



Ports Regulator of South Africa  
S30(6) & S44 Report 2011/12  
(Incorporating the Annual Report in terms of the PFMA)

## **VISION**

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

## **MISSION**

The Mission of the Ports Regulator is to:

- exercise economic regulation of the South African ports system consistent with Government's strategic objectives;
- support the development of the ports industry and system;
- promote equity of access to ports and to facilities and services provided in ports; and,
- monitor the activities of the National Ports Authority to ensure that it performs its functions in accordance with the National Ports Act, 2005.

## **VALUES**

The Ports Regulator adheres to the values of:

- the Constitution of the Republic of South Africa, with special reference to the creation of a democratic, non-racial, non-sexist, fair society in South Africa
- stakeholder focus
- fairness
- integrity
- transparency, accountability and responsibility
- honesty and trust
- respect for the trust placed in it for the proper use of taxpayer and stakeholder resources.

## STRATEGIC OBJECTIVES

The strategic objectives of the Regulator are:

- Establishing all elements of the regulatory framework within its mandate
- Developing the capacity to deal with all the output requirements of the organisation
- Establishing its reputation as an organisation with integrity focussed on delivery
- Ensuring that all port sector participants comply with the National Ports Act
- Supporting the development of the port system and the port regulatory system architecture.



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## 1. Chairman's Foreword

It is with a profound sense of arriving at an interim destination that I report in this annual report for the Financial Year 2011/2012. In many ways it would be appropriate to call this financial year, the “end of the beginning”. The initial tenure of Regulator Members ended with the conclusion of the financial year under review. It is therefore important that my report comments not only on the year under review, but also the journey travelled and achievements to date.



With the promulgation of The Ports Act on 4 August 2005, the Ports Regulator was established as the institution responsible for economic regulation of the ports industry. This was a very broadly defined responsibility that included obligations with respect to traditional economic regulation such as tariff determinations etc, but also included diverse obligations such as industry promotion, transformation and supporting institutional reform, including those activities usually associated with an industry ombudsman, such as hearing complaints and appeals.

The functions and powers of the Regulator are to:

- Exercise economic regulation of the port system in line with government's strategic objectives;
- Promote equity of access to ports, facilities and services provided in ports;
- Monitor the activities of the National Ports Authority to ensure compliance with the Act;
- Adjudicate complaints and appeals against the Authority;
- Approve or reject the Authority tariffs;
- Promote regulated competition; and,
- Regulate the provision of adequate, affordable and efficient port services and facilities.

On the appointment of the Members 5 years ago, we were given the task to set up the Regulator. That this was a much larger task than the then Minister suggested in such simple and clear words is an understatement. The Regulator had 9 part-time Members that were required to establish an office, set up the staff, finalise the Regulatory framework and start implementing.

There was no staff, no building, no policies, no systems and the sub-ordinate regulation was yet to be developed by us. It is a testimony to their character and commitment to this country that the Regulator Members did not run and hide and hope the task went away while they were hiding, although at times we were tempted. We decided that the critical task ahead was to set up the initial regulatory framework and commence its implementation.

A fundamental requirement of any person using public resources is that appropriate institutions, standards and systems of governance must be established to manage and ensure that the resources are correctly expended, not only in a substantive sense, but also with respect to process integrity. We immediately commenced the processes for establishing an interim governance context that was appropriate for the circumstances. While we set ourselves to this task, we also began establishing a physical presence for the Regulator in Durban. Our experience with respect to the establishment of the physical presence of the Regulator was a lot more complex than would appear to be the case. It is the equivalent of trying to set up a small business with the rules and compliance framework that is normally found in a multi-national company. Every step was a grinding slog, and we came to appreciate the nuances of setting up a critical public entity from scratch, in the context of multiple and complex compliance regimes while all the resources are part-timers. After having set up the physical presence, we started the process of appointing contractual staff to ensure that we could deliver on the outcomes that were required of us. The Regulator, I am glad to say, has commenced the process of appointing permanent staff, after this power was granted to us in the year under review.

The development of the initial Regulatory Framework continued alongside the practical tasks of “setting up office”. The first and most critical requirement of the initial regulatory framework was to provide a base level of regulatory certainty. This had to exist in both the process and decision-making context. We needed to provide a clear direction not only what we were going to do, but also how we intended doing it. The added dimension in economic regulation is the particular approach that the Regulator takes to key issues in the policy context. These issues

are largely provided by the sectoral state policy, but need a clear application context to provide the regulated parties and parties with an interest a sufficiently clear view of the regulatory approaches. We therefore developed the Regulatory Principles Paper to give some clarity on what the regulatory approaches were. We further developed the Directives that, besides containing some content provisions, mainly deal with how the Regulator manages its processes and what is required of all participants in these processes. The Regulatory Principles and the Directives were then subjected to a public consultation process. On completion of the consultative process, certain amendments were made and the Principles and Directives were published in the Government Gazette and came into effect. This started the next phase of the Regulator's existence which was the implementation of the Regulatory Framework.

