regulation and Economic Development	Prof Simon Roberts	Director	6 August 2015
Durban University of Technology	Mary Gounder	Lecturer: Maritime Studies	7 August 2015
University of KwaZulu-Natal	Prof Trevor Jones	Economic Lecturer for the Maritime Studies Unit	12 August 2015
University of KwaZulu-Natal	Langa Dlamini	Legal Lecturer for the Maritime Studies Unit	12 August 2015

Department of Transport	Moeketsi Sikhudo	Responsible for STER (Single Transport Economic Regulator) Bill	13 August 2015
South African Shippers, Transport and Logistics Council	Brenda Horne Ferreira	CEO of SASTALC	17 August 2015

Table 2 outlines the evaluation questions and questions thereafter profiles the participants in the focus.

Table 2: Purpose of the Regulatory Review with evaluation questions

Evaluation Questions:	Sub-questions:
How has the context changed since the passing of the National Ports Act (12 of 2005)?	<ul style="list-style-type: none"> • What was the context of the National Ports Act? Consider national commercial ports policy. • Have there been any new legislation/ policy/ speeches that suggest a change in this context? • What do the challenges in realising the Act say about the current context? • What are the implications for the work of the Regulator
Are the intended outcomes of the PRSA relevant or how should they be revised?	<ul style="list-style-type: none"> • What are the outcomes of the PRSA and where are they mandated? • Are the outcomes relevant, given the context or how should they be revised? • Are there outcomes that should be considered that aren't being considered currently?
Are the policies and methods still relevant to achieve the outcomes?	<ul style="list-style-type: none"> • Clarify the policies and methods of the PRSA? • How do they plan to achieve the outcomes and what assumptions are being made? • Have the policies and methods been implemented successfully? • What have been the successes and challenges in implementing the policies and methods? • How does the Regulator compare with other South African regulators?
How do stakeholders perceive the effectiveness, efficiency and neutrality of the PRSA?	<ul style="list-style-type: none"> • Do stakeholders believe that the outcomes of the PRSA are being achieved or are likely to be achieved given the outputs and activities (speaks to effectiveness)? • Do stakeholders believe that policies and methods (activities and outputs) are being carried out timeously and communicated effectively (speaks to efficiency)? • Do stakeholders believe that the PRSA is objective and independent in its policies and methods (speaks to neutrality)?

What changes are needed in the legislation, in the methodologies and in the capacity of the PRSA to improve the likelihood to which outputs and outcomes are achieved?	<ul style="list-style-type: none"> • What changes in context, outcomes and policies and methods are needed to address the emerging context of the PRSA, drawing on the findings above? • Which of these changes can be enacted through legislation and which through the practices of the PRSA?
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With regard to scoring, the attendees were asked to rate the Regulator according to a scale of 1 (bad) to 5 (excellent). These scores were captured and both the median and average scores calculated per port to give the scores reflected below.

Survey of Port Users

An electronic survey of port users was conducted in order to garner views from the public on the work of the Regulator and also to set a baseline for future, more detailed evaluations of this sort. The aim was to ensure that quality and relevant feedback is obtained from users in the system which might be limited in an open public submissions process. To optimise the response rate and to target participants likely to provide informed feedback in the process, the Regulator requested the survey questionnaire to be distributed by the South African Ship Owners Association (SASOA), the South African Association of Freight Forwarders (SAAFF) and the South African Shippers, Transport and Logistics Council (SASTALC) which assisted in improving the return rate. A total of 143 responses were received. In addition to the surveys, the Regulator has, at the Tariff Determination (2014) and Tariff Strategy Roadshow (2015), conducted surveys with attendees to obtain their feedback on the quality and relevance of the Regulators work. Results from these questionnaires have been included as part of the stakeholder input.

Tariff strategy focus group and road show respondents

The Tariff Strategy for South African Ports was published on the 31st of March 2015. Focus groups were held with port experts on the 6th of May and government officials on the 11th of May. Public hearings were held in Durban, Johannesburg, Port Elizabeth, and Cape Town from the 17th to the 24th of June 2015. Questionnaires were distributed to all attendees – 4 port expert forms were returned, 10 government forms returned and 56 feedback forms were returned in total from all four road shows. The feedback forms were completed by 35 respondents with the following breakdown:

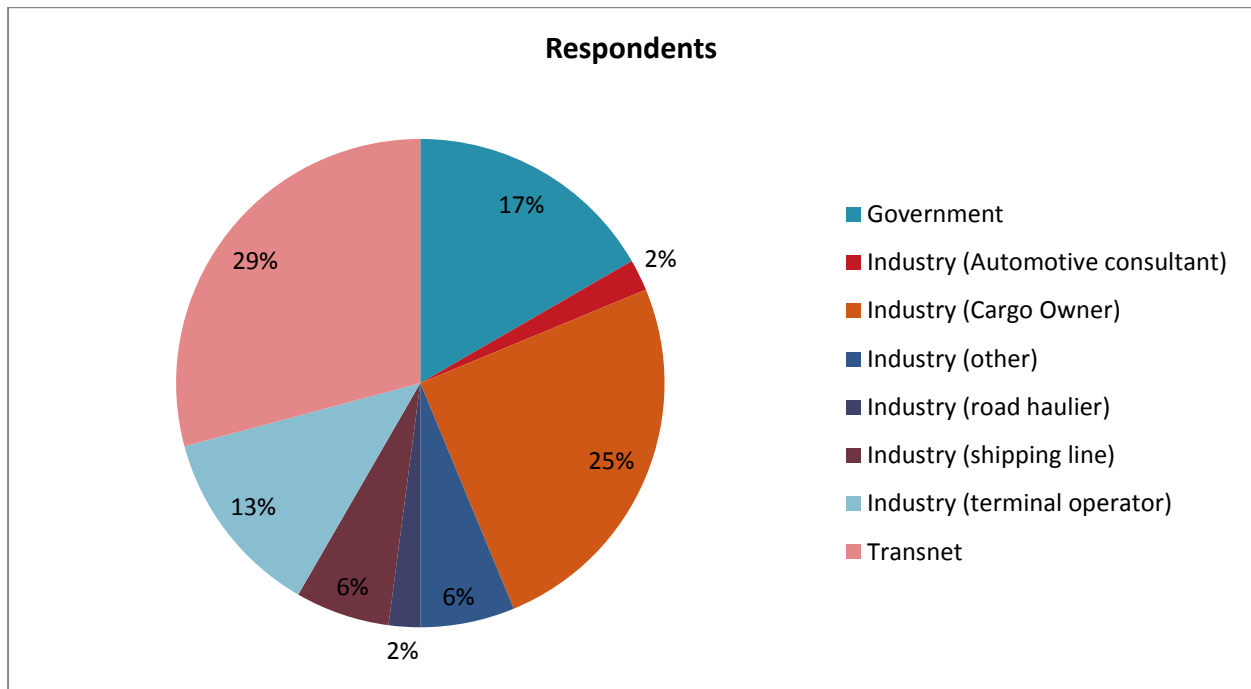


Figure 1 Type of businesses who filled out feedback forms

Detailed feedback and analysis of these is reported in section 4 of the report.

1.5 STRUCTURE

The Regulatory Review is structured as follows:

- Section one: Introduction which covered the purpose, scope, intended users of the review and the methodology
- Section two: contextualises the Regulator through an overview and coverage of its establishment, composition and current programmes.
- Section three: provides an overview of the current theory of change required by the National Evaluation framework
- Section four: Evaluation of the ports regulators' performance including results of the electronic survey results and evaluation questionnaires from road shows
- Section five: Analysis of interviews and survey findings in line with theory of change
- Section six and seven : Conclusions and proposed new theory of change

2. OVERVIEW OF THE PORTS REGULATOR

2.1 LEGISLATIVE MANDATE AND CONTEXT FOR ECONOMIC REGULATION

The Ports Regulator of South Africa is the independent national economic regulator for the nine commercial ports of South Africa. The Ports Regulator was first proposed in the *White Paper on National Transport Policy* (Department of Transport, 1996) which mooted the need for the creation of the National Ports Authority (NPA) and corollary need for an independent Ports Regulator to oversee the monopoly that would be the NPA.

'Since it will itself be a monopoly, the port authority will be regulated by an independent regulator' (Department of Transport, 1996).

In addition, the fact that Transnet SOC Limited (Transnet) is not only the landlord of the ports (via the NPA) but at the same time held 100% of the terminal operator licenses for containers and for automotive terminals, as well as some bulk licenses (via Transnet Port Terminals (TPT)), whilst providing all marine services across the ports sector (via the NPA) making it both a 'player and referee' in the port system.

In the foreword of the *National Commercial Ports Policy* (DOT, 2002), both the Ministers of Transport and of Public Enterprise at the time acknowledged the negative impact the lack of competition in the ports system was having on efficiency within the ports. In order to increase trade and investment, it was seen as essential that South African ports become internationally competitive.

The basic principles of the Commercial Ports Policy are as follows:

1. National needs, aspirations and requirements shall be of primary consideration;
2. Consideration of user and other stakeholder needs and views need to be embedded in all processes;
3. Port system development, management and enhancement will primarily remain a national function;
4. Regulation should be kept to a minimum, without compromising national aspirations, safety, health, security, efficiency and environmental sustainability;
5. Participants in the market should be treated equally and fairly;
6. The principle of user pays or cost recovery, benchmarked against international best practice to ensure that the costs are globally competitive will be applied as far as possible, including an appropriate return for infrastructure providers; and
7. Strategic port planning will include the integration of social and biophysical aspects at the earliest stages to ensure sustainable port development.

The Commercial Ports Policy was implemented through the National Ports Act (12 of 2005), which brought the Ports Regulator into existence, established the National Ports Authority, and created the Port Consultative Committees which brings democracy to port stakeholders at port level.

The diagram below describes the governance framework for South African Ports.

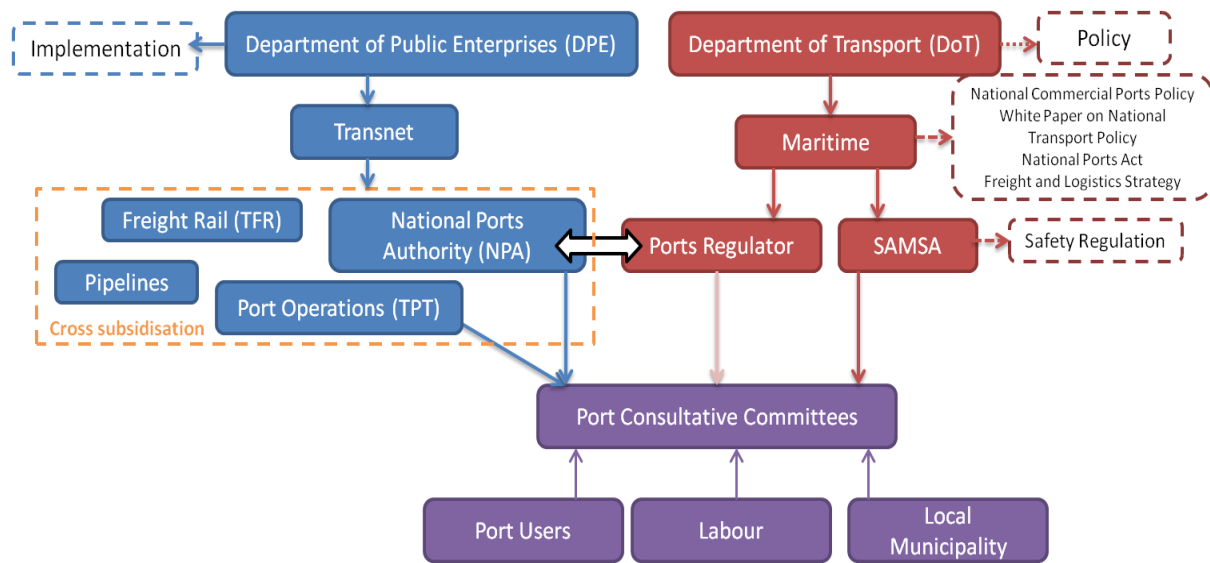


Figure 2 Governance Framework for South Africa Ports

Transnet is a wholly state-owned company reporting to the Department of Public Enterprises (DPE). The NPA is one of four divisions of Transnet; therefore it also falls under the DPE. The South African ports, in turn, fall under the NPA. The NPA is bound, above all else, by the National Ports Act (hereafter “the Act”), under the custodianship of the Minister of Transport. The Department of Transport (DoT) is also home to the Ports Regulator and the South African Maritime Safety Association (SAMSA). SAMSA is responsible for safety, environment, security and compliance with the South African Maritime Safety Act. The Ports Regulator is responsible for economic regulation, tribunal and compliance with the National Ports Act.

The NPA is moreover required to give effect to the need for inclusion of port users in its planning process by consulting with the Port Consultative Committee (PCC) as a user representative forum in each port, legislated in the National Ports Act and whose functions are further described in the Directives; such functions include to consult ports users on the NPAs capex programme. This is in line with Section 81 (3) of the Act, which states that the Authority must consult the PCC regarding any major scheme relating to the expansion or development of a particular port, and any other matter on which the Minister of Transport or Public Enterprises wishes to consult on. There is a PCC for each port and a national PCC. PCCs include port users, labour, local municipalities, TPT, the NPA, SAMSA, and the Ports Regulator which is afforded observer status in the meetings of both PCC and National PCC. The NPCC is a nationally consolidated structure representing all PCCs as well as national sector departments relevant in the development of the South African commercial port system. The NPCC has the responsibility of, as an example, advising the Minister of Transport whenever there are any significant changes in the South African port tariff regime.

2.2. THE FUNCTIONS OF THE PORTS REGULATOR

The functions of the Regulator, as defined in the National Ports Act, are to:

- Exercise economic regulation of the ports system in line with government's strategic objectives;
- Promote equity of access to ports and to facilities and services provided in ports; and
- Monitor the activities of the Authority to ensure that it performs its functions in accordance with the Act.

The Regulator must:

- Hear appeals and complaints contemplated in sections 46 and 47, respectively, and investigate complaints contemplated in section 48;
- Negotiate and conclude an agreement with the Competition Commission established by section 19 of the Competition Act, 1998 (Act No. 89 of 1998), to co-ordinate and harmonise the exercise of jurisdiction over competition matters, and to ensure consistent application of the principles of this Act;
- Advise and receive advice from any other regulatory authority;
- Consider proposed tariffs of the Authority, contemplated in section 72, in the prescribed manner;
- Promote regulated competition;
- Regulate the provision of adequate, affordable and efficient port services and facilities.

Source: National Ports Act (12 of 2005)

The Regulator, whose first members and Chief Executive Officer were appointed in December 2006, a full year and four months after the promulgation of the Act on 4 August 2005, set out to create an organisation to competently and efficiently carry out the functions, starting with the creation and set up of an organisation. Of this process the Chairperson, Ms. Serobe said in the 2008/09 Annual Report,

'The absence of any precedent in this Sector has required that even the most simple of decisions have been complex. Constructing this component of the South African institutional system of governance has been a humbling and educational experience'.

The setting up process included the development of a Regulatory Framework which was concluded in 2009 and entailed:

- Development of regulatory principles that would guide economic regulation of South Africa's commercial ports.
- An approach to assess the NPAs tariff application.
- Processes and procedures to ensure equity of access to port facilities and services through complaints and appeals through the directives.

2.3. ESTABLISHMENT OF THE REGULATOR

The journey traversed in the creation of the organisation included the mundane but energy intensive process of physically establishing and outfitting an office and establishment of appropriate own policies and governance frameworks from those of the Department of Transport (DOT) in the areas of human resources, financial and supply chain management processes through a seconded DOT employee (Mr. Ebie Fakie) in 2007; the setting up of various committees to manage the establishment of the Regulator; and the appointment of the CEO (Mr. Riad Khan) in 2008 together with a general assistant (Ms. Philisiwe Hlophe) and three other contract employees who made up the secretariat of the Regulator. Member of the first board, appointed on 01 January 2007 and served till 31st March 2012 are captured below.



Front: Mr. Riad Khan (CEO and ex-officio), Ms. Thandiwe Njobe, Mrs. Gloria Tomatoe Serobe (Chairperson), Mrs. Ella Nchabele, Mr. Mawethu Vilana and Dr. Brian Gowans. Back: Mr. Ebie Fakie Prof. Douglas Blackmur, Mr. Randal Howard and Mr. Andrew Pike.

The effort required of the Regulator's Members to take part in the operational aspects of the Regulator is evident from the number of meetings held in the two year period from 28 March, 2007 to 31 March, 2009. Over this period, 35 meetings of the Regulator and its committees were held in total. This is in comparison with 2009/10 where only 15 meetings were required and 2011/12 where only 7 meetings were required.