On instruction of the Minister of Transport, in the Regulations promulgated under the Ports Act, the Regulator was further required to perform an Economic Review of the Ports Sector and in specific deal with the participation of the private sector and submit this to the Minister of Transport. This work commenced after the completion of the Regulatory Framework and was subjected to a public consultation process prior to being submitted to the Minister. In the process of developing the "Economic Review on Participation in Ports Operation and Services in South Africa" the Regulator performed a global comparison with different jurisdictions around the globe on economic regulation in ports and what was very clear was that there is no standard approach. Every country must in its own interest and at its own pace, develop a regulatory framework that is appropriate for its policy context and level of economic development, and develop that framework in accordance with the rate of change in that country; a lesson that we have carried through in all our processes to date.

We also commenced the hearing of appeals and complaints under the Ports Act. Some of the matters have been finalised and most are in the final resolution stages, with a small percentage being in early stage processes. This year represents the year in which some of our initial matters being heard by the tribunal were decided and finalised and the decisions of the Regulator implemented by NPA and industry participants. The establishment and operation of a tribunal in a highly contested and formalistic legal battle arena is indeed a process that can engender frustration for any group of people. The expectation that the tribunal would have a lesser formal burden due to the conduct of the parties was quickly dashed. It always seemed to be a whole team of lawyers on both sides, taking every single possible technical point that was available to them. That they are within their rights to exercise any of such rights that

are available to them under the circumstances is without doubt. What would have been preferable would have been a lower level of legal formalism. We are of the view that exaggerated formalism may act as an impediment to access to justice for some petitioners, and is an area that we keep a close eye on to ensure that the formality and process do not have the unintended consequence of preventing justice for those who require it, but are unable to carry the cost of a phalanx of legal practitioners.

The activity of the Regulator with the highest level of public awareness is clearly the annual NPA tariff determination. This aspect of the work of the Regulator is the one that also attracts the most media, and positive or negative comments. The process that occurs every year in August, requires the submission of an application by the National Ports Authority to the Regulator to amend its tariffs for the next tariff year commencing on the next 1 April. There is a public consultation process, whereupon the Regulator makes its determination. The decision that was taken in this year under review was to allow NPA to increase its tariffs by 2.76%, while a rebate programme for exports of full containers and motor vehicles of R 1 billion was also included. These tariffs would operate from 1 April 2012 to 31 March 2013. In addition we have created a R 900 million Excessive Tariff Increase Margin Credit that would act as a buffer for the economy against large increases in the medium to long term that could result from the massive capital expansions required to service the needs of the economy.

In the next cycle of the Regulator's tenure, the Regulator's development will be characterised by expanding activities into new mandate areas and growing the capacity of the Regulator. It will also see a much greater level of concentration of the Regulator on matters related to Ports Act compliance and efficiency.

In this year under review, significant challenges and successes were experienced, but the successes far outweighed the challenges. The new resource environment that allowed the Regulator to start capacitating the organisation with permanent staff and that allocated a significantly increased baseline budgetary allocation sets the Regulator on a new trajectory for service delivery into the future. Although these positive shifts occurred later than we had hoped, we are enthused by the potential that has been added to the organisation's capacity to impact positively on the economy of the country.



I would like to thank Minister Ndebele, Minister Radebe, Deputy-Minister Cronin, the Department of Transport and National Treasury, all industry participants and the Regulator Secretariat for their support in ensuring that the Regulator is not only successful in the discharge of its mandates, but also that it meets the requirements of accountability and process integrity that are required under the PFMA.

And last but not least, as the Chairman of the Regulator, I wish to thank my fellow Regulator Members past and present

- Prof Doug Blackmur
- Dr Brian Gowans
- Mr Randall Howard
- Ms Phumzile Langeni
- Ms Tandiwe Njobe
- Ms Ella Ntshabele
- Mr Andrew Pike
- Mr Mawethu Vilana

for their tireless efforts over the 5 year period running to the conclusion of this 2011/2012 financial year.



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**GLORIA TOMATOE SEROBE**

**Chairman**

**Ports Regulator of South Africa**



## 2. Chief Executive Officer's Report

To only claim successes in the CEO's report will not do justice to the requirements of the Ports Act and the Public Finance Management Act. It is therefore prudent to report, as has occurred before, that we faced a mixture of successes and failures in the year under review. The future of the organisation looks significantly better than was expected in the previous annual report. This year has been accompanied by a significant shift in the empowerment of the Regulator to discharge its mandate effectively and efficiently. The Regulator has finally been granted the right to appoint permanent



employees. This shall significantly raise not only the quantity of outputs, but also the quality.

The key areas of failure related to certain of the activities under the compliance and monitoring of port participants and in the development and implementation of an integrated system for information management across the organisation. These activities were intended to be completed in the 2011/2012 financial year, but due to certain events such as funding transfers and staffing approvals occurring later than hoped, the timeframe for completion prior to the stated delivery were not sufficient. In addition, those activities that were to be outsourced to external service providers had been priced beyond what the Secretariat believed was value for money and were therefore not contracted. National Treasury has been requested to allow, and has approved, that the funds be retained to be used for the same purposes, but managed internally using fixed term contract staff. The Regulator also failed to secure a service provider to develop and implement an agnostic IT platform that would be capable of integration into the eventual platform that is used by the Single Transport Economic Regulator when it is established. National Treasury's unit responsible for transversal systems across Government has been requested to support the process being internally managed as they have the most applicable experience and competence in multiple system development across multiple platforms.

The process of appointing permanent staff commenced in the period under review and is expected to be completed for all budgeted posts in the 2012/2013 financial year. This occurred

as the Regulator has now been empowered to appoint permanent staff. These permanent appointments will greatly enhance the ability of the Regulator to deliver on all its mandate areas, as the main gaps in the Secretariat during the time that permanent appointments were unlawful, were in the technical areas of economic regulation and compliance monitoring.

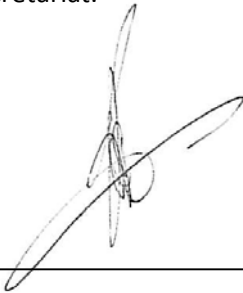
The enhanced budget that was provided to the Regulator during the mid-year adjustments enabled the Regulator to afford an unforeseen event, that of the funding of the medical retirement of the Company Secretary, while the residual funds have been approved for rollover to deliver the outcomes they were intended for. The mid-term allocation of the Regulator has also been significantly enhanced. The baseline budget for the MTEF has been increased by about 60% for the years 2012/13 to 2014/15. This not only enables the Regulator to greatly expand its activities into un-serviced mandate areas, but also allows the Regulator to develop a greater level of sustainability in that the depth of management will be greatly enhanced to the level that continuity is provided in the event that staff critical to the operations exit the organisation. Although the baseline increase was less than requested, it provides a prudent increase to allow the capacity of the Regulator to ramp up while certain issues with respect to the Single Transport Economic Regulator remain unresolved.

The Regulator has also taken a significant step in the area of tariff determination in the year under review, in that the tariff decisions of the Regulator now include the entire business of the National Ports Authority, and not only the marine business as had previously been the case. This shift ensures that a holistic assessment is made of the sustainability of the NPA and an appropriate tariff amendment can therefore be developed therefrom. This and a range of other shifts in tariff approaches and assessments have provided an increasing certainty to all market participants as to the nature and implementation application of the regulatory regime. In the areas of hearing complaints and appeals, the Regulator has concluded some of its first matters and the decisions in these matters have been implemented. The lessons from these processes that were to have been crystallised in amended Directives, were delayed due to the late completion of these matters, owing to multiple interlocutory legal steps that although valid,

tend to draw out the tribunal processes significantly. As this is the first cycle of completed matters, there were some hard lessons learnt as well.

The benchmarking and tariff comparator processes have also had significant success, but some of the analysis has highlighted significant structural problems in the manner in which the ports have appeared to dislocate from state economic development policy and therefore requires that the Regulator and the ports industry participants urgently address these to ensure that their negative impact on the economy is removed. These anomalies have preceded the enactment of the National Ports Act, and even the establishment of the National Ports Authority, but have never been articulated and dealt with before. Although significant research has been done on the ports over the years by various parties, these anomalies only came to light during the research in the benchmarking and tariff comparator assessments of the Ports Regulator. This has diverted some of the operational activities of the Regulator that had been planned in the year under review into the areas required to address this matter.

Mr M Vilana retired from the Regulator during the period under review and is thanked for his support and service to the Regulator and the staff over his tenure. All outgoing Members are also thanked for their sterling service to the organisation and the support they have granted the Secretariat.



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**Riad Khan**

**CEO**

**Ports Regulator of South Africa**

### **3. Corporate Report**

The Ports Regulator is the South African national economic regulator for the ports industry. This organisation came into being on 4 August 2005 on the promulgation of the National Ports Act, 2005 (Act 12 of 2005). The establishment of the Regulator was a key component of the “White paper on National Commercial Ports Policy, 2002”. The Act and the policy establishes the institutional framework for the ports industry as well as articulating a range of mechanisms critical to the stable governance thereof from an economic perspective. This governance framework was further developed in the publication and coming into effect of regulations by the Minister of Transport in November 2007, and the Directives issued by the Ports Regulator coming into effect on 6 August 2009.

The Members of the Ports Regulator are:

- Mrs Gloria Tomatoe Serobe (Chairman)
- Mr Riad Khan (CEO ex officio)
- Dr Brian Gowans
- Mr Randall Howard
- Ms Pumzile Langeni
- Ms Tandiwe Njobe
- Ms Ella Ntshabele
- Mr Andrew Pike
- Mr Mawethu Vilana

### **3.1 Key Activities & Outputs in the Mandate Areas of the Ports Regulator:**

#### **3.1.1 Establishment and Maintenance of Administration**

The 2011/2012 financial year came with a mix of significant achievements and unfavourable unforeseen events taking place, these include the approval of the human resource regime, the medical boarding of the company secretary and the end of tenure for Members. The National Ports Act requires the Minister of Transport to approve the human resource regime and that the approval be concurred to by the Minister of Finance. Both these levels of approval were obtained by the end of July 2011, which enabled the Ports Regulator to commence implementing its human resource regime and accelerate on human capital acquisition. In addition to the approval of the human resource regime, the Ports Regulator was allocated a further R 5 million (over and above the initial budget) by the Department of Transport to assist in securing competent skills and services to discharge on the mandate.