With the offices established and a small, but able, Secretariat in place, the Regulator was capable to focus on its core function of regulation. The Regulator assisted the DoT with the finalisation of the Regulations and Directives to the National Ports Act. The Regulator developed the Regulatory Principles (2009) which firmly established, both internally and externally the Regulator's approach to Regulation. In the Annual Report of 2009 the CEO (Mr Khan) stated:

'The difficulty in reporting on an organisation in its establishment phase, is that every significant event is operational and the performance impact of it is internal and therefore lesser on the external environment. The lag between the exercise of significant effort on the part of the Regulator and its impact on its stakeholders and their operations is felt most acutely by the Regulator'.

Once the Regulatory Framework was completed in 2009, the Ports Regulator had the legal instruments necessary to conduct the first review of the National Ports Authority's tariff proposal and process the first complaints in 2009/10. In 2010/11 the Economic Review of participation in ports operation and services in South Africa was completed. It was intended as a once off research paper to understand the baseline of public and private sector, and BEE participation in the ports of South Africa and guide the Regulator regarding the ideal level of participation in this regard. Also in 2010/11 the first complaint was heard at the tribunal, several port benchmarking studies were completed and the Port Consultative Committees were established. The diagram below describes the milestones in the Regulator's history from its inception in 2005 to the current year.

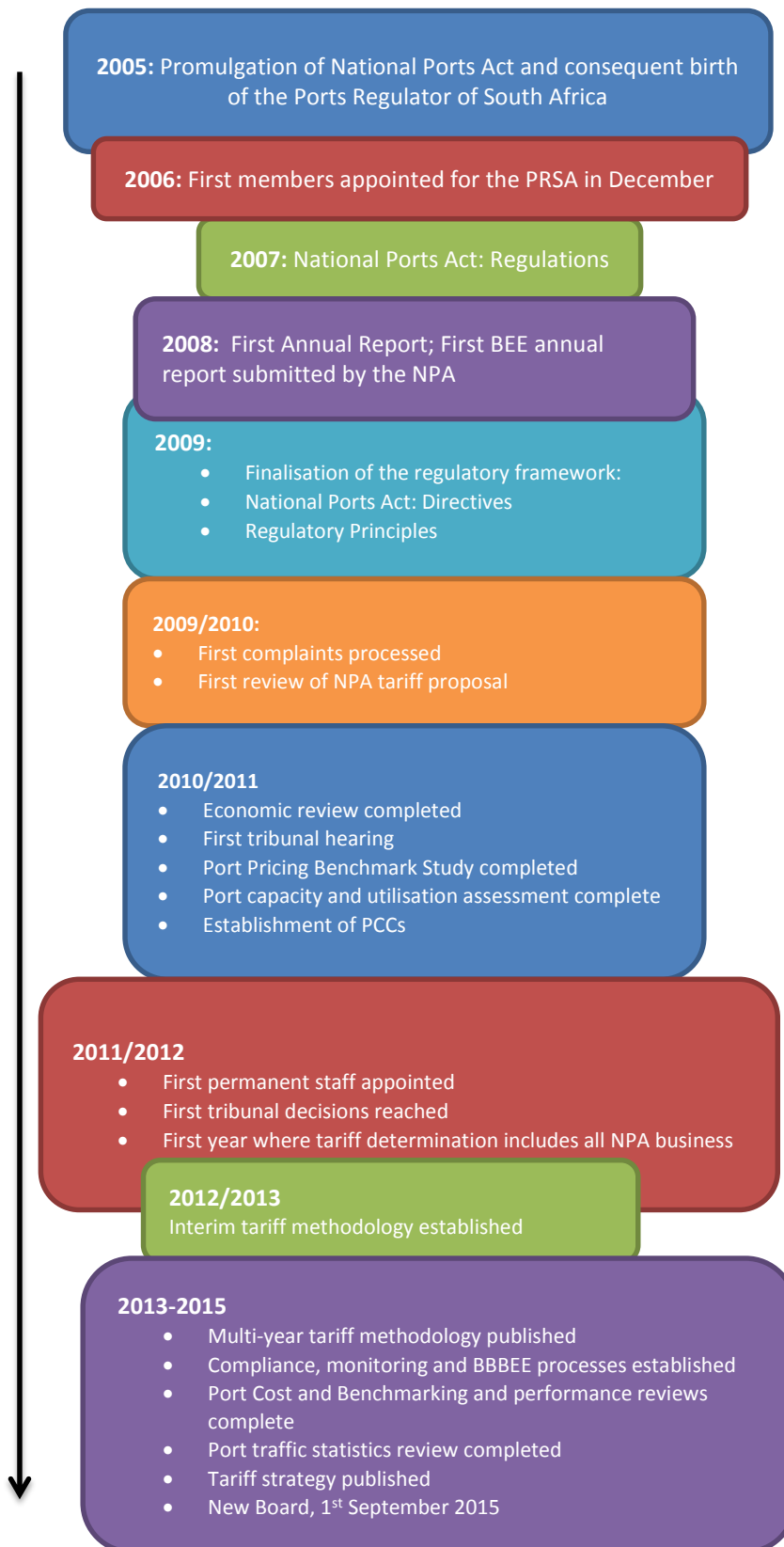
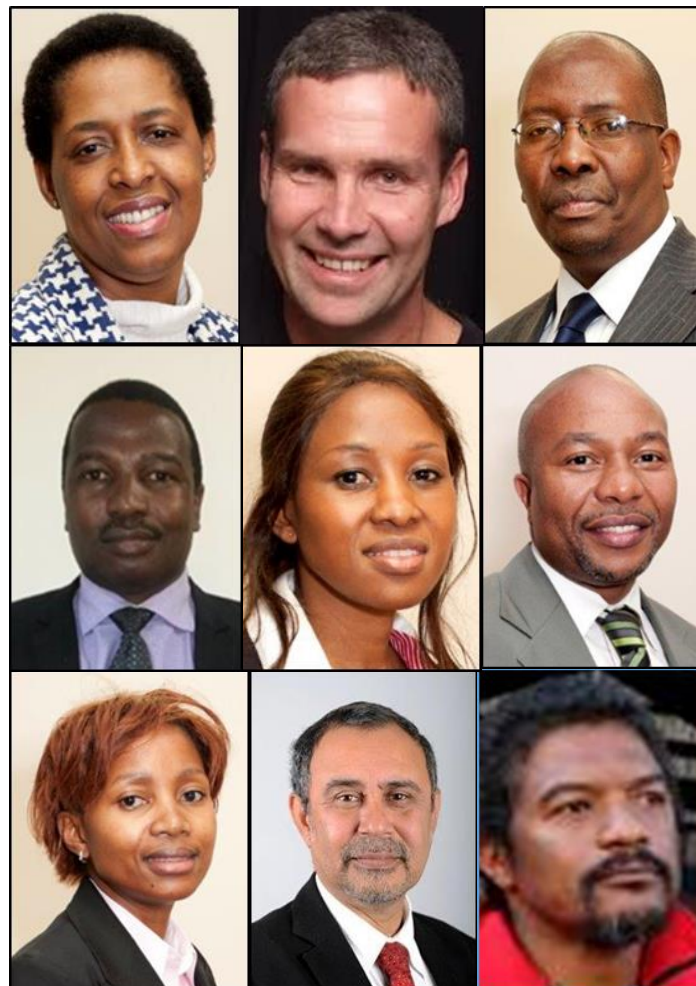


Figure 3: Milestones in the history of the Regulator, 2005-2015

Members of the second board who served between 2012 and 2015:



Mrs Gloria Serobe (Chair)



(From top left) Ms Thato Tsautse, Dr Grove Steyn, Mr Aubrey Ncobo, Prof. Didibhuku Thwala, Ms Patricia Mazibuko, Mr Andile Mahlalutye, Ms Phumzile Langeni, Mr Mahesh Fakir, Mr Randall Howard

	<u>Start Date</u>		<u>End Date</u>		<u>Years</u>
Ms Gloria Tomatoe Serobe (Chairperson)	01-Jan-07		01-Sep-15		8.67
Mr Mahesh Fakir	01-Jun-12		30-Apr-14		1.91
Dr Grove Steyn	01-Jun-12		10-Oct-14		2.36
Mr Aubrey Ngcobo*	01-Jun-12		To Date		3.25
Mr Andile Mahlalutye*	01-Jun-12		To Date		3.25
Ms Patricia Mazibuko*	01-Jun-12		To Date		3.25
Prof Didibhuku Thwala	02-May-14		To Date		1.33
Ms Thato Tsautse*	01-Jun-12		To Date		3.25
Mr Randall Howard	01-Jan-07		01-May-14		7.33
Ms Phumzile Langeni	01-Jan-07		11-Apr-14		7.28

2.4. AIMS OF THE REGULATOR

As a creature of statute, the Ports Regulator's Vision and Mission is largely defined by the explicit mandates of the legislation and the implied mandates of the Policy, Strategy and Initiatives of Government. The Vision and Mission therefore remains consistent with its regulatory and policy framework.

The Ports Regulator Vision is:

"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".

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, 2005.
- Consider the proposed tariffs of the National Ports Authority; and
- Regulate the provision of adequate, affordable and efficient port services and facilities.

At the core of the Ports Regulator's functions and goals is our value system. The Regulator continually strives to be relevant and excellent in the performance of our mandate. The Ports Regulator therefore continues to adhere to the key values of:

	Values	Behavioural Attributes
P	Protection of the values enshrined in the Constitution of human dignity, equality and freedom;	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.
R	Respect and Relevance	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.
S	Service Delivery and Stakeholder focus	Striving to exceed stakeholder expectations which engender credibility.
A	Accountability	Being accountable to the board of the Regulator, its Executive Authority and stakeholders for the decisions and actions it takes.

These values are the foundation upon which the corporate culture in the Ports Regulator is founded and maintained at every level. The Regulator reviewed its strategic plan, and has determined that its goals and objectives should be derived directly from the Act. These have been consolidated as follows:

Table 3: Strategic Goals of the Regulator (2015/16)

Strategic Outcome Orientated Goal	Goal statement
Establish all elements of the Regulatory framework within its mandate	A Regulatory framework is in place that ensures Regulatory certainty and intervention in required areas in accordance with state policy, that responds to all appropriate stakeholder needs
Enhance the capacity to deal with all the output requirements of the organisation	Maintain and enhance where appropriate all systems, resources and staff competencies to ensure the delivery of the Regulator's mandate
Continue to maintain its reputation as an organisation with integrity focused on delivery and excellence	Ensure that it delivers the appropriate outcomes that are predictable, timeous, and clear, in alignment with policy and the Regulatory framework and meet the needs of the country with integrity and excellence.
Ensure that all port sector participants comply with the National Ports Act, 12 of 2005	Monitor and intervene in the industry to ensure that the industry as a whole complies with the Ports policy and legislative requirements.
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	Promote the equity of access to ports and port facilities and services, regulate the efficiency and effectiveness of the provision of port services and facilities by the Authority to enhance competition and attract new investment.

In order to achieve these goals, the Regulator requires a sound operational and reporting structure. The figure below describes the reporting framework and high level functions of the Ports Regulator.

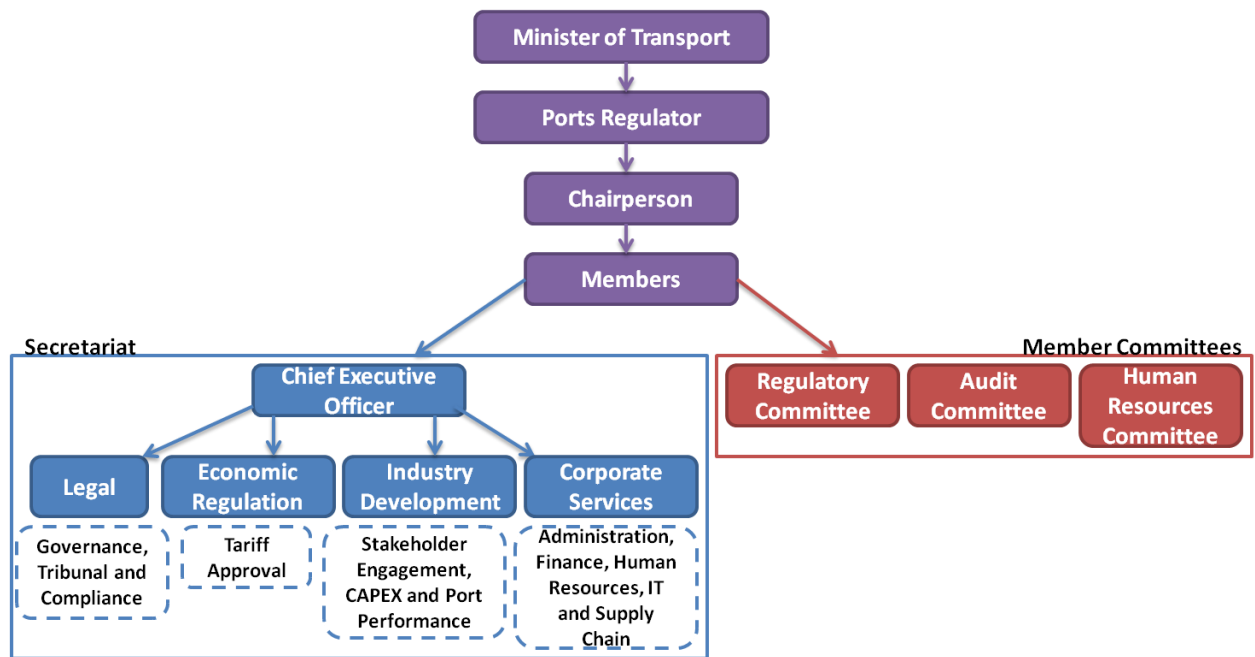


Figure 4 Operational Structure of the Regulator

The Ports Regulator comprises 11 Members who are part of various decision-making committees, and the Secretariat who has the resources to research decisions and support the Members. The Members and the CEO are appointed directly by the Minister of Transport whereas the secretariat is appointed by the CEO. The Regulator has three sub-committees: Regulatory, Audit and Human Resources. The Secretariat is divided into four functional units/programmes: Legal, Economic Regulation, Industry Development and Corporate Services. An overview of each of these units, their functions and their outputs is provided below.

2.5. MAIN PROGRAMMES OF THE REGULATOR

2.5.1. CORPORATE SERVICES

The Corporate Services division of the Regulator is responsible for finance, human resources, IT, and supply chain functions. The inaugural meeting of the Regulator (as pictured below) was held on 28 March 2007, after which the establishment of an administration began in earnest. In the absence of a Secretariat, various committees were set up to manage the establishment of the Regulator.

The Regulator procured offices and implemented a range of administrative and telecommunications systems that would result in operational offices. In order to ensure appropriate governance and compliance, the Regulator utilised the policies of the Department of Transport (DoT) for all human resource, financial and supply chain management functions. Over this period, 35 meetings of the Regulator and its committees were held in total. This is in comparison with 2009/10 where only 15 meetings were required and 2011/12 where only 7 meetings were required.

With the offices established and a small, but able, Secretariat in place, the Regulator was able to focus on its core function of regulation. The Regulator assisted the DoT with the finalisation of the Regulations and Directives to the National Ports Act. The Regulator developed the Regulatory Principles (2009) which firmly established, both internally and externally the Regulator's approach to Regulation. In 2009/10, the residual financial management functions which were still performed within the Department of Transport were transferred to the Regulator. The Regulator then procured the services of suitably qualified consultants for the provision of the internal audit function, the provision of IT equipment and services, the provision of travel management services as well as the development of human resource policies. The Regulator has since automated its supply chain processes through its website and its document management system, Papertrail. The Ports Regulator's revamped website went live in January 2013 and is an essential part of the Regulator's public consultation. All research projects and Record of Decisions are made available on the website.

Finance

The graph below illustrates the expenditure pattern of the Regulator for the past five financial years. In its first two financial years (2007-2009), the Regulator's budget amounted to R 6,474,000 and has since grown to R 16,852,000 in the 2014/15 financial year. The Regulator prides itself on the fact that, despite its infancy and the related challenges, it has never received an adverse or qualified audit opinion from Audit General and never went to SCOPA.

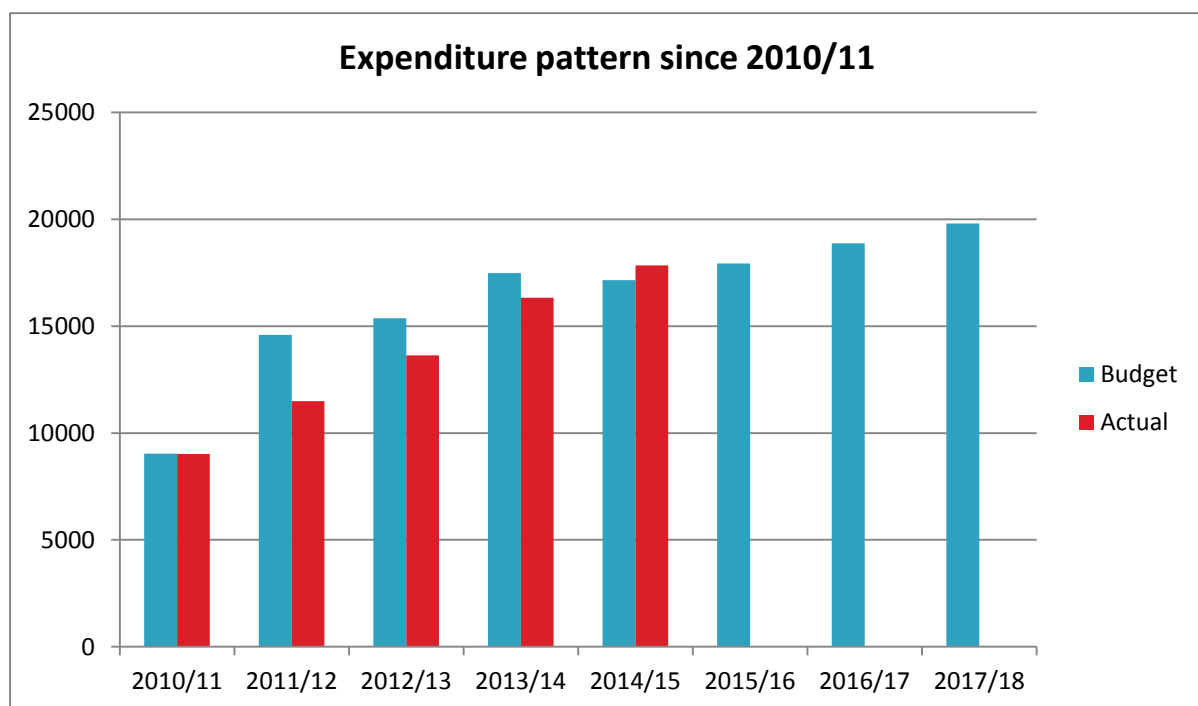


Figure 5 Regulator Expenditure Pattern, 2010-2015

The Regulator is of the view that it has insufficient funds to properly perform its functions. The Regulator is, therefore, in the process of engaging with the Department of Transport to revise the baseline allocation in order to expand the human capital as well as to accelerate the mandate discharge. This may result in the baseline allocation for the medium term to be revised up from the

current budgeted figures. Furthermore, the Regulator has submitted an alternative funding model to the Minister for consideration and approval for promulgation of the necessary enabling legislation.

Human Resources

The total administrative independence of the Regulator from the Department of Transport ushered in a new era of operation for the Regulator; however, this was challenged by the Regulator's inability to appoint permanent employees. In March 2010/11, this challenge was partly eased due to the Human Resource governance requirements being approved, allowing the Regulator to employ a permanent workforce.

The specialised nature of the skills required for the delivery of the Regulatory services that fall within the mandate of the Regulator has made it difficult to recruit employees with the appropriate blend of skills, knowledge and expertise. The skills set include aspects from the maritime sector, economic regulation, maritime law, as well as their allied disciplines of planning and strategy. This challenge, as well as budget constraints, poses an ongoing recruitment problem. In 2014, the Regulator achieved the target of filling all vacant, funded posts. As depicted on its Organogram below, only 17 of 27 posts are funded (those positions shaded in grey are filled and funded).

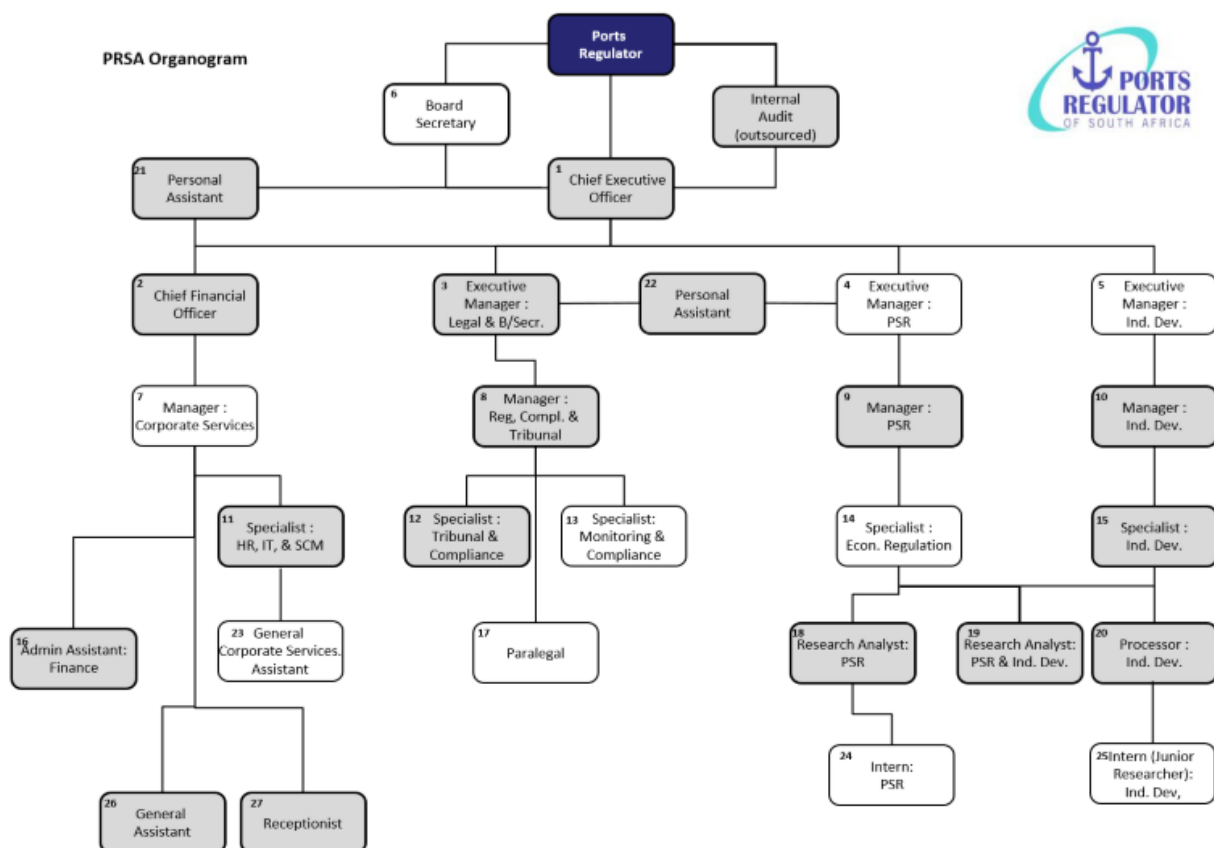


Figure 6 Regulator Organogram

The unique skill set required by the Regulator ensures that both Members and employees undergo various forms of training and skills development. This is done through short courses, degree and diploma courses, as well as internal training. The Regulator Members attended a regulation course at the London School of Economics in 2013 as well as a short course at the University of Johannesburg in order to bridge the skills gap.

In 2013/14, all staff benefits, as stipulated in the Regulator's Conditions of Service, were implemented. This included the implementation of a human resource regime which included its current policies and procedures, an integrated performance management system for employees, and a salary benchmarking exercise. The salary benchmarking exercise was necessary as no cost-of-living adjustments were implemented during the two year salary scales application and approval process. The salary benchmarking process and revised scales aim to create favourable working conditions for the Secretariat as well as attract the necessary skills and talents required by the Regulator.

The departure of the CEO in 2013/14, due to his contract expiring, had a major impact on the operations of the Regulator and presented challenges with continuity since the entire management team of the Regulator had been employed for less than a year. Ms Marissa Damons, the Executive Manager for Legal, acted as CEO before Mr. Mahesh Fakir was appointed on 1 May 2014.

Table 4: Corporate Services Achievements, Challenges and Plans

Corporate Services Achievements, Challenges and Plans
Achievements: <ul style="list-style-type: none"> • Securing offices; • Securing permanent staff –All 17 funded posts are filled out of 27 available; • Implementation of conditions of service in 2014; • Salary Benchmarking completed in 2015; • Compliance with legislation; • Clean audit in 2013/14 – never been called to SCOPA; (unqualified audits in preceding years) • Automation of supply chain processes; • Website developed and went live in January 2013
Challenges: <ul style="list-style-type: none"> • Funding of posts – 27 posts in the organogram but only 17 are funded (and filled); • Finding required skills for core function – some positions have taken up to two years to fill due to applicants not having appropriate skills; • The National Ports Act limits the way in which funding can be raised by the Regulator; • Lag between when members' term ends and when new members are appointed (similar with CEO) due to necessary appointment by the Minister of Transport; • Appointing consultants who understand the core business of the Regulator; • Due to losing essential staff such as the Company Secretary and the first CEO, essential operational knowledge was not always passed on resulting in lessons being learnt too late e.g. in 2013 the server crashed and new staff were unaware that no back up was being made. Metrofile were appointed shortly afterwards to carry out off site back-ups. The loss of the server added to the knowledge vacuum created by essential staff leaving. • Small size means that the organisation loses much institutional knowledge whenever someone leaves

Plans:

- Organisational and Employee performance improved;
- Implementation of a sustainable funding model for the organization, once approved by the Executive Authority.

2.5.2. LEGAL

The legal team is responsible for tribunal, compliance and governance functions.

Tribunal

Operating an efficient and effective quasi-judicial mechanism of dispute resolution, in the form of a Tribunal to hear complaints and appeals under the National Ports Act, is one of the core functions of the Ports Regulator. The Tribunal function regulates the industry through the decisions it delivers with which the NPA and industry is obliged to comply. The Tribunal is seen as a more time and cost efficient means for port users to resolve issues that arise from the actions of the NPA, functioning as both landlord and operator within the ports (against the provisions of the Act). The internal procedures and processes, to be used by the Tribunal and port users in the hearing of complaints and appeals, were established in 2009 by the Regulatory Committee and were enabled in 2009/10 with the approval of the Regulatory Framework and published in the Regulations to the Act.

Section 30(2) of the Act states that *'the Regulator must hear appeals and complaints contemplated in sections 46 and 47, respectively, and investigate complaints contemplated in section 48'*. Section 47(2) states that *'a complaint against the Authority may be based on any ground provided for by the Regulator by direction under section 30(3)'* (where the NPA has not performed its functions) *'or on the ground that:*

- a) Access to ports and port facilities are not provided in a non-discriminatory, fair and transparent manner;*
- b) Small and medium sized enterprises owned by historically disadvantaged groups do not have an equitable opportunity to participate in the operation of facilities in the ports environment;*
- c) Transnet is treated more favourably and that it derives an unfair advantage over other transport companies'.*

By the end of the first year of the Regulations being published (2009/2010), the Tribunal was in operation, and the Regulator had received 16 complaints and 2 appeals. The Regulator consistently acts to ensure that the process remains accessible to all parties, irrespective of their level of resources, availability, or the sophistication of the parties in dispute. The Regulator travelled the country in raising awareness of the Regulator, its function, and the rights of parties in South Africa to all interested parties in 2009/10. Further, the Regulator published a manual describing the processes in a simplified manner. As a result, the Tribunal has received complaints from port users as small as

fishermen and as large as the South African Ship Owners Association. The CEO (Mr. Khan) stated the following about complaints and appeals in the 2009/10 Annual Report:

‘The establishment of a functional capacity to hear complaints and appeals from scratch is a complex and complicated process. The adversarial nature of these complaints and appeals where competing parties wish to convince the Regulator that their points of view on particular matters are correct and appropriate, needs be managed with great sensitivity to the needs of the parties in dispute and to the outcomes and impacts of decisions in this regard’.

The Regulator conducted its first hearing in 2010/11 and reached its first decision in 2011/12; therefore this is the most entrenched process of the Regulator, together with the assessment of the NPA Tariff Book. The Regulator has, over the last 9 years, received and dealt with various complaints and appeals on which recourse was sought against the Authority. The merits on the spectrum of matters have strengthened over time from simple misunderstandings to real, contentious issues on pricing, tariff implementation and fairness issues in the ports sector. The nature and variance of complaints and appeals further continues to evidence the fact that the Regulator has managed to raise awareness across the country, and the international trade arena, with regard to its mandate, functions, as well as the services it offers. The graph below describes the number of matters brought to the Regulator from 2009 to date.

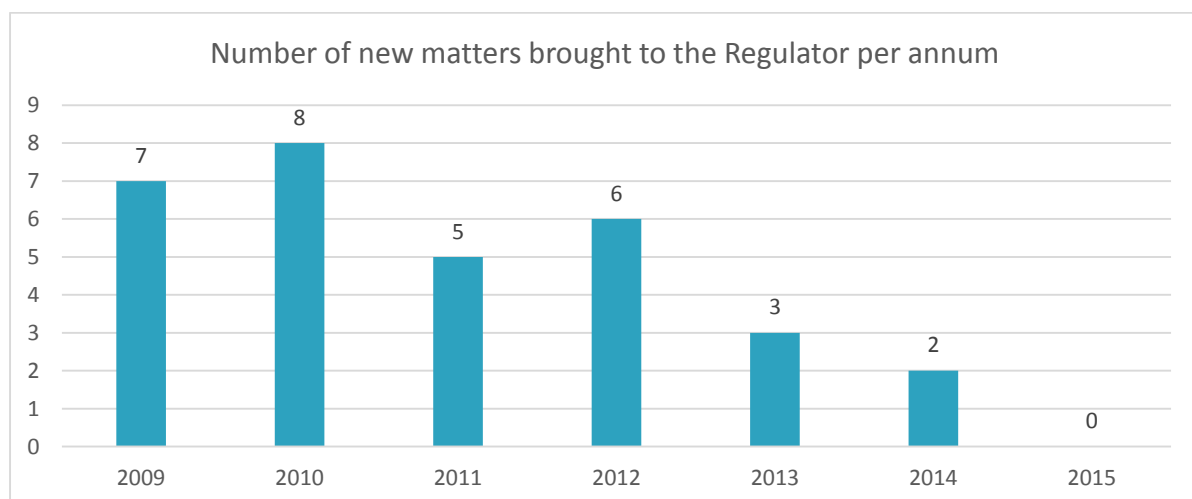


Figure 7 Number of Matters brought to the Regulator, 2009-2015

*Eight similar complaints were combined into one matter under the title of Panargo in 2009/10

A possible reason for the number of matters reducing since 2009/10 is, while matters are ordinarily required to be brought to the Regulator within 90 days, an exception was made for 2009/10 where all matters up to that date could be brought to the Tribunal. Eight of the complaints brought in 2009/10 were on the same topic, i.e. complaint against the excessive pilotage tariff. These 8 Complainants were consolidated into one hearing. The chart below shows progress on the 31 matters brought to the Regulator over the past 5 years. Thirteen of the matters were withdrawn or abandoned by the complainants and six were settled. Matters being settled or withdrawn/abandoned due to settlement are considered a great success by the legal team because they save port users time and money, while at the same time resolving the original complaint. Often complainants to the Tribunal facilitate access

to the NPA, and open communication, and once this is achieved the matter is withdrawn. By December 2015 one matter is still in progress and six Records of Decision have been reached by the Tribunal.

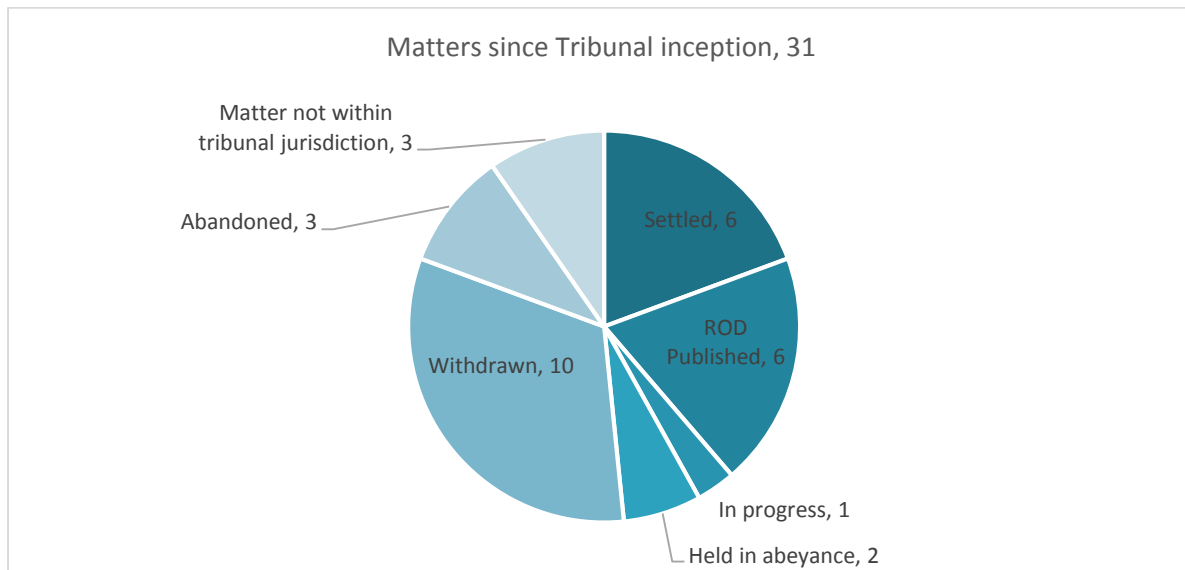


Figure 8: Matters since Tribunal inception

The Tribunal, along with the tariff assessment, are the two primary tools with which the Regulator conducts economic regulation of the SA ports system. As outlined above, the Regulator has ruled on matters involving fair tariff implementation in the ports sector.