The Members have been responsible for the governance and strategic direction of the Ports Regulator from the inception of the entity and have achieved significant progress in terms of guiding the establishment of the entity and having an impact on the South African economy. The objectives of the entity have only been partially achieved due to constraints such as funding and insufficient human capital, particularly due to the inability to appoint permanent staff, to implement the strategies of the Regulator. This had led to the performance of the entity not being at the desired level. There has been significant acceleration in the embedding of administrative processes and the efficiency of administrative processing and procedural control. However there is still room for improvement in terms of governance matters and strengthening the internal control environment to ensure that there is full compliance by the entity. The Secretariat has further developed the administrative systems and processes, thereby ensuring a greater level of compliance with the requirements of the regulatory framework. In the year under review, the internal control process assessment, although completed in time, had not completed all the governance approvals in time and is an area of work and emphasis in the subsequent year.

The medical retirement of the company secretary occurred at the critical time when the Regulator was finalising its tariff decision on the National Ports Authority (NPA) application for the 2012/2013 tariff year. The Human Resource and Remuneration Committee together with management explored all the avenues in following due process to ensure that the medical retirement process was performed in accordance with policies and procedures, and accepted practice when decisions were required and in support of such decisions. The company secretary had been in the service of the Ports Regulator from the initial establishment. This has been a huge loss in institutional memory and severely impaired the administrative operations in the final quarter of the year under review. The duties of the company secretary have since been accommodated in other positions in the organisation.

The human resource regime approval necessitated the need to start implementing the processes where the current employees, that were all on 3 month contracts, were aligned to the approved human resource practices. This included filling the posts that were approved and funded in terms of the Ports Regulator recruitment policies and procedures. Subsequently, the appointment of additional staff on all funded posts will follow to ensure that the Ports Regulator equips itself with competent human capital to advance its service delivery. This will allow the Ports Regulator to increase its compliance with all mandate obligations over the medium-term, all relevant policies and procedures in the short-term, as well as ensuring continuous good governance. The governance and internal control dimensions will include revision of all policies and procedures to ensure their relevance to current business processes and separation of functions, as well as expanding the functional coverage of these policies and procedures to take into account multiple levels of governance and control. The Ports Regulator has also put controls in place to ensure that the fruitless and wasteful expenditure no longer occurs in the future. The overruns of a single previous incident of fruitless and wasteful expenditure was closed out in this financial year, after the conclusion of an audit and assessment process.

Although significant strides were made in audit compliance and governance, certain objectives were not met to a standard acceptable to the Regulator, partly attributable to the approval of the human resource regime occurring halfway through the financial year, which did not allow sufficient time to perform effectively on all the programmes. There was an additional allocation of R 5 million from the Department of Transport which was received in October



2011 but was not used for programmes as the tender process did not bear any fruits. The Ports Regulator went out on a tender process but was not able to secure the services of service providers as the response was poor with high tender prices and/or no response at all. When sufficient technically compliant bids were submitted, they were priced excessively in the opinion of the CEO, and did not represent value for money.

This led to the additional allocation not being used by the end of the financial year. However, a portion of this additional funding was then used to fund the medical retirement of Mr. Ebie Fakie at the end of the financial year. The Ports Regulator used this additional funding as a result of the lack of a pension fund scheme, and therefore had to fund the medical retirement out of its operational expenditure. The Regulator had previously attempted to source service providers to provide pension and medical benefit schemes to the staff. As most service providers were not interested in providing services to a small staff component, and as a result did not submit bids, the Regulator entered into discussions with the Government Employees Pension Fund (GEPF) to secure staff retirement benefits. The process culminated in the accession of Regulator staff to the GEP; however this occurred after the medical retirement of the Board Secretary.

The process to secure a medical aid benefit service provider also received no formal bids from service providers. The Regulator secretariat then entered into discussions with the Government Employees Medical Aid Scheme (GEMS) to provide medical aid benefits to the Regulator staff. The process could not be concluded by the end of the financial year as GEMS was awaiting a review decision on the expansion and opening of the scheme that affected our eligibility to accede to the scheme.