The Regulator has experienced much growth in the way that the Tribunal functions over the past 5 years. The Regulator is adding to the body of jurisprudence on port matters and the sophistication of matters is increasing as a result. Staff and Regulator Members are gaining expertise. Procedures are evolving through the current process of amending the Act, its Regulations and Directives. The Regulator has instituted a pre-hearing procedure where the matter is discussed with both parties present, which has greatly assisted the rate of settlement and the expedience of the hearing should it occur.

Challenges include gaps in legislation, especially the lack of enforcement measures. The Tribunal is not given specific enough powers in the Act. The desired amendments to the Act include, but are not limited to, giving the Regulator independent powers of investigation to allow for whistle blowers to come forward anonymously. The Tribunal falls within the Regulator's mandate to regulate the NPA so complaints against Transnet Port Terminals (TPT) and other operators fall outside of the Regulator's jurisdiction which is often disappointing to port users who feel they have no recourse against terminal operators. The possibility of expanding the Regulator's scope is being dealt with under the Single Transport Economic Regulator (STER) Bill.

Compliance

The Regulator, through its compliance function, is required to ensure that the National Ports Authority complies with the National Ports Act (12 of 2005) ("the Act"). The compliance function is aimed directly at the Regulator function to '*Monitor the activities of the Authority to ensure that it performs its functions in accordance with this Act*' (Section 30(1)(c)). The compliance function serves to anticipate issues that might cause complaints and resolve them before they are raised and thus it further pays close attention to Section 47 of the Act (see Tribunal section above).

The key outputs in terms of compliance monitoring were firstly to develop a compliance methodology/framework which was successfully achieved in 2012/13. While the Act instructs the Regulator to monitor all functions of the NPA, due to capacity constraints, the Regulator chose to focus only on specific legal aspects of the Act (such as Section 56 and Section 57) until more resources are available. The legal scope of the Regulators current focus includes concessions, licences, and leases; B-BBEE compliance as set out in the Regulations and; NPA in its current corporate format and the legal consequences thereof.

The second key output was to initiate, strategise and conduct a compliance "audit", in accordance with the compliance framework and methodology for the ports of Richards Bay and Durban, which was achieved in 2014/15. The compliance report has been presented to NPA who have been given an opportunity to formally respond. A summary of the report is available on the Ports Regulator website. This year, 2015/16, will see the compliance programme complete the compliance "audit"/ monitoring process to the remaining six commercial ports.

The third aspect of compliance is to ensure that the NPA complies with Regulations 2, 3 and 4 in terms of the Act, which requires the NPA to report on the B-BBEE status of those operating a facility or providing a service within the ports to ensure they comply with the requirements set out in the aforementioned Regulations. The NPA annually reports on the B-BBEE status to the Regulator. The Regulator has reported since 2009. In January 2013, the Regulator however developed a reporting template for the NPA on B-BBEE and received a sample of B-BBEE certificates from NPA after which B-BBEE monitoring started in earnest. The recent publication of the Maritime Sector Codes has created some confusion amongst industry and the NPA as they contradict the 75% Level Four contribution requirement set out in the Regulations to the Act. The Regulator is liaising with all relevant parties to in this regard.

The lack of punitive measures provided to the Regulator in the Act to enforce the compliance regime is viewed a challenge to fully affecting compliance. As enforcement mechanisms, the Regulator relies on the complaints being raised by port users regarding compliance issues and/or on the Minister of Transport to whom the compliance recommendations are made. Furthermore, there is a severe lack of capacity to carry out compliance monitoring of all existing agreements. One staff member is responsible for checking compliance of all agreements/ licences/ leases across all ports. The compliance review of Durban and Richards Bay included checking compliance against a sample of 250 agreements/ licences/ leases with extracting relevant and detailed information from NPA presenting a significant challenge.

Governance

This function serves to ensure that the internal governance regime of the Regulator is compliant with legislation. The Regulator should be compliant with the National Ports Act, the Companies Act, and Public Finance Management Act (PFMA). This includes performing the function of Company Secretary and advising the Regulator Members on legal issues. Activities include, ensuring the Regulator meetings and sub-committee meetings happen quarterly; ensuring that each meeting has accurate and signed off minutes; ensuring that there is a Terms of Reference for members and a code of conduct; and producing the Annual Report. The Governance function was performed from inception and has progressively become more sophisticated. The Regulator now has a properly constituted “Board” (according to the PFMA, but not the National Ports Act) with Terms of Reference and work plans for all sub-committees. This has enhanced the fulfilment of the Members’ duties and the compliance of the organisation.

The Governance function is furthermore responsible for the review of the National Ports Act, its Regulations and Directives, which began in 2011/12 and was submitted to the National Department of Transport at the end of 2014/15. The amendments are considered vital to providing the Regulator with clear economic regulation and compliance powers necessary to perform its functions.

Table 5 Legal Programme Achievements, Challenges and Plans

Legal Achievements, Challenges and Plans
<p>Achievements:</p> <ul style="list-style-type: none"> • Completing the legal framework required to carry out Tribunal functions and receiving the first complaints and appeals in 2009/10; • Receipt of 42 complaints and appeals over the past five years of which 31 were processed resulting in increased body of jurisprudence and expertise; • Development of compliance framework and first compliance review, in the process of being consulted with the NPA, despite challenges; • Fully functioning “Board” and sub-committees with Terms and Reference, work plans and structured quarterly meetings in place.
<p>Challenges:</p> <ul style="list-style-type: none"> • Insufficient capacity, in terms of number of Regulator Members available, on the panel to hear matters; • Insufficient capacity to carry out compliance reviewing and monitoring of hundreds of agreements/ licences/ leases in all SA ports; • Delaying tactics of Tribunal parties’ legal teams; • Possible reluctance of port users to bring matters forward due to perceived threat by the NPA; • Limited scope and difficulty to accurately regulate, due to jurisdiction of NPA only, excluding Transnet and other terminal operators (due to provisions of the Act not being fully complied with); • Extracting compliance related documentation from NPA timeously; • Non-corporatisation of NPA requires legal decisions and compliance to be carried out in; of incomplete implementation of the Act; and Lack of punitive measures for both Tribunal and Compliance functions, as well as lack of investigative powers.

Plans:

- Tribunal to be consistently operated to receive new complaints and appeals and deal with existing complaints and appeals efficiently;
- Amendments to the Act, its Regulations and Directives, adjusting Tribunal and Compliance procedures to give the Regulator the powers to carry out its mandate;
- Ongoing monitoring and reviewing of compliance of the NPA with the Act, with respect to agreements/ licences/ leases, processes, and other Regulatory aspects;
- B-BBEE status review of all port facilities and services provided in all the ports;
- Monitor amendments to the Act, through the Executive Authority process, and correspond with the Executive Authority regarding any further amendments that may be required.

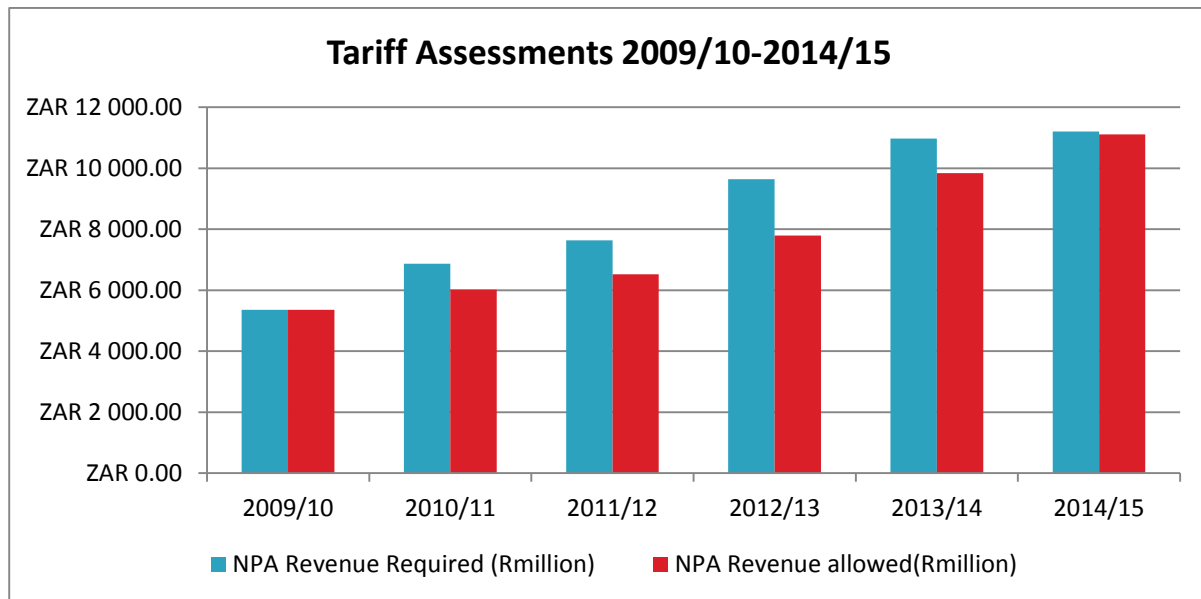
2.5.3. ECONOMIC REGULATION

The Economic Regulation function is overseen by the Regulatory Committee and work is undertaken primarily by the Policy, Strategy and Research unit of the secretariat. The Economic Regulation team is responsible for all directly tariff related matters of the NPA. Section 72 of the National Ports Act (12 of 2005) states that the Authority must, with the approval of the Ports Regulator, determine tariffs for services and facilities offered by Authority and annually publish a Tariff Book containing those tariffs.

The first Tariff Book was approved by the Regulator in the 2009/10 financial year and the Regulator has therefore approved its 6th tariff application from the NPA in 2015. The tariff determination was a watershed for the Regulator and for industry in that for the first time in the history of the country, the ports tariff increases were subject to assessment by an independent party. Since the very first tariff determination, the Regulator has conducted extensive consultation with industry, holding annual tariff hearings or road-shows in Johannesburg, Port Elizabeth, Durban and Cape Town. The Regulator also conducted a review of international best practice in ports economic regulation which allowed the Regulator to contextualise many of the technical and institutional questions required.

In 2013 the Regulator published an interim tariff methodology to assist the NPA calculate tariffs which would, as a result, be more likely approved. In 2014/15 this was converted into a 3 year tariff methodology which was used by the NPA in calculating the new Tariff Book for 2015/16 and will be used in 2016/17 and 2017/18. The tariff methodology is aimed at assisting the NPA with submitting an application which will narrow the gap between the tariffs requested and those subsequently granted by the Regulator. The publication of the methodology increased Regulatory certainty resulting in, for example, less than half a percent difference in the Weighted Average Cost of Capital (WACC) granted and that applied for in 2013/14 (see graph below).

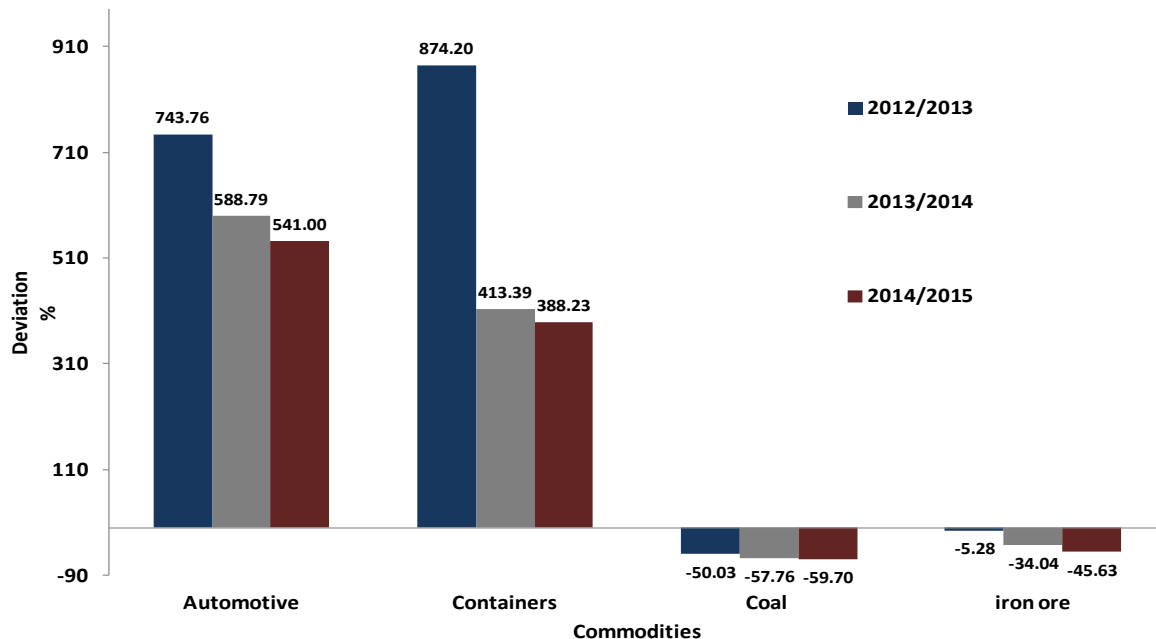
Figure 9 Tariff Assessments 2009-2015



The tariff methodology is one of the most important documents to be produced by the Regulator in the last 6 years and forms part of the Regulatory Framework. By end of March 2015, the resultant tariff decisions had translated into a saving to port users of approximately R5.2 billion. However, there are still several contentious issues in the tariff methodology that port stakeholders mention in consultation. The main issue is the valuation of the asset base which has only ever been conducted by the NPA and, therefore, has not been verified independently. There is a degree of mistrust by port users of this value as it has, in previous years, grown substantially between valuations. It is critical that the Regulator not only values the assets independently but also conducts a critique of the methodology being used. This cannot be done in-house and thus the Regulator is in the process of securing both funding and suppliers to conduct this study. Other issues include the value of the beta, the revenue required methodology and the productivity/utilisation of assets and related capital expenditure. The methodology and the value of the beta will be re-considered on the review of the methodology and the productivity of assets is being investigated by the Industry Development Programme of the Regulator (see below).

As well as the tariff methodology, the economic regulation team conducts various research to support its tariff decisions, of which the most quoted is the Global Port Pricing Comparator Study (GPPCS). The GPPCS compares the price of South African ports to global ports across cargo types. This has allowed the Regulator to differentiate tariffs by cargo type in order to bring tariffs in line with global norms. The 2014/15 tariff increase was 2.2% higher for coal, iron ore, manganese and marine services than it was for other commodities because the GPPCS found that these charges were low by international standards. An illustration from the 2014/15 GPPCS is given below.

Figure 10: SA Cargo Owner Costs as a deviation from global sample average.



Source: Ports Regulator (2015). The full report is available at: www.portsregulator.org

The GPPCS is also an invaluable tool for testing the results of the Tariff Strategy, which was developed alongside the Tariff Methodology process. The Tariff Strategy concerns itself with tariff incidence. It looks at internal and external coherence of tariff incidence and answers important questions such as, which port user carries which portion of the tariff burden. The strategy was completed by the Regulator in July 2015. The Strategy will start being implemented in the 2016/17 tariff determination and will be implemented over ten years as required.

The aim of the strategy is to better allocate costs to users who benefit from infrastructure. The appropriate allocation of costs has a greater impact on application of cost recovery and port user business viability than is commonly thought. Policy decisions by the NPA as to cost allocation can in effect transfer subsidisation between users in contradiction to the actual utilisation of resources. The choices are not neutral and impact on the investment decisions of NPA as well. In an environment where costs are not appropriately allocated, investments that should be made are avoided, as they do not appear to have revenue business cases that support them, when in fact, a more appropriate allocation of costs may in fact make such investments lucrative. The Tariff Strategy is therefore fundamental to the efficiency and effectiveness of the port system.

The inappropriate allocation of costs must be corrected prior to any clear views being made as to subsidisation. In the application of the current cost allocation approach, there are clamours for certain activities to be subsidised and not to be priced on a cost reflective basis that may not require subsidisation should the costs be better allocated. Subsidisation, as articulated in the various policy and regulatory instruments, is an integral part of our economic development agenda, and is to be

justified by the public interest. However, no clear approach to subsidisation or even its alter ego, punitive tariffing, can be implemented in the absence of a clear set of price signals built on appropriate cost allocation methodology. This process, shall greatly contribute to clarifying investment and operational signals in the management and development of the port system.

A highlight for the economic regulation function is that the Tariff Methodology, the Tariff Strategy and the previous two tariff assessments have been done in-house. These are complex processes and it is a testament to the team that they have been widely accepted by port stakeholders and government alike. Challenges include the lack of funding for essential parts of economic regulation, including the inability of the Regulator to always verify data being received from the NPA. The trajectory of increasing sophistication of our assessments is promising as we strive to achieve the level of complexity required by the hundreds of pricing items in a port system.

Table 6: Economic Regulation Achievements, Challenges and Plans

Economic Regulation Achievements, Challenges and Plans	
Achievements:	<ul style="list-style-type: none"> • Completing the Directives, Regulations and Principles that enabled economic regulation to take place; • Completing the Economic Review of the South African Ports System; (in 2015/16) • Completing the first tariff assessment in 2009/10 and 5 thereafter, two of which have been completed in-house; • Publishing the interim (2013/14) and multi-year Tariff Methodology (2014/15); • Publishing the Tariff Strategy (July 2015); • Completing three years of Global Port Pricing Comparator Studies and other supporting research year on year.
Challenges:	<ul style="list-style-type: none"> • Inability to carry out the valuation of assets due to funding constraints, which has been addressed as budget adjustment in 2015; • Attracting scarce skills and receiving affordable training; • Asymmetry of information received from NPA; • Lack of capacity in order to cover all analysis required for the tariff methodology timeously; • Regulator capture.
Plans:	<ul style="list-style-type: none"> • Implement and review the Multi-year Tariff Methodology; • Tariff Strategy approved, published, implemented and monitored; • Annual Global Tariff Comparator Study for at least 5 commodity types e.g. coal, iron-ore, automotives, liquid bulk, containers; • Review of the Port Sector; • Port level analysis of financials and rental income; • Conduct valuation of the Regulatory Asset Base of the National Ports Authority

2.5.4. INDUSTRY DEVELOPMENT

Industry development is the newest function of the Regulator and was initiated in 2013 to ensure effective interaction with Industry and to address equity of access to ports, as well as skills development within the maritime sector. Industry development would monitor progress in the system in relation to achievement of transformational objectives broadly and within the context of the Broad Based Black Economic Empowerment. The initial functions are described below:

- a) Oversee skills gaps in the maritime industry and challenges to be met;
- b) Increase the supply of qualified entrants into the maritime industry in South Africa by establishing relationships with academic institutions to facilitate maritime studies as a viable career choice, holding and/or participating in open days at schools and tertiary/academic institutions, produce information pamphlets for distribution and develop/implement bursary schemes for underprivileged students, as funding becomes available.
- c) Facilitate equity of access to ports by contributing to the promotion of development of port related businesses. This includes developing sound working relationships with Development Financing Institutions, communicating development opportunities to port users and encouraging BBBEE port users to take advantage of programmes on offer.
- d) In line with the requirements for the PRSA to support government objectives in the National Ports Act, at inception it was clear that it would need to support the Industry Development initiatives of the Department of Transport and the other transport entities operating in the maritime and ports space e.g. the South African Maritime Safety Authority without compromising these or impacting on the independence of the Regulator. Through the published port regulations, the Regulator is an observer in the Port Consultative Committees allowing industry development to be informed as well as input into the PCC processes, which are designed to democratise the NPA CAPEX development process by requiring that port users – through their representatives – are consulted on any major CAPEX projects.

The Industry development function in the Regulator has, however, evolved from this formative vision of a department. While Industry Development does support the Department of Transport in such matters and is responsible for stakeholder engagement, the function spends much of its time researching port performance and utilisation. The two primary functions of stakeholder engagement and port performance monitoring are outlined below.

Support to the DOT and Stakeholder engagement

The Industry Development Unit is the interface between port stakeholders and the Regulator. Stakeholder engagement involves engaging with port users, government departments and the NPA. The most common means for engagement with all three stakeholder groups is through Port Consultative Committees (PCCs). Port Consultative Committees are legislated in Section 81 of the National Ports Act. Regulation number 7 (3) states that *'A representative of the Ports Regulator may attend any meeting of any Ports Consultative Committee in an observer capacity, may contribute to such meetings if requested to do so, but shall not be permitted to participate in any voting or raise any*

objections to any action, decision, or advice proposed to be taken or given by the Committee’. The manager of industry development attends quarterly PCC meetings at all ports, as well as the National PCC. The objective is to develop a national consensus across all stakeholders to optimize port planning and operations.

The Industry development unit is also involved in stakeholder engagement on the tariff approvals, methodology and strategy through road-shows and other individual engagements. Engagements with government are focused on request for technical or other support by the Department of Transport (DOT) on port development process that do not have a direct bearing on the regulatory processes i.e. tariff approval, complaints, appeals and tribunal processes. The unit has recently provided required technical support in the Department’s process of establishing a Single Transport Economic Regulator (STER), through the draft Transport Economic Regulation Bill; the National Maritime Transport Policy; the review of the National Freight and Logistics Strategy as well as the PCCs which are chaired by the DOT.

Capex and port performance

The Regulator is directly responsible for the regulation of the *provision of adequate, affordable and efficient port services and facilities*, as well as ensuring that Transnet is not treated more favourably or that it does not derive an unfair advantage over other transport companies (National Ports Act, 2012). The overall objectives of the Industry Development CAPEX and Port Performance function therefore follow from the role of the Regulator as per the National Ports Act (12 of 2005). The objectives are to:

- Ensure that CAPEX is being leveraged to the maximum benefit of the country by reaching high performance levels.
- Monitor the Authority’s achievement of efficiency levels in marine services and terminal operation given the lack of or low levels of competition in these spaces, including ensuring that other operational divisions of Transnet in the port system are not favourably treated with regard to the setting, monitoring of standards or application of sanctions.

Industry Development performs these objectives through benchmarking port performance, monitoring the TOPS (terminal operator performance standards) and MOPS (marine operator performance standards) processes, as well as monitoring capital expenditure and utilisation. With capacity to conduct studies enhanced during the 2014/15 financial year, the Industry Development Department conducted research and published the first Port Capacity and Utilization Study and Port Performance Benchmarking Study in March 2015. Both studies set the basis for more comprehensive research and assessment of the productivity and efficiencies of South African terminals.

A highlight for the unit has been the institution of Port Level KPI Sub-Committees which fall under the Port Consultative Committee meetings; the insistence that wider port user and stakeholder constituency be invited to consider and comment on the Authority’s capex program and port performance through annual national road shows, which serves to broaden the democratic function of the PCCs as well as the institution of the ongoing stakeholder perception surveys.

Industry Development Achievements, Challenges and Plans

Achievements:

- Active engagement and technical support to the Department of Transport's initiatives in transforming the port system through the Port Consultative Committees, the National Transport Forum and those intended at improving the regulated aspects of South Africa's transport logistics system broadly (bill and related process for Transport Economic Regulation) and the review of the National Freight Logistic Strategy, and the National Maritime Transport Policy.
- SA Port Terminals: Capacity and Utilisation review 2014/15 study published.
- Benchmarking South African Ports: containers and automotive terminals 2014/15 study published (2015).
- Project register for monitoring Authority's Capital projects and expenditure for 2015/16 and beyond developed.
- Templates for reporting on port performance per port 2015/16 and beyond developed.

Challenges:

- Defining and consistently translating an Industry Development mandate within a Regulatory context without compromising independence of the Regulator;
- Information asymmetry between NPA and Regulator –;
- Timeous extraction of information and verification of data from NPA;
- Capacity with regard to engineering and complex port performance and efficiency modelling skills;

Plans:

- Support the Maritime Industry Development initiatives of government and the DoT, within the mandate of the PRSA;
- Port performance and efficiency benchmarking review;
- Port infrastructure utilisation and Capital Expenditure (CAPEX) Programme assessment;
- Project Register of NPA CAPEX projects established, and progress monitored quarterly;
- Perform Regulatory Review/ evaluation of the Ports Regulator every 5 years as per the Regulatory principles.

Against this backdrop, the evaluation of the Regulator is based on what the Regulator set out and was required to achieve in terms of quality and relevance of its decisions. The DPME has established a methodology for impact assessment titled "Theory of Change" to denote the change in government's planning and delivery approach which previously tended to be activity based instead of focused on outcomes and output of the efforts of various departments and state owned entities. This is outlined below.

New board appointed from 1 September 2015:



Mr Thaba Mufamadi (Chair)



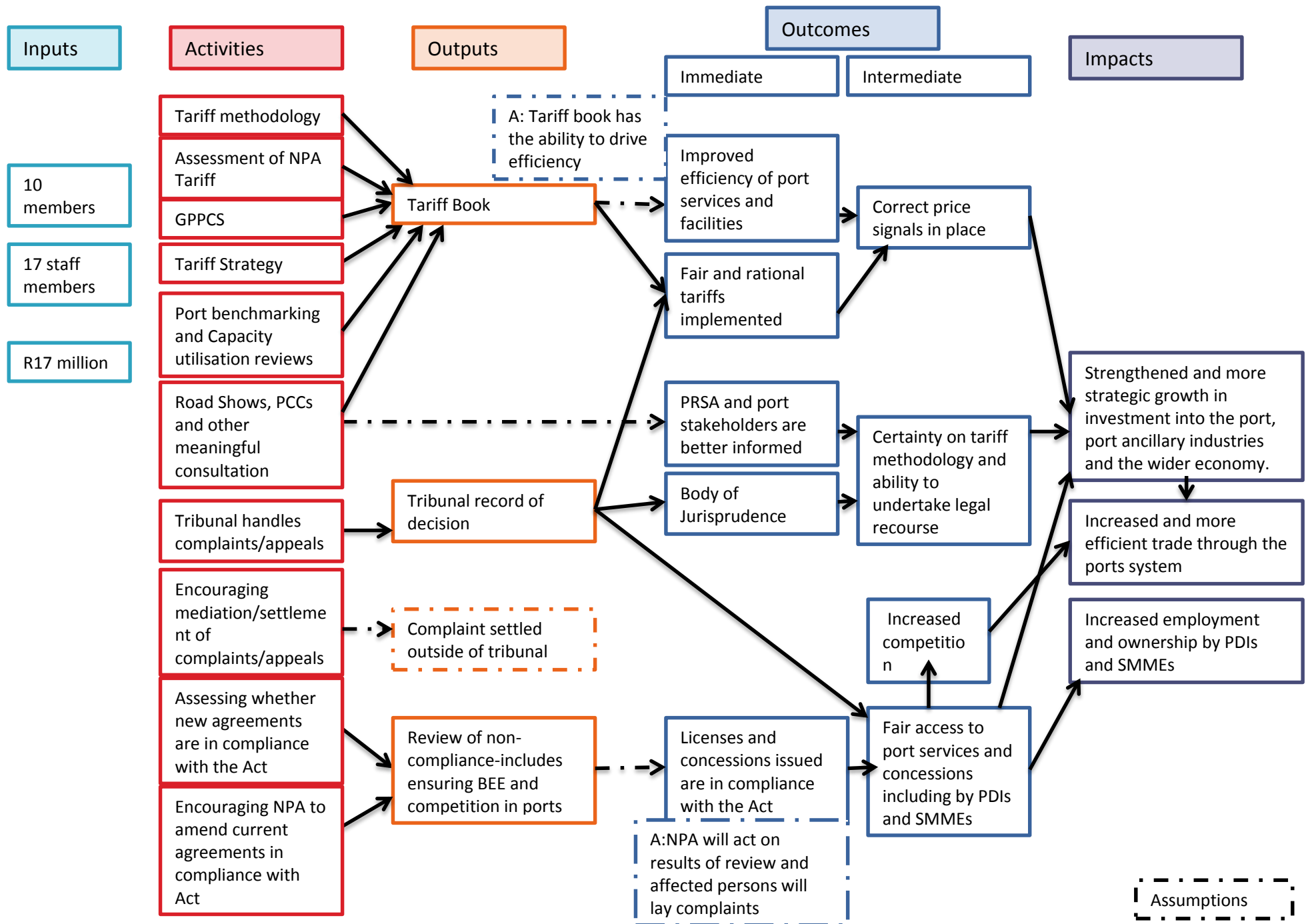
(From top left) Ms Thato Tsautse, Mr Lindelwe Mabandla, Mr Aubrey Ncobo, Ms Patricia Mazibuko, Mr Riad Khan, Prof. Didibhuku Thwala, Mr Andile Mahlalatye, Ms Gerdileen Taylor, Ms Anjue Hirachund, Adv. Gugulethu Thimane

3. THEORY OF CHANGE

The programme, activities and outputs of the Regulator, described in the overview, are summarised in the Theory of Change below, which was developed with the assistance of the DPME. A Theory of Change describes the causal relationship between activities and outputs with the anticipated outcomes and impacts, teasing out if the assumptions that informs the inputs and activities can lead to the achievement of the intended outputs and impacts, requiring a constant check to ensure that necessary adjustments are made to realise intended impact. If a programme has not worked the Theory of Change can help identify whether this is due to implementation or whether the causal chain does not work and if a programme works well it can help to understand what is required to repeat the success (DPME, 2014).

Due to the fact that the Regulator is a fairly new organisation and are still in the process of refining its Regulatory framework, very little data is available to monitor the outcomes and impacts of the Regulator on the South African economy. For this reason, an impact assessment could not yet be conducted as part of this review. The focus of the review is rather on implementation of the actions and outputs of the Regulator and a qualitative evaluation of whether the implementation of actions and outputs are likely to achieve the impacts identified in the Theory of Change.

This short section diagrammatically summarises the work processes of the Ports Regulator as it currently stands, and must be read together with the sections that follow which examines what the various public submissions say about the work of the Regulator, its working environment, the results of its work, and suggestions and interactions for improvement. These then are captured in a new Theory of Change diagram, at the end of the Review/Evaluation, which prescribes new or additional work processes for the Regulator and its Executive Authority to consider going forward into the next five years.



The envisaged and ultimate impact of economic regulation of SA commercial port system are three fold: strengthened and strategic growth in investment into the port, port ancillary industries and wider economy; increased and more efficient trade through the system and increased employment and ownership by PDIs and SMMEs. The Regulator's inputs, activities, outputs and outcomes must in one way or the other contribute to these.

The three legislated tools of the Regulator are listed in the Theory of Change as the three outputs - the Tariff Book, the Tribunal Decisions and the Compliance Review. As mentioned in the Overview, the Tariff Book and the Tribunal are the most entrenched processes of the Regulator, each running for five years, whereas the Compliance Review has only just been completed. Complaints settled outside of the Tribunal are also an output of the Tribunal and mediation offered by the Regulator but is more outside of the Regulator's control. The Tribunal relies on the activities as outlined in the Directives and the Tribunal Manual. The Compliance Review is dependent on a Compliance Framework developed in 2013/14. These activities are carried out in the Legal Program. The Tariff Book has substantially more processes feeding into it. It is dependent on the Tariff Methodology, the GPPCS, the Tariff Strategy, the Port Performance Benchmarking and the CAPEX monitoring/Capacity Utilisation review. The last three of these activities are very new and were published for the first time in 2014/15. These activities are carried out in the Economic Regulation and Industry Development Programs.

Several outcomes are produced as a result of the three outputs. The Tariff Book's primary function is to create fair and rational tariffs which lead to the correct price signals being in place which, ultimately, strengthens strategic investment into South African ports, growing trade and reducing the cost of doing business in the ports. These impacts are heavily dependent on efficiency, not just of pricing, but of port operations. The ability of the Tariff Book to drive efficiency within the ports is a major assumption. The Tariff Book currently does not include efficiency incentives but this is the medium term goal of the Regulator and it is intended to re-examine this in its regulatory design efforts in the near future. Due to the Pricing Strategy and efficiency programmes being so new, the Tariff Book does not yet represent the correct price signals, therefore, the outcomes and impacts cannot be evaluated as yet.

The outcomes of the Tribunal are that fair and rational tariffs are implemented through the Tariff Book, a body of jurisprudence leading to increased certainty amongst port users on their ability to take legal recourse, and fair access to port services and concessions including by previously disadvantaged persons (PDIs) and small, micro, and medium sized enterprises (SMMEs). The link between Tribunal decisions and these outcomes is strong as the NPA must obey the decisions of the Tribunal. The outcome of the compliance programme is that licenses and concessions issued are in compliance with the Act, leading to fair access to port services and concessions including by PDIs and SMMEs. This outcome, however, relies on the NPA acting on the compliance findings. Both the Tribunal and Compliance programmes are intended to lead to increased competition in the ports as was envisaged in the Commercial Ports Policy. Increased competition, is envisaged to lead to increased and more efficient trade as well as reducing the cost of doing business. A further impact of both legal tools is the increased employment and ownership by PDIs and SMMEs.

The Regulator's support of the Port Consultative committee process and other meaningful stakeholder consultation underpins and informs all three outputs, leading to both the Regulator and port stakeholders being better informed, creating the certainty required for the Theory of Change to

operate effectively. The performance of the Regulator on the components of the theory of change was investigated through interviews, specific electronic surveys, and focus group discussions with various groupings of port users as well as self-administered questionnaires at the Regulator's road shows (NPA's application as well as tariff strategy road show).