<b>BBBEE as a percentage of Procurement category:</b>	<b>2011/2012</b>	<b>2010/2011</b>
Discretionary Expenditure	90.18%	71.57%
Total Expenditure	37.45%	50.73%

<b>Employment Equity Statistics</b>	<b>2011/2012</b>	<b>2010/2011</b>
<b>Category:</b>		
Black Male	33.33%	35.71%
Black Female	60.00%	50.00%
White Male	6.67%	14.29%
White Female	0%	0%
Total	100%	100%

<b>2011/2012 Employment Equity Breakdown of Staff:</b>					
Category	Black Female	Black Male	White Female	White Male	Category Total
Technical & Managerial	20.00%	60.00%	0%	20.00%	36.00%
Support & Interns	80.00%	20.00%	0%	0.00%	64.00%
Total	60.00%	33.33%	0%	6.67%	100%

### **3.1.2 Economic Regulation**

In the sphere of economic regulation, the Regulator has made significant strides in the period under review, although certain of the mandates such as the monitoring and industry development mandates have remained at a lower level of output than others.

With respect to the engagement with industry stakeholders, a considerable increase in industry engagements has been affected over the period under review. The Regulator has been engaging stakeholders actively in the period running up to the tariff application and in the public engagement process. Industry clusters, particularly on the cargo owner and transport facilitator side of the industry have been engaged in preparation for the tariff application to ensure that adequate awareness existed about the tariff processes, the timelines therefore and how stakeholders could engage the Regulator on the processes to influence the outcomes. These engagements were performed well in advance of the application to prepare stakeholders for the process. The absence of any submissions from National Departments remains a concern, but it is believed that the approach they have taken is to trust the process to deliver an outcome that is in alignment with policy. In addition, they are of the view that they sit on the National Ports Consultative Committee and participate in the comment on the tariff application through that forum's submission. The impact of these engagements was evident in the increased quality of the submissions on the tariff application, and the broad ranging nature thereof. The submissions resulting from the expanded engagements have certainly raised the quality of the submissions, where although the submissions are decreasing, the quality and appropriateness of the content have increased dramatically. In addition, submissions by industry associations or concentrations of companies have increased. Several stakeholders had also collaborated in submissions where an academic institution or specialist advisor had developed a technical response that had then been used by more than one institution in their submissions. The submissions generally had a greater level of supporting research than had been the case in previous years.

This sustained effort in stakeholder engagement, including an increased engagement with NPA and Transnet, is critical to ensuring that the regulatory trajectory remains relevant to the needs of the industry and the regulated entities and does not adopt an "academic" life of its own that may not support the national developmental interest. The relationship between NPA and Transnet on the one hand and the Regulator and industry stakeholders on the other has developed significantly over the year under review. The engagements are more collaborative,

rather than adversarial and the level of trust that has been developed by the deliberate actions of the Group CEO of Transnet and the CEO of NPA has definitely increased. These shifts in the approach to the regulatory processes by the regulated entity bode well for the future of the Regulatory process.

The Ports Consultative Committees and the National Ports Consultative Committee, have become an excellent platform for resolving issues in the ports system before they have an opportunity to escalate into industry conflicts and litigation, or to plan the development and evolution of the port system in accordance with the society wide range of interests and not the narrow interests of particular sections of the port community. The Committees are functioning effectively, some better than others across the country, and have succeeded in resolving long outstanding matters and driving critical infrastructure decisions. A continuing problem is the low level of information dissemination to the stakeholders from their own representatives on the committees. This is to be resolved by websites being set up for each port that would remove the information asymmetries between PCC members and the rest of the local port community.

A major area of activity for the Regulator under this programme, for about 3 quarters of the year under review, is the tariff application of the NPA for its increase in tariffs for the next year. The tariff application cycle that occurred in the year under review ran from July 2011 to 31 March 2012. On 31 July 2011, NPA applied to the Regulator for approval of an 18.06% increase in port tariffs. The Regulator then made a 3 part decision. The Regulator approved a 2.7% increase on the overall tariff book. The Regulator also accepted a R 1 billion rebate programme on automotives on own wheels and full containers. The Regulator also retained a R 900 million ETIMC (Excessive Tariff Increase Margin Credit) as a buffer against future increases, that although may be justified by the tariff methodology was not affordable at that time by the port users. The NPA tariff book was approved on 31 March 2012, for implementation on 1 April 2012. This process included a large amount of engagements with National Departments, the NPA and Transnet, Port Users, industry associations, port communities and academic institutions.

In the area of research and policy development a significant amount of research had been developed over the year under review. The approaches that were used in this year were more targeted and specific rather than the generalist approach that was taken in previous years. This approach had resulted in the Regulator uncovering significant port pricing anomalies that had the potential to embed structural rigidities in the economy. In the area of tariff comparator and Ports Regulator of South Africa - S30(6) & S44 Report 2011 – 2012 (Incorporating the Annual Report in terms of the PFMA)

benchmarking research, the Regulator had after the initial results of the research indicated significant anomalies in the South African port pricing approaches. The research was reviewed and certain aspects of the research redone to verify the results. These were then discussed with the relevant National Departments to ascertain their views on the alignment between the pricing approaches and state policy on the matters that had been discovered. On the completion of the engagement with the various Departments a copy of some of the research was submitted to Transnet for their comment on the study, including their views on the accuracy of the study elements. This process is ongoing and the second tariff review was not performed due to the engagements and the long delays in responses from the parties engaged. It was also decided that the variability between the two in-year studies was too low to justify the continuation of the 6 month reviews and a position was taken to review global tariffs on an annual basis only. The tariff strategy study performed by the NPA had also not been completed so the results of the research could not be applied against the outcomes of the study to ascertain the extent of alignment between the new pricing approach, the current reality and its global benchmarks.