4. EVALUATION OF THE PORTS REGULATORS' PERFORMANCE AND SURVEY RESULTS

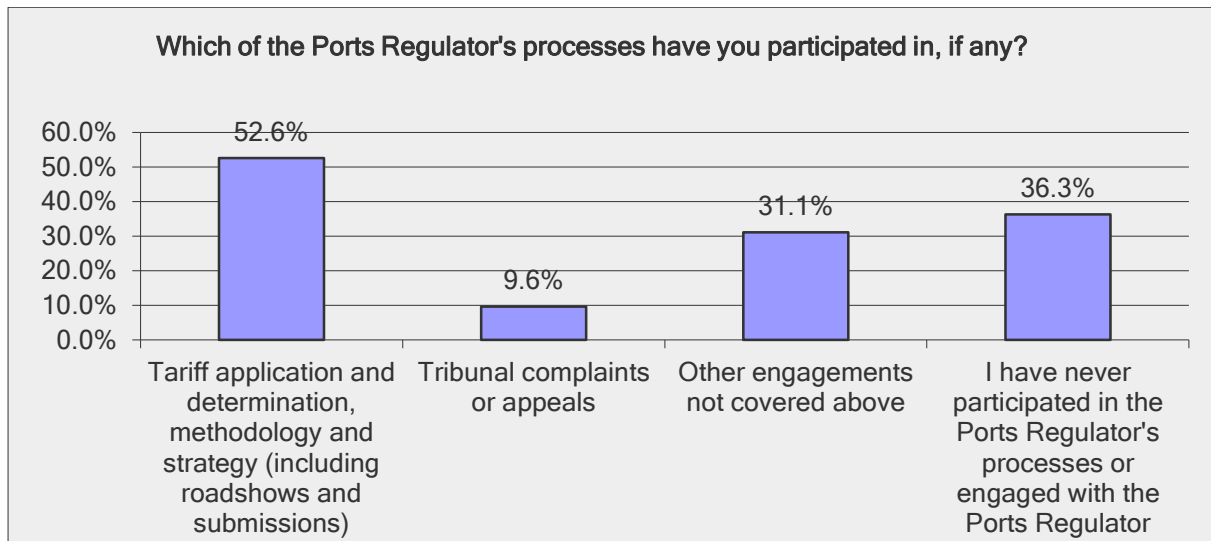
4.1. PORT USERS PROFILE AND LEVEL OF ENGAGEMENT WITH REGULATORS PROCESSES

As highlighted in the methodology, a total of 143 responses were received from various categories of port users as summarised below.

How would you describe your primary business?		
Answer Options	Response Percent	Response Count
Private sector business or industry association	72,7%	104
Academic Institution	1,4%	2
Government, excluding Transnet	5,6%	8
Transnet Group, Freight Rail, Pipelines or Port Terminals	6,3%	9
National Ports Authority	4,9%	7
Other	9,1%	13
<i>answered question</i>		143

Out of a total 135 respondents who answered the question “which of the Ports Regulator’s processes have you participated in, if any?” 49 respondents or 36% indicated that they had never participated in the Ports Regulators processes, whilst the majority (53%) have participated in the tariff processes. Only 9.6% indicated that they had participated in the tribunal complaints or appeals processes.

Which sector of industry do you mostly represent?		
Answer Options	Response Percent	Response Count
Shipping line	16,1%	18
Cargo owner	13,4%	15
Agent/ Freight Forwarder	28,6%	32
Boat building	0,0%	0
Fishing	0,9%	1
Tourism	8,9%	10
Road haulier or Rail	1,8%	2
Warehousing/storage/depot	9,8%	11
Lawyer	0,0%	0
Maritime/economic/logistics consultant	3,6%	4
Other	17,0%	19
<i>answered question</i>		112



Of those who had not participated in processes of the Ports Regulator (44 respondents/36%), 70.5% were aware that the Ports Regulator existed due to its function regulating tariffs, suggesting that respondents are not aware of the Tribunal functions of the Regulator. Half of the 44 respondents who have not taken part in processes of the Ports Regulator have not done because they were unaware of the processes. This is followed by 15% of respondents who are concerned that if they raise a complaint they will be treated unfavourably by NPA.

Please inform us of your reasons for not participating in the processes of the Ports Regulator (you may choose more than one option)?

Answer Options	Response Percent
I am not aware of the Ports Regulator's processes	55.0%
I have no complaints regarding the conduct or decisions of the National Ports Authority	12.5%
I am happy with the tariffs collected through the National Ports Authority's Tariff Book	5.0%
The tariffs are a minor part of my costs and therefore do not warrant my time	2.5%
I am concerned that if I raise a complaint I may be treated unfavourably by the National Ports Authority	15.0%
I do not trust the Ports Regulator's independence or abilities	0.0%
I am not a port stakeholder	12.5%
Other (please specify)	15.0%

Under 'other', reasons given for not participating included:

- A sense of hopelessness with the NPA i.e. feeling that nothing would change;
- Rely on the industry association to participate in the processes on their behalf;
- Recreational Yacht club who feels that the processes don't impact them;
- Live out of area so can't get to the meetings often.

4.2. SURVEY RESULTS – ELECTRONIC SURVEY

The interviews with key informants gathered qualitative feedback on the performance of the Regulator whilst the electronic survey and self-administered questionnaires at focus group discussion and tariff application road shows provided more quantitative feedback to the similar questions. The result of the electronic survey covers feedback on the decisions of the Ports Regulator, and the perceived impact of the Regulator. The questionnaire was structured to include open-ended questions in instances where qualitative inputs were anticipated and to also allow respondents to recommend improvements to the Regulator.

4.2.1 DECISIONS OF THE REGULATOR

The decisions of the Regulator are outlined in the Theory of Change as the outputs i.e. Tariff Book (which represents the tariff decisions of the Regulator); tribunal records of decisions, complaints settled outside of tribunal system and review of non-compliance with the Act in relation to BBEEE and competition in the port system. In general, both the decisions of the Tribunal and Tariff Book are held in high regard by the majority of respondents (excluding instances where respondents felt the question was not applicable to them):

- 92% and 85% of respondents respectively thought that the Ports Regulator responded within a reasonable or legislated timeframe to queries for tariffs and tribunal decision processes;
- 84% of respondents for both tariff and tribunal decisions thought that the conduct and decisions of the Ports Regulator appeared neutral; and
- 94% and 90% of respondents respectively thought that tariff and tribunal decisions were of a high or satisfactory quality.

This represents a strong mandate from private sector for the decisions of the Ports Regulator. Details are provided in the table below.

	Tariffs	Tribunal
Responsiveness		
Responded within a reasonable time period	47%	33%
Responded within legislated timeframes	36%	27%
Did not respond within a reasonable time period	7%	11%
Did not respond at all	0%	0%
N/A	10%	29%
Neutrality or independence		
The Regulator's conduct and decisions appeared neutral	77%	58%
The Regulator's conduct and decisions appeared slightly biased	13%	8%
The Regulator's conduct and decisions appeared biased	1%	4%

	Tariffs	Tribunal
N/A	9%	30%
Quality of Decisions		
The decision was of a high quality	34%	22%
The decision was of a satisfactory quality	54%	38%
The decision was poorly taken	5%	7%
N/A	7%	33%

Electronic survey respondents were asked what recommendations they would give the Ports Regulator to improve their interactions with the industry and/or the quality of their decisions. The majority of the comments were around improving the level of stakeholder engagement and the ability to reach more port users. The following responses were received:

- Stakeholder engagement:
 - Engage with stakeholders more regularly on pertinent issues and decisions, even those outside of the tariff determination (8 respondents);
 - Advertise more broadly, through more interactive channels for roadshows and on the role of the Regulator and update the database with more role-players in order to improve communication (4 respondents);
 - Ensure the website is user-friendly and up to date;
 - More engagement with private terminal operators;
 - Consider Freight Forwarders more as primary users;
- Time Issues:
 - Release tariff announcement earlier (5 respondents);
 - Punish/penalise parties that delay tribunal proceedings and fast-track processes (5 respondents);
 - Provide more time to comment on tariff decisions;
 - Do not allow some organisations to submit late submissions on the tariffs;
- Regulation Issues:
 - Encourage NPA to better regulate TPT or include in PRSA's regulation (4 respondents);
 - Improve the quality and quantity of information provided publically by NPA;
 - Corporatize NPA;
- Suggested research:
 - Conduct a survey on the performance of NPA in order to learn where to focus efforts;
 - Conduct more research to understand the impact that tariff decisions have on ship owners and charterers;
 - Include impact of efficiency and vessel turnaround time in pricing;
 - Consider further global benchmarking studies;
 - More clarity on NPA rentals and inclusiveness;
- Other:
 - More active follow up of implementation of tariff and tribunal decisions;
 - Continue to make sound economic decisions and not to follow political agenda;
 - Motivate with government to attract business back to SA ports;

- Central government should allocate a larger budget to the Ports Regulator;
- Concerns at the Port of East London;
- The Ports Regulator is over-looking the bigger picture and not taking account of past actions by the NPA;

4.2.2 PERCEPTIONS ON THE REGULATORS IMPACT

Electronic survey respondents were asked how much of an impact they felt the Ports Regulator has had on the listed outcomes over the previous five years and 56 responses were captured for this question, including those that indicated “*don’t know*” as a response. The most unknowns were for fair access by PDIs (29%), fair access by SMMEs (24%) and compliance (18%).

The highest proportion of respondents who rated “*no impact*” by the Regulator (29%) was on increasing competition in ports, whilst “*very little impact*” was given for fair access to port services by Small, Medium and Micro Enterprises (44%) and on improved efficiency on port services and facilities (42%). On the other end of the scale, 37% of respondents agreed that the Regulator has had “*substantial impact*” on fair and rational tariffs are implemented leading to correct pricing signals in place. Combined with the 43% of respondents who felt that “*satisfactory impact*” has been made on tariffs, this indicates that the majority of respondents (80%) who see satisfactory and substantial impact by the Regulator on the Authority’s tariffs and on Port stakeholders being better informed.

Answer Options	No Impact	Very little impact	Satisfactory Impact	Substantial Impact
Improved efficiency of port services and facilities	9%	42%	27%	22%
Fair and rational tariffs implemented leading to correct price signals in place	2%	19%	43%	37%
Port Stakeholders are better informed	5%	14%	48%	32%
Body of jurisprudence, certainty and ability to undertake legal recourse among port stakeholders	4%	27%	51%	18%
Licenses and concessions issued are in compliance with the Act	4%	18%	60%	18%
Fair access to port services by Previously Disadvantaged Individuals (PDIs)	8%	36%	49%	8%
Fair access to port services by Small, Medium and Micro Enterprises (SMMEs)	5%	44%	44%	7%
Increased competition	29%	37%	29%	6%

This is followed by 78% of respondents who think that the Regulator has had a substantial or satisfactory impact on licenses and concessions being in compliance with the Act. 69% of respondents feel that certainty and ability to undertake legal recourse has been created by the Tribunal.

The majority of respondents felt that the Ports Regulator has had very little impact on improving efficiency, on increasing access by PDIs and SMMEs and on increasing competition, which suggests that these areas should become focus areas for the Regulator in future.

Respondents were asked to provide examples of the impact the Ports Regulator has had, if possible. Examples of how the Ports Regulator has had a positive impact include:

- Control over and/or reduction of NPAs revenue and tariffs (13 respondents). With indication that *"Most importantly the PRSA keeps Transnet from hiking the tariffs for all importers and exporters so that we as a country do not out price our economy internationally, but the PRSA must STILL put pressure on Transnet to become a globally competitive Port Operator - this is very important !"*
- Transformation in the Pricing Strategy and credit repaid to industry.
- Provision of a platform for port users to engage and debate tariff methodology and strategy issues, prior to implementation; a desire and willingness to communicate with stakeholders; and improve transparency in the system.
- TNPA is beginning to measure performance, which unfortunately is still in its infancy of measurement targets;
- Publication of the multi-year tariff methodology;
- The present (2015) ruling on the BOOT system in Saldanha;

Comments regarding negative developments in the ports include:

- The yearly approval of tariff increases does not take into account that port productivity in every aspect is constantly decreasing; and that service levels to port users are in instances reduced i.e. *"draught in the port of Durban keep getting lower while the rates keep climbing"*;
- Lack of regulation of TPT performance by NPA which is *"absolutely not existent"*;
- TNPA tariffs are the only thing being regulated (4% increase) while TPT hands are completely free (9%);
- NPA must be *"commercialised"* as per the Ports Act;
- Lack of competition in South African Ports and Terminals is still a big problem. The monopoly of Transnet must be reconsidered. Furthermore that the granting of terminal concessions to TPT in Coega was a lost opportunity in ensuring that there is fair tendering process and the opportunity to break of the TNPA/TPT monopoly in container handling;
- Ensuring that the TNPA do not openly favour TPT and attempt to act impartially towards TPT,
- Transnet must become a globally competitive port operator.

4.2.3. SUGGESTIONS AND COMMENTS.

Four questions requested an open-ended response from respondents to allow respondent to provide their own input rather than be type-cast through a scale. The responses were unique or on a particular matter or port. Notably, the most common comment from respondents was that terminal operators should be regulated with regard to both performance and tariffs and respondents also felt that the Ports Regulator should take a more active approach to regulation, including being afforded more powers in the National Ports Act to be able to investigate NPA and apply punitive measures. Other suggestions mentioned frequently are ranked based on frequency they were raised (1 most, 7 least) shown in the figure below.

Suggestions and comments	Rank
Regulation of terminal operator charges and performance	1
Take more effective approach to regulation with more investigative and punitive powers	2
Conduct global benchmarking and comparison of logistics costs, including from other African ports	3
Corporatise NPA	4
Engage more frequently with all stakeholders	5
Improve the capacity of the Regulator through funding and staff	6
Increased competition and transparency on tender processes	7

Other unique comments, which again provides useful feedback on the kinds of issues that port users are grappling with or requires the Regulator to intervene on, include:

- Evaluate the value of the NPA asset base;
- Enhanced focus on access by PDIs and SMME; *“PRSA must seek ways or methodology on how best to allow SMMEs access on port opportunities”*
- Faster turnaround time for reaching ROD's, including stopping delaying tactics of NPA in Tribunals;
- Establish the Single Transport Economic Regulator;
- Improve port productivity and efficiency;
- Implement the Tariff Strategy sooner than over 10 years;
- Hand out presentations on a disk at Road Shows;
- Monitor and improve level of communication between NPA, TPT and Industry;
- BOOT funding models needs to be unpacked by the Regulator and explained to NPA;
- Take action on the Iron-Ore dust issue at Saldanha Bay;
- Employ an industry development person such as the PCC secretariat at each port;
- Ensure that all port revenue is invested into port infrastructure and not used by Transnet for non-port related acquisitions;
- Consult with stevedores, acknowledge that the industry is in crisis and take action on the problems which have been brought to the Ports Regulator;

4.3. SURVEY RESULTS - TARIFF STRATEGY FOCUS GROUP CONSULTATIONS

Attendees of focus groups on tariff strategy provided the following feedback on the Regulator's performance. The attendees were asked to rate the Regulator on a scale of 1 (bad) to 5 (excellent). These scores were captured and both the median and average scores calculated per port to give the scores reflected below.

Table 7: Focus group scores

	Government		Port Experts	
	Average	Median	Average	Median
Rate the quality of information provided in the focus group and published document, does it allow you to effectively comment on the tariff application?	3.8	4	4	4
Rate the overall usefulness of information provided in the focus group and published document, does it allow you to effectively comment on the tariff strategy?	3.8	4	3.3	3.5
Rate the ability of the focused group to cover all pertinent issues with the South African port tariff strategy	3.8	4	2.3	2.5
The efficiency of the PRSA	4.3	4	3.7	4
The effectiveness of the PRSA	4.2	4	3.3	3
The responsiveness of the PRSA	4	4	3.7	4
The neutrality of the PRSA	3.9	4	3.3	4
The independence of the PRSA	3.8	4	3.3	4
Decisions issued by the PRSA	4	4	3	3

The following comments were provided on feedback forms.

Table 8 Focus group comments

Government Comments:
Keep up the good work
To continuously consult stakeholders to reduce the potential misunderstanding amongst port users more especially economic sectors that the dti is supporting
More engagement to refine model
It may be good to meet as DOT with PRSA on these NB (important) issues to ensure we are the same page as department and entity
Transnet and DPE needs assurance to their revenue. This needs to be clear going forth.
Port expert comments:
Expanding database of academic stakeholders
Engagement with the industry players such as shipping lines/cargo owners necessary
Focus group must be dedicated to a smaller list of direct questions

4.3. SURVEY RESULT - TARIFF APPLICATION ROAD SHOW RESPONDENTS

The attendees were asked to rate the Regulator according to a scale of 1 (bad) to 5 (excellent). These scores were captured and both the median and average scores calculated per port from the 35 responses to give the scores reflected below.

Table 9 Roadshow scores (1 is bad, 5 is excellent)

	Durban		JHB		PE		CPT		Total	
	Ave	Med	Ave	Med	Ave	Med	Ave	Med	Ave	Med
Rate the Ports Regulator Presentation	4.3	4	4.8	5.0	4.3	4.0	4.1	4.0	4.4	4.0
Rate the quality of information provided in the focus group and published document.	4.1	4	4.3	4.3	4.2	4.0	4.1	4.0	4.2	4.0
Rate the overall usefulness of information provided in the focus group and published document.	4.0	4	4.5	5.0	3.9	4.0	4.0	4.0	4.1	4.0
Rate the ability of the focused group to cover all pertinent issues with the South African port tariff strategy	3.9	4	4.3	4.5	3.8	4.0	3.8	4.0	3.9	4.0
The efficiency of the PRSA	4.0	4	4.3	4.0	4.2	4.0	3.6	3.8	4.0	4.0
The effectiveness of PRSA	4.0	4	4.3	4.0	4.1	4.0	3.6	3.6	4.0	4.0
Responsiveness of PRSA	3.8	4	3.9	3.0	3.9	4.0	3.5	3.3	3.8	3.6
The neutrality of the PRSA	4.0	4	4.6	5.0	4.3	4.0	3.7	4.0	4.1	4.0
Independence of PRSA	4.0	4	4.5	5.0	4.1	4.0	3.7	4.0	4.1	4.0
Decisions issued by PRSA	3.8	4	4.4	5.0	4.1	4.0	3.5	3.8	3.9	4.0

The table below provides a comparison of results from the previous road show held in September 2014.

Table 10 Comparison of results from September 2014 road shows

Comparison	Sep-14	Jun-15
The efficiency of the PRSA	4.0	4.0
The effectiveness of the PRSA	4.0	4.0
The responsiveness of the PRSA	3.9	3.8
The neutrality of the PRSA	4.2	4.1
The independence of the PRSA	4.1	4.1
Decisions issued by the PRSA	3.9	3.9
Number of respondents	70	56

In comparison to the previous road shows the results were mostly unchanged; only the responsiveness and neutrality of the Regulator decreased by 0.1 points.

The following comments were received on the feedback forms.

Table 11 Comments from roadshow attendees

Comments:
Presentation was simple and to the point. You are going in the right direction to reduce costs to cargo holders over next few years but shipping lines will just pass on their costs to us.
Please make coastal shipments competitive; please see road transport as the competition; there is value to unlock for coastal shippers.
A very well concise/comprehensive presentation. It is very different to what was presented in prior years. I like that I see more transparency with PRSA which is very encouraging for business/economy of SA.
Secure additional funding from TNPA and or cargo owners and or shipping lines - requires amendment to the NP Act. Improve efficiency of tribunal.
Have more engagements with stakeholders.
Great engagement with the Regulator. Sessions are very useful to clarify and make sure that we have confident interpretation.
Industry port users' participation at public hearings disappointing.
Great platform to drive awareness on tariff strategy. Direction being taken is in line with previous expectations as discussed. Quite critical to accelerate the implementation of the strategy.
A phased approach in the implementation of this strategy will be of utmost importance.
Would like to request that the same approach be followed by TFR in order to ensure an effective logistics system.

4.4.SUMMARY OF THE QUANTITATIVE SURVEYS

The first electronic survey of the Ports Regulator was well responded to, with 143 responses. SATALC, SAAFF and SASOA kindly distributed the survey so responses were sufficiently varied. The majority of respondents were from a private sector business or industry association (73%) who have been in the industry for over ten years (80%). A significant number (36%) of respondents had never participated in a process of the Ports Regulator. The majority of respondents who have not taken part in processes of the Ports Regulator have not done so due to not being unaware of the processes (55%). This is followed by 15% of respondents who are concerned that if they raise a complaint they will be treated unfavourably by NPA.

Respondents hold decisions of the Ports Regulator in high regard with regard to responsiveness, neutrality and quality. In order to improve interactions with stakeholders and decisions, respondents recommended more frequent and wider consultation, as well as, increased communication of the processes used to reach decisions. Respondents further requested both tribunal and tariff decisions to be released sooner and for delays in tribunal cases to be dealt with more harshly.

A large 80% of respondents stated that the Regulator has had a satisfactory or substantial impact on implementing fair and rational tariffs and on ensuring stakeholders are better informed. In contrast, the majority of respondents felt that the Ports Regulator has had very little impact on improving

efficiency, on increasing access by PDIs and SMMEs and on increasing competition, which suggests that these areas should become focus areas for the Ports Regulator in future. The compliance review should impact these outcomes, once implemented. Most respondents site reduced tariffs as evidence of the impact the Ports Regulator is having, showing that this is the most visible and recognised process of the Ports Regulator.

Respondents submitted many suggestions and comments throughout the survey. Notably are the following which highlights areas that the Regulator should engage with and determine an effective way forward:

- Terminal operators should be regulated with regard to both performance and tariffs, but especially tariffs.
- The Ports Regulator should take a more active approach to regulation, including being afforded more powers in the National Ports Act in order to investigate NPA and apply punitive measures.
- To conduct further benchmarking studies such as the Global Pricing Comparator Study, affirming the use of this type of methodology.
- NPA should be corporatized as per the National Ports Act and that competition amongst terminal operations should be increased.
- Ports Regulator should receive more funding and employees.
- Request for more thorough and frequent consultation on decision processes and other processes of the Ports Regulator.

The revised Theory of Change (which is presented at the end) going forward must take these and other suggestions made forward. The next section integrates and summarises these with feedback from the qualitative interviews.

5. ANALYSIS OF INTERVIEWS AND SURVEY FINDINGS IN LINE WITH THEORY OF CHANGE

5.1. STAKEHOLDERS PERCEPTIONS OF THE REGULATOR'S EFFECTIVENESS, EFFICIENCY AND NEUTRALITY.

5.1.1. EFFECTIVENESS OF THE REGULATOR

Again, the decisions of the Regulator outlined in the Theory of Change as outputs are the Tariff Book; tribunal records of decisions, complaints settled outside of tribunal system and review of non-compliance with the Act in relation to BBEEE and competition in the port system. Industry stakeholders in both the interviews and the survey were asked how they perceived the decisions of the Regulator – are they communicated timeously and are they objective/independent. As captured in the preceding section, most of the industry interviewees affirmed that the activities and outputs of the Ports Regulator are done timeously and communicated effectively. It was reported earlier that in general, both the decisions of the Tribunal and Tariff Book are held in high regard by the majority of

respondents (excluding those instances where respondents felt the question was not applicable to them).

From the qualitative one on one interviews there were more nuanced feedback and caveats to the generally positive feedback. For example, the South African Association of Freight Forwarders (SAAFF) and the Southern Africa Shippers Transport and Logistics Council (SASTALC) both stated that decisions seemed independent and based on sound economic principles and research.

'It's fairly clear that the single biggest impact of the Regulator's work has been in the area of tariff adjudication. This function has been carried out fairly and findings have been based on meticulous research and proper methodology. The Regulator has also demonstrated neutrality, in that its findings and decisions have clearly taken the submissions of all parties into account'.

SAAFF further added that if the Ports Regulator had not disallowed tariffs requested then cargo owners would have seen tariffs double over the past five years. On the other hand, the South African Association of Ship Owners and Agencies (SAASOA), responses were sceptical about the Ports Regulator's independence. In their view, the Regulator, just like Transnet, is accountable to the state and therefore there will always be some doubt on the Regulator's independence. SAASOA expressed concerns that there may be interference from the Department of Transport or the Department of Public Enterprise and SAASOA questions who the Ports Regulator would favour in this instance, considering Members and CEO are appointed by the Minister of Transport.

5.1.2. IMPACT OF REGULATOR'S OUTCOMES

Respondents were asked how much of an impact the Ports Regulator has had on the listed outcomes over the previous five years. A large proportion (80%) of respondents stated that the Regulator has had a satisfactory or substantial impact on implementing fair and rational tariffs

'Despite the challenges facing the regulatory bodies and within the policy environment, the Port Regulator has taken a relatively short period of time to develop its methodology and effectively challenge the tariffs of TNPA' (TIPS Review on Regulation in the Ports Sector, 2014)

and on ensuring stakeholders are better informed. 78% of respondents think that the Regulator has had a substantial or satisfactory impact on licenses and concessions being in compliance with the Act despite the Compliance Review function being in its infancy with outcomes yet to be publicised and implemented by NPA. This likely reflects that industry is unaware of the non-compliance of licenses and concessions with the Act. 69% of respondents feel that certainty and ability to undertake legal recourse has been created by the Tribunal. This may be lower than expected for such an entrenched function of the Ports Regulator. The majority of respondents (42%) felt that the Ports Regulator has had very little impact on improving efficiency, on increasing access by PDIs and SMMEs and on increasing competition, which suggests that these areas should become focus areas for the Regulator in future.

INTERVIEW QUOTES



Left to right: Mrs. Gloria Serobe, Prof. Jones, Mr. Besnard, Ms Dweba, Dr Crompton, Ms Horne-Ferreira

Ms Gloria Serobe: First Chairperson of the Regulator:

“The ports regulator has gone beyond its expected capacity – we don’t have funding. People have given of themselves more than we should have. ... [We are] very happy with what we have achieved considering. If there is one Regulator that should not fail it’s this one –we believe in the cause – we are defending the country.”

Prof. Trevor Jones: Head- Maritime School of Economics: UKZN

“It is very important to get the price signals right and break down barriers to entry and send the right allocative signals. [Regulator is] far away from achieving efficiency...I am quite impressed with what the Regulator has done in a modest space of time with modest resources.”

Mr Peter Besnard: CEO: SAASOA

“Competition and closer monitoring [of the NPA] would enhance productivity of the ports ...”

Ms Mpumi Dweba: Former Deputy Director responsible for Maritime Policy at the Department of Transport

“It is very critical that we still achieve what has been outlined in the Act in terms of ensuring that we promote an effective and productive port system and capacitate institutions to act... and ensure transparency”.

Dr. Rod Crompton: Commissioner: NERSA:

“Modern independent regulators were emerging as a world phenomenon and were not well established in South Africa and the direction the country took was towards modern economic and transparent economic regulation”

Ms Brenda Horne Ferreira: CEO SASTALC:

“It’s fairly clear that the single biggest impact of the Regulator’s work has been in the area of tariff adjudication. This function has been carried out fairly and findings have been based on meticulous research and proper methodology. The Regulator has also demonstrated neutrality, in that its findings and decisions have clearly taken the submissions of all parties into account.

5.2. WHAT CHANGES ARE NEEDED TO IMPROVE THE LIKELIHOOD THAT OUTPUTS AND OUTCOMES ARE ACHIEVED?

Asked what changes are needed to improve the likelihood to which outputs and outcomes of the Regulator are achieved, interviewees raised a number of issues. Some interviewees would like to see a far more heavy handed approach to regulation as there are many issues in the port that never get sorted out, mentioning that it would be appreciated if the Regulator had the resources to be pro-active as opposed to reactive with regard to efficiency, maintenance and infrastructure development issues. Some mentioned that *'there is severe congestions in the Durban Container Terminal – when will port users be able to blame the Ports Regulator for this'?*

The following recommendations are derived from the discussion in previous questions and structured in the format of the Theory of Change. There have been numerous suggestions provided throughout the research, however, the changes listed below are limited to those that have a large impact on the flow of the Theory of Change of the Regulator. Other more technical suggestions on, for example, how to improve the tariff methodology are not included here but are worth-while and are included in the annexure. The main suggestions and comments from the electronic survey could be consolidated into seven suggestions (in order of rank), namely:

1. Increased competition and transparency of tender process of the NPA;
2. Improve the capacity of the Regulator through funding and staff;
3. Engage more frequently with all stakeholders;
4. Corporatise the NPA;
5. Conduct global benchmarking and comparison of logistics costs, including from other African ports;
6. Take a more active approach to regulation with more investigative and punitive powers; and
7. Regulation of terminal operator charges and performance.

5.2.1. INCREASED COMPETITION

Earlier on 66% of survey respondents reported that they see either no impact or very limited impact in the Regulator's process in ensuring competition in the ports. This was echoed also in a statement *"competition issues have not received sufficient attention by the Ports Regulator"*. Comments from the electronic survey supports this notion:

'The function of the Port Regulator is absolutely relevant in a country with container terminal monopoly'

'Lack of competition in South African Ports and Terminals is still a big problem. The monopoly of Transnet must be reconsidered'

'Due to no control on price reduction for services offered by parastatals, private entities have no chance of competing on the same platform'

'[the Regulator tries to] ensure that the TNPA do not openly favour TPT and attempt to act impartially however, in the bigger picture Transnet is Transnet - not entirely convinced'

There seemed to be a shared perception that the Authority gives preferential treatment to TPT with regard to rentals and concessions. One interviewee was very critical of the progress that the Ports Regulator has made in this regard:

'It is probably fair to say that the competition considerations covered in (b – conclude an agreement with the Competition Commission) and (e – promote regulated competition) have not received much attention, in the sense that TNPA's de facto monopoly continues virtually unchanged. While we can accept that this is something of a political hot potato, the fact remains that it is a statutory obligation, and one which would appear not to have been met. So to that extent, it can be said that the Regulator has not fully achieved success in its duties. If that is the case with a specialised Regulator, whose only focus is on the ports, then the chances of any progress under a single regulator must be viewed with some scepticism'.

From the interviews, it is suggested that more can be done on increasing competition, ensuring licences and concessions are in compliance with the Act (especially Sections 56 and 57) which in turn would address fair access to port services, especially by PDIs and SMMEs, although this is against the backdrop of government policy position in support of increasing competition, a position which interviewees felt is now ambiguous. An interviewee contends that it is possible that government prefers 'nationalisation' as a method to increase the participations of PDIs in the maritime sector and if competition is no longer the policy position, then far more heavy handed regulation is required.

"In the absence of competition among terminal operators the Regulator is not achieving its mandate as tariffs are passed on to TPT from NPA"

Linked to the question of competition is fair access to port service and concession including by PDIs and SMMEs. Interviewees felt that this function needs to be enhanced although some felt that this should be done directly and others indirectly through creating correct price signals and competition.

'Promoting equity must remain an objective, but it would be a contradiction in terms of the Regulator were to make that its prime focus area, with possible negative impacts on efficiency and productivity'.

A more direct approach would be to have an action plan to increase access. *'There is still little being done to ensure that there is participation in the maritime sector'.*

5.2.2. IMPROVE THE CAPACITY OF THE REGULATOR THROUGH FUNDING AND STAFF INCREASES

In the comments and suggestions that focussed on the Regulator, interviewees expressed the need for the Ports Regulator to be properly funded so that it can carry out its functions, primary of which at this stage was identified as the carrying out of asset valuation and other studies, noting critically that ...

'the Ports Regulator hardly exists in the public mind and it has almost no resources. Given the economic impact it can have it ought to have a higher profile and better resources. Port tariffs and rail tariffs have been one of the major aspects blocking an export oriented economy',

'It also requires staff with industry experience, not just academic knowledge. The Ports Regulator needs personnel who can analyse the impact on users as it is important to model the responsiveness of user groups over time with regard to tariffs and services.'

'The CEO and staff should spend more time in port actively monitoring. Do more research so that you can spring surprises that are necessary for those that can pull the wool over your eyes (i.e. NPA)'?

One interviewee noted the irony in that *"if government implemented the National Ports Act then the role of the Regulator would be diminished. However, we are now in a situation where the Ports Regulator requires more resources."*

Others further stated:

"We are a creature of statute so we should not undermine the mandate of the National Ports Act. The mandate is to the Members of the Regulator. It seems as if the tail is wagging the dog with regard to the secretariat and the Members. We should be judging the Members, not the entity. A political board is as good as not having a board"

'How aware is the Regulator of itself? The very fact that NPA is not corporatized shows that regulation is defunct from the start...'

'The Regulator needs to be far more active in lobbying for the Act to be implemented. It is ridiculous. How the Ports Regulator is able to regulate at all is baffling. A decision must be made for the benefit of the country....'

Most of the interviewees and suggestion from the electronic survey shows that port users feel that the Regulator is not adequately funded nor capacitated to carry out the activities necessary to achieve its outputs. It has also been proposed that the Regulator obtain extra funding on a project basis from DOT, which could promote interference by DOT.

'The Ports Regulatorhas almost no resources. Given the economic impact it can have it ought to have a higher profile and better resources. Port tariffs and rail tariffs have been one of the major aspects blocking an export oriented economy'.

The following suggestions were made on what government can do to enable the Regulator to achieve its outcomes more effectively:

'The Ports Regulator holds a crucial function and must be supported with the right funding and capacity for providing an effective service to the ports industry'

'Improve/increase funding (budget) and human resources for the Ports Regulator'

'Increase budget as a once off to be able to do a proper asset register' and 'increase its funding and capacity'.

'(Ports Regulator) to be strengthened in terms of capacity to play a more active role in operational issues to influence major port shortfalls with regard to efficiency (or lack thereof) that seriously impact industry'.