### **3.1.3 Tribunal and Monitoring**

The Regulator has made significant advances in the area of Tribunal and Monitoring in this financial year. The Regulator had two hearings of matters and consequently delivered 3 decisions, both on *in limine* points as well as on substantive issues. The road to the actual sittings of the Regulator for hearing purposes was not a smooth one as various challenges were faced based on the interpretations attached to the legislation governing the Regulator, by legal representatives of the Parties to the matters. In one response to these challenges, the Regulator resolved on 5 October 2011, to delegate the power to hold hearings, to any 3 of its members, a resolution which was endorsed by the Minister of Transport. As at the end of the financial year 2011/2012, the Regulator had had 33 complaints and appeals lodged with it. With the exception of one matter, all the complaints and Appeals were active as at the end of the financial year. Most of the matters have run the course of Pleadings and are ready to be heard by the Members. For this reason, a very high level of activity is required of the Members sitting in the hearing panels for the next financial year.

With the Regulator having had most of its matters run the course of pleadings, the Regulator was in a better position to review the procedural elements of the Directives insofar as they relate to the process of dealing with complaints and appeals. The process was initiated and as at the end of the financial year 2011/2012, the appointment of a service provider was being finalised to support the regulatory review. It is intended that the review of the Directives will fill up the gaps in the process as well as shorten the period from which the complaint is lodged to the finalisation of the matter. Moreover, it is hoped that the Amended Directives will support activities in the equity of access jurisdiction of the Regulator. It was initially expected that the process would run parallel to that of reviewing and amending the National Ports Act and Regulations thereto. The portion of intended amendments that would have been developed and proposed by the Regulator was delayed, pending the policy engagements that are expected to occur in the subsequent financial year.

The nature and the spread of complaints and appeals continue to evidence the fact that the Regulator has managed to raise awareness across the country with regard to its functions as well as the services being offered. The Regulator continues to receive complaints from indigent and un-represented parties and continues to assist them through the process which can become complex, depending on the nature of the complaint/appeal. The Regulator attempts to ensure a balance in these processes between the obligation to assist and support parties that are unrepresented and seek justice and the obligation to remain a neutral arbiter.

The Regulator shall continue to raise awareness about its functions and services to ensure that it is not only the members of society who are able to afford legal representation that have access to Regulator services. In addition to the amendment of the Directives that has already commenced, the Regulator intends publishing a Tribunal Manual that will further promote the ease of access to the services of the Regulator.



#### 4. Governance Structures:

##### 4.1 The Human Resources and Remuneration Committee

Members of this committee are Ms T. Njobe (Chairman), Mr M. Vilana, and Mr. R. Howard.

Ms Tandiwe Njobe

Chairman

**Human Resources and Remuneration  
Committee**



The function of this committee is to ensure management and governance of all the HR and Remuneration processes, procedures and activities inside of the organisation. It also establishes reviews and assesses policy and procedure and recommends any changes in this regard to the Regulator for final approval.

In the period under review, the committee achieved a significant milestone with the approval of the Human resource regime as required by the National Ports Act. Internal processes are underway to align the current staff to the regime and recruit staff to fill up the vacant positions based on budget affordability.

This committee further processed the retirement for medical reasons of the then company secretary Mr Ebie Fakie who exited the employ of the Regulator on 31 March 2012. Appropriate processes (to ensure full compliance with legislation) were developed to address this process as it was the first time that the entity had to execute this process.



## 4.2 The Regulatory Committee

Members of this committee are Mr A. Pike (Chairman), Ms P. Langeni, Dr B. Gowans and Mr M. Vilana.

Mr A. Pike  
Chairman  
**Regulatory Committee**



This committee is responsible for oversight of delivery of obligations of the Regulator arising from the National Ports Act and regulations issued there under. The key activities of this committee during the period under review were in the areas of economic regulation and the hearing of complaints and appeals. This committee also performs oversight of all the regulatory elements and requests for determinations which are submitted to the Regulator for approval. They also perform a quality control function with respect to economic regulation and the hearing of complaints and appeals.

- Economic Regulation

Significant outputs of this committee included the global port pricing comparator in and assessment of the NPA tariff for the 2012/2013 tariff year. With respect to the tariff determination process the committee was responsible for components of the base analysis for the tariff assessment and oversight and quality control of the inputs of the Regulator's secretariat into the Regulator's determination of the tariff.

The Regulatory committee also performs oversight and quality control over the outputs of the organisation in the areas of tariff review, performance and efficiency benchmarking and monitoring. The Regulatory committee is also responsible for significant levels of baseline research in the tribunal processes for consideration by the Regulator. This committee also provides oversight and quality control over the subsidiary tribunal processes and procedures that are performed by the Secretariat.



### 4.3 The Risk Management Committee

Members of this committee are Dr B. Gowans (Chairman), Mr A. Pike, Mrs E. Ntshabele, Ms T. Njobe.

Dr B Gowans  
Chairman  
**Risk Management Committee**



This committee is responsible for the establishment and oversight of the Risk Management Function as required in terms of the Public Finance Management Act, (no 1 of 1999).

In the period under review the Risk Management committee further oversaw all elements of the risk management framework and policies of the Ports Regulator.

#### **4.4 The Audit Committee**

Members of this Committee are Mrs E. Ntshabele (Chairman), Ms T. Njobe, Mr A. Pike and Dr B. Gowans.

Mrs E. Ntshabele  
Chairman  
**Audit Committee**



This committee is responsible for the governance and compliance regime of the organisation and ensures its operations remain within the established and accepted compliance standards. This committee during its term of office managed to establish acceptable level of progress in terms of governance and good internal control, however there are still some challenges that were not addressed.

#### **4.5 Board Secretary**

The Board Secretary is the key support of the Regulator, and is responsible for compliance and governance in all Regulator meetings and provides an advisory service to the Regulators with respect to such functions. The board secretary was retired for medical reasons at the end of the period under review due to ill-health. The board secretary has left the Regulator having played a significant role in establishing the Regulator and being instrumental in the development of policies and procedures that guide the business processes of the Regulator. The legal specialist is currently fulfilling the functions of board secretary.

Mr M I Fakie

**Board Secretary**



**Regulator Member meeting attendance for the period 1 April 2011 to 31 March 2012**

<b>Name</b>	<b>Regulator</b>	<b>Human Resources Committee</b>	<b>Regulatory Committee</b>	<b>Risk</b>	<b>Audit</b>	<b>Annual General Meeting</b>
Total number of meetings	4	1	0	0	1	1
Mrs G. Serobe	4					1
Ms P. Langeni	1					
Ms T. Njobe	2	1				
Mrs E. Ntshabele	1				1	1
Dr. B Gowans	4				1	1
Mr. A. Pike	2					1
Mr. M Vilana						
Mr. R. Howard	3	1				1

<b>Name</b>	<b>Remuneration (2011/2012)</b>
Mrs G. Serobe	R 30 327.75
Ms P. Langeni	R 7 161.00
Ms T. Njobe	R 18 044.25
Mrs E. Ntshabele	R 14 564.25
Dr. B Gowans	R 59 850.00
Mr. A. Pike	R 45 488.50
Mr. M Vilana (DoT official)	R 0.00
Mr. R. Howard	R 39 491.65

## 5. Achievements in the year under review

Key Result Area	Business Objective	Annual Target	Performance Indicator	Actual achievement	Action required
Establishment and maintenance of administration	Maintain and expand the Regulator Secretariat to deal with the expansion of the Regulator into all its mandates.	Expansion of technical staff complement to meet capacity requirements and reduce external resource utilisation.	Staff appointed in all funded and approved vacancies within approved staffing regime	New posts advertised. Existing contract staff aligned to approved framework until 31/03/2011 and establishment formalised. Existing posts appointment processes commenced.	Additional funded posts to be filled.
		HRD strategy and skills plan developed and implementation commenced	Plan developed for each appointed staff member within 6 months of appointment(after 2 quarterly assessments completed).(Post approval of HR Regime)	Awaiting staff appointment and individual output requirements and skill gap responses	None.
		Internship Programme complexity increased and formalised in Economic Regulation branch.	HRD plan for all interns developed within 2 months of appointment.	Joint development path for interns as group.	None.
		Implementation of additional Conditions of service not yet in place	Medical aid scheme service provider appointed. Group life service provider appointed.	Engaging GEMS on possible membership. Advertised for Group Life and medical aid service providers, no acceptable bids received, while awaiting GEMS decision.	Awaiting GEMS response.
		Staff performance management system(PMS)	PMS implemented for	Performance management system to	System development to be finalised.

Key Result Area	Business Objective	Annual Target	Performance Indicator	Actual achievement	Action required
		implemented	staff members at all levels	be commenced on appointment of staff.	
		Purchase scalable IT platform that is cost effective and appropriate for the Regulator and develop systems plan and architecture, that is aligned with DOT enterprise wide IT system and scalable to a Single Transport Regulator level	System purchased Agnostic Sub-components in statistical and database management that are capable of stand-alone operation acquired and implemented.	System specifications submitted to tender in 3 <sup>rd</sup> quarter. No appropriate responses.	Self development to proceed.
		Develop gap response to Auditor General's comments and recommendations on 2010/11 financial statements	Gap response implemented	Pastel system changes implemented 50%, travel service provider appointed; procedural issues raised have been corrected. Some issues awaiting appointment of staff to be corrected.	Hire staff when budget expanded.
		Induction manual to be developed for new members and staff	Induction manual developed and initial training delivered	None.	None.
Economic regulation (Price, access, institutional structure, etc) of the port industry	Establish and implement all elements of the regulatory framework within its mandate	Tariff approach developed Consultation complete	Tariff approach resolved for medium term	Existing tariff methodology utilised, final tariff methodology consultation process to commence after publication of decision.	Publish Transnet draft tariff methodology after 2012/2013 decision & commence consultation process. Awaiting NPA tariff methodology proposal.
		Initial Tariff approach developed for specific	Specific real estate Tariff	Real estate tariff interim approach implemented.	Tariff methodology finalisation to include



Key Result Area	Business Objective	Annual Target	Performance Indicator	Actual achievement	Action required
		treatment of leases and real estate and consulted in tariff application process	Approach resolved for short term		real estate approach.
		Normalisation of specific tariffs process and standards of determination including individual tariff level setting considerations agreed/established	Normalisation process and standards established and commenced	Consultation with NPA on tariff strategy approach and tariff specifics.	Await NPA Tariff Strategy to commence public consultation.
		Perform NPA 2012/2013 Tariff Assessment	Tariff determination completed	Tariff finalized and tariff book approved.	None.
		Commence engagement with DOT to develop integrated tariff methodology approach for Single Transport Economic Regulator beyond medium term ports economic regulatory approach	Engagement and consultation commenced	Initial structural proposal and funding approach submitted to DoT.	Support DoT process of continued engagement on the matter.
		Revise Directives to include procedures for monitoring and compliance filing by all port industry participants	Revised Directives published	Advertisements for service providers published and service provider appointed.	None.
		Revise directives to articulate application of Regulator powers and mandates in areas hitherto not covered by Directives	Revised Directives published	Advertisements for service providers published and service provider appointed.	None.
		Tariff baseline RAB methodology development for real estate and port assets	Valuation methodology for real estate and port assets consulted	Awaiting tariff methodology proposal by NPA.	Awaiting NPA tariff methodology proposal.

Key Area	Result	Business Objective	Annual Target	Performance Indicator	Actual achievement	Action required
			Twice yearly tariff review	April review completed September review completed	April review consulted with key government departments, Transnet and NPA.	None.
			BRICSA Tariff comparator study	BRICSA Tariff study completed	Initial research commenced, information outstanding.	Await SARS IT process.
	Support the development of the port system and the port regulatory system architecture	Support the development of the Ministerial Framework for Private Sector Participation in Ports	Support provided to DOT on development and consultation of the Ministerial Framework for Private Sector Participation in Ports	Await DoT process.	None.	
		Implement the Ministerial Framework for Private Sector Participation in Ports	Support and monitor the implementation of the Ministerial Framework for Private Sector Participation in Ports	Await DoT process.	None.	
		Support the National transport planning Committee initiatives	Support provided to the National transport planning Committee initiatives	Await DoT process.	None.	
		Support the further implementation of the Ports Act	Implement and monitor the components of the Ports Act as	Support provided to Presidential Infrastructure Co-coordinating Committee	None.	

Key Result Area	Business Objective	Annual Target	Performance Indicator	Actual achievement	Action required
			directed by the DOT	with respect to Ports and Transport elements.	
		Support the implementation of the Ministerial Agreement elements within the mandate of the Regulator	Ensure Implementation of Ministerial Agreement elements in Regulator mandate.	Lowering cost of business Dealt with in tariff application review.	None.
		Support the implementation of the National Freight Logistics Strategy	Implement all aspects of the implementation of the NFLS as directed by the DOT that are within the mandate of the Regulator	Await DoT instruction.	None.
		Develop changes to the Port Act that facilitate its implementation and the operations of the Regulator, under ports Act revision process of DOT	Support the development of a National Ports Amendment Bill	Advertised for service providers to provide support to Ports Regulator.	None.
Monitoring the port industry and its compliance with the port policy, strategy and regulatory instruments	Monitoring performance in accordance with state strategy and policy	Twice yearly selected port kpi review with regional case studies	April and September Port performance review submitted to DOT and published	Was not completed due to expanded global tariff comparator study using staff availability..	None.
	Monitoring Regulatory Compliance in the ports industry, with the Ports Act, Regulations and Directives	Develop compliance scan methodology in consultation with industry to target concerns not yet capable of Tribunal	Methodology established	Process commenced. Scan methodology to be developed alongside Durban harbour compliance scan service	NT to be requested to allow internal contract staff to be appointed to run programme in house.

Key Result Area	Business Objective	Annual Target	Performance Indicator	Actual achievement	Action required
		submission		provider tender failed to appoint provider due to costs.	
		Port service provider tariff filing compliance review	Tariff Filing Audit	Not commenced.	None.
	Monitor port system	Develop and consult revised directives for information filing and requirements for port sector participants	Directives consulted, concurred by Minister and published.	Advertised for service providers to provide support to Ports Regulator, limited responses received.	To be developed in house.
Establishing and operating a tribunal to hear complaints and appeals under the National Ports Act.	Establish Tribunal to hear complaints and appeals under the NPA Act	Finalising the Directives for amended tribunal establishment processes and procedures	Revised Directives