'Increase powers (Regulator's) to act and compel, allow it to be funded by port users who benefit from the services, expand investigative capacity and powers, as well as pricing review of parties other than NPA'.

5.2.3. ENGAGE MORE FREQUENTLY WITH ALL STAKEHOLDERS

Effective engagement with stakeholders is an essential component of the Theory of Change as it improves awareness of the functions of the Ports Regulator and improves the feedback that the Ports Regulator receives from stakeholders. The majority of the electronic survey respondents who indicated that they had not taken part in processes of the Ports Regulator have not done so due to being unaware of the processes (55%). Interviewees and survey respondents requested increased and improved stakeholder engagement, especially with industry associations. This could take the form of monthly progress meetings or forming steering committees for specific projects. Stakeholders requested feedback on their submissions and also an improved, more user-friendly website.

5.2.4. CORPORATISATION OF NPA

The following specific comments were made with regard the corporatisation of the authority which some respondents referred to as “commercialisation” of the NPA. Asked directly why they believed the NPA had not been corporatized, some of the in depth interview (not electronic survey) respondents highlighted that at the time that the Commercial Ports Policy and the National Ports Act were drafted there was no speculation that corporatisation would not occur, reflecting that it was seen as critical for the NPA to be given powers to manage its own revenue and invest back into the ports system, for the benefit of South African ports through corporatisation. Interviewees suggested three key reasons for non-corporatisation linked to a perceived new government agenda that is pro-nationalisation, labour as well as financial considerations. Although all agree that the lack of corporatisation reflects changes in policy direction, the reasons for such changes are less homogeneous with some interviewees feeling that the political climate has changed and government

no longer wants corporatisation – in part as a response to developments elsewhere in the economy with statement such as

‘....denationalisation occurred too quickly and the mines have not been a success story which has given government cold feet’.

An interviewee speculated that labour concerns were a strong reason for NPA not being corporatized, mentioning that a 2001 agreement with labour where the notion of privatisation was rejected and labour was promised that South Africa would keep these state-owned-entities intact influencing the decision not to corporatise. The latter is anecdotally evidenced in one interviewee’s description of government’s rejection of a Standard bank’s foreign delegation’s proposal to own and invest in the upgrade of the Saldanha rail line and port to increase iron ore exports, which ownership and upgraded infrastructure would have reverted back to the NPA after thirty years enabling investments that the NPA could not afford to happen.

Notwithstanding these, several interviewees noted that NPA can still be corporatized and remain an SOE, therefore, they feel that the key reason for non-corporatisation has to do with finance.

‘The accounting required to unpack a family of companies is problematic Transnet purposefully wound back loans into a consolidated position so that the removal of NPA would lead to a loan default’.

‘There are legitimate financial concerns with corporatisation that have not been properly quantified. If NPA is corporatized then the state will need to fund rail development which has stalled the [corporatisation] process’ and further that “corporatisation requires co-operation from DPE who do not seem to be pro-corporatisation.”

The majority of interviewees stated that NPA should be corporatized as per the Act. Those ‘pro-corporatisation’ saying that it is essential to capacitate NPA to carry out its functions in an independent and transparent manner for the effectiveness and efficiency of the ports system.

Those against corporatisation felt that Transnet has better oversight of the entire logistics chain with both ports and rail housed within.

‘Under the current landscape it is not the time for the country to corporatize’.

All interviewees were sceptical of corporatisation occurring any time soon and the Ports Regulator needs to be more effective with a proposed first step would be to regulate TPT as expressed by one interviewee

‘The Ports Regulator also need to be regulating Transnet because, in the absence of corporatisation, that is the entity now’.

Interviewees intimated at the possible solution for cross-subsidisation and the challenges that arise from the non-corporatisation of NPA to be the mooted Single Transport Economic Regulator. One of

the key difference to be introduced by STER would be a mechanism which will allow port regulation to be extended to areas of the market which evidence suggests are not functioning competitively (and reduce its scope should areas of the market become adequately competitive to no longer require regulation). The other would be a proposed introduction of a specialist independent body, namely the Council, with the ability to review regulatory decisions. The 2015 Medium Term Strategic Framework of government anticipate the creation of Transport Economic Regulator by 2018, its effect will only thus affect the next review and is not factored in the proposed Theory of Change.

5.2.5. CONDUCT GLOBAL BENCHMARKING AND COMPARISON OF LOGISTICS COSTS

Interviewees felt that the Ports Regulator has moved towards correct price signals with the multi-year tariff methodology, pricing strategy and price benchmarking. The research conducted on port pricing is also lauded for ensuring objectivity and the independence the Regulator's tariff decisions:

'It's fairly clear that the single biggest impact of the Regulator's work has been in the area of tariff adjudication. This function has been carried out fairly and findings have been based on meticulous research and proper methodology. The Regulator has also demonstrated neutrality, in that its findings and decisions have clearly taken the submissions of all parties into account'.

One interviewee felt that the Ports Regulator needs to take the whole logistics chain into account and not just the ports. SAASOA felt that SA ports still aren't comparable globally, especially with regard to services offered to vessels such as bunkering and ship repair. *'There used to be a rebate on bunkering which was taken away and now Mauritius is the major port in the area for bunkering due to the packaged deal they are offering'.* SASTALC questioned the ability of the Ports Regulator to enforce prices in the Tariff Book on long term contracts that NPA has with bulk cargo owner in particular.

Monitoring and evaluation of the Ports Regulator: An interviewee noted that without a measurement of the extent to which the outcomes have been achieved, it is impossible to comment on the Regulators progress or what should be changed with regard to its powers. Two interviewees noted that introduction of measures/impact assessment tools are critical to understanding the achievements of the Ports Regulator. NERSA are in the process of conducting their second economic impact assessment but are cognisant that it is very difficult to measure the impact of regulation. While this is not an outcome in itself, it does assist with achieving the outcomes and is an activity of the Regulator.

Interviewees stated that it would be appreciated if the Regulator had the resources to be pro-active as opposed to reactive with regard to efficiency, maintenance and infrastructure development issues. *'There is severe congestions in the Durban Container Terminal – when will port users be able to blame the Ports Regulator for this' (Interviewee, 2015)?*

5.2.6. A MORE ACTIVE APPROACH TO REGULATION WITH INVESTIGATION AND PUNITIVE POWERS

Issues were raised with **the tension between regulatory objectives, government objectives and the public interest** which can *“interfere with the ability of the Ports Regulator to make decisions in the best way, as it is difficult to establish the correct trade-off”*. This could be assisted by enhanced communication between South African regulators or by introducing a centralised regulation framework. A better understanding of the separation of functions by all parties and a respect for the independence of the Ports Regulator would further assist, although according to some respondents, it is not clear how this would be achieved. One industry association suggested that more legal professionals are employed as Members or as CEO/Management because legal professionals tend to understand the risks of political interference and diverging from the Act.

Oversight of capital projects: Technically, although not specifically legislated, the Ports Regulator does have the power to oversee the capital projects of the NPA, through its approval of the Tariff Book, where it approves funding for capital projects. Capital projects could be excluded from the Regulatory Asset Base and denied funding. The NPA, would, however, still be able to fund these projects from their profits. In some literature (Meridian Economics, 2014), it is suggested that Regulators must be empowered to approve large capital projects before funding is committed.

‘Establish a comprehensive national infrastructure decision framework to provide alignment and independent review of SOE related infrastructure investment decisions’.

The approval of capital projects and licences and concessions would need to work together to be most effective.

Tribunal: Not many of the port users in the electronic survey and the interviews had engaged with the tribunal processes of the Regulator. Issues raised included concerns with “delaying tactics by parties” and the perception that users feel threatened when they have to bring a complaint that could end up in the tribunal process.

5.2.7. TERMINAL OPERATOR REGULATION

Respondents generally felt that if the NPA is not going to be corporatized as per the Act, then the outputs of the Regulator needed to be expanded to include regulation of terminal operators. That is, the tariffs of terminal operators need to be approved by the Regulator and the Tribunal process needs to accommodate complaints against all terminal operators. *‘The Ports Regulator also need to be regulating Transnet because, in the absence of corporatisation, Transnet is the entity now’*, a sentiment that also came through from comments and suggestions in the electronic surveys where some interviewee suggested that *“there is a conflict of interest with TPT”* and government must *“commercialise’ NPA”*.

Approval of licenses and concessions: In line with the powers of other South African regulators, it is suggested that the Ports Regulator should have powers of approval over licenses and concessions or,

at the very least, have punitive powers for non-compliance of these licenses and concession with the Act. This is especially necessary in the case that NPA is not corporatized and competition is not introduced. An interviewee went further to suggest that the Regulator must be allowed to regulate any aspect of the port usage, including forcing that NPA ensure private sector participation in at least one terminal in every port.

6. CHALLENGES AND RECOMMENDATIONS TO PROPOSED THEORY OF CHANGE

The revised Theory of Change going forward must take these and other suggestions made forward. The proposed theory of change attempts to synthesise the inputs from stakeholders and the Regulator's capacities and challenges.

6.1 CHALLENGES AND RECOMMENDATIONS TO COMPLETING ACTIVITIES

The challenges to completing activities relate to the ability of the Regulator to carry out its activities, given its inputs. They deal with the inputs of funding, secretariat and Regulator capacity, as well as the ability to implement the activities and therefore achieve the outputs. Most of these challenges have remained unchanged for the previous five years and require long term solutions such as the scarce skills in the economic regulation space and the budget constraints which prevent the Regulator from carrying out all the functions required of it in the National Ports Act.

Some projects, for example the Asset Valuation, have remained in the Annual Performance Plan of the Regulator from 2009/10 through to 2014/15 due to insufficient funds. Other projects, such as the Compliance review, have to be carried out in phases due to insufficient capacity. Other challenges include timeous acquisition of information from the NPA and the ability to verify data received. A list of these challenges is given below.

Challenges to completing Activities	
Funding:	Recommendations:
<ul style="list-style-type: none"> Funding of posts – 27 posts in the Organogram but only 17 are funded (and filled); Resources and capacity for required engineering and complex port performance and efficiency modelling; The National Ports Act limits the way in which funding can be raised by the Regulator; 	An alternative funding model that allows the Regulator greater capacity.
Human Resources and Capacity Constraints:	Recommendations:
<ul style="list-style-type: none"> Finding required skills for core functions due to unique nature of ports regulator Insufficient capacity, in terms of number of Regulator Members available, on the panel to hear matters if there are too many matters; Insufficient capacity to carry out compliance reviewing and monitoring of hundreds of agreements/ licences/ leases in all SA ports; 	<p>The Regulator must propose Amendments to the Act to allow for Commissioners who are specialists to assist Members in Tribunal matters.</p> <p>Knowledge Management system to be enhanced.</p>

<ul style="list-style-type: none"> Loss of institutional knowledge and memory when staff leave due to small size of the organisation. 	Additional funding to expand capacity in the organisation
Challenges in relating to core functions:	Recommendations:
<ul style="list-style-type: none"> Delaying tactics of Tribunal parties' legal teams; Timeous acquisition of information and verification of data from NPA; Asymmetry of information; Defining and consistently translating an Industry Development mandate within a Regulatory context without compromising independence of the Regulator. 	<p>These are procedural challenges that are being dealt with on a day-to-day basis, as the organisation evolves its practices.</p> <p>Asymmetry of information is addressed through the Tariff process, and the research conducted.</p>

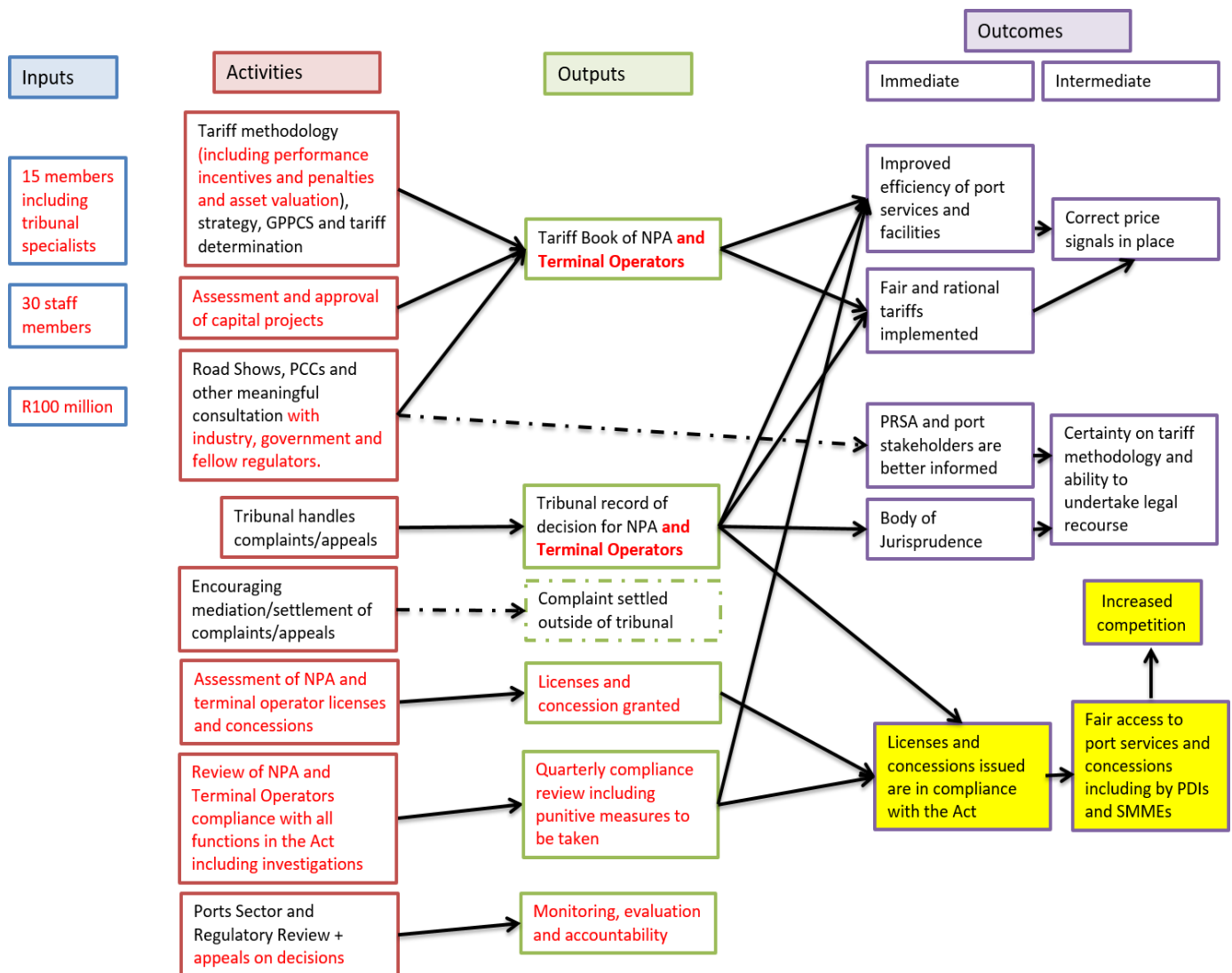
6.2 CHALLENGES AND RECOMMENDATIONS TO ACHIEVING OUTPUTS AND OUTCOMES

The table below summarises the key challenges and recommendations towards achieving better outputs and outcomes.

Challenges to achieving Outputs and Outcomes	Recommendations
Non-corporatisation of NPA requires legal decisions and compliance to be carried out in a non-compliant and legally contentious environment, amongst other issues;	Implementation of Chapter two of the Act is the prerogative of the Ministry of Public Enterprise in terms of the Act.
Lack of punitive measures for both Tribunal and Compliance functions, as well as lack of investigative powers;	To be addressed through amendments to the Act and its Directives.
Possible reluctance of port users to bring matters forward due to perceived threat of victimisation by the NPA;	Strengthening of stakeholder engagements
Addressing efficiency and capacity utilisation;	More research to be done going forward and to be addressed through a Review of the tariff methodology.
Regulatory Capture.	The Regulator to remain conscious of this and conduct regular surveys with stakeholders to test perceived independence of the Regulator.

6.3. RESULTING CHANGES TO THEORY OF CHANGE DIAGRAM

Changes to original Theory of Change are highlighted in red.



7. CONCLUSION

The overall findings show that the tariff function of the Ports Regulator is seen to have been the most effective at lowering port tariffs and generating awareness of the Regulator's role. Stakeholders view the Ports Regulator in a very positive light and trust the neutrality of the Regulator. However, findings also shows that more must still be done to reach outcomes of fair and rational tariffs, efficiency and increasing access to port services and facilities, especially by PDIs and SMMEs. Increased resources are required to achieve more of the Regulator's functions including, conduct the valuation of assets, incorporate performance incentives into the tariff methodology, and expand the monitoring and compliance programme to include all functions of the NPA. Findings also show a concern by stakeholders with government policy regarding its stance on corporatisation of the NPA. Recommendations have been given on how to address the gaps in the Theory of Change.

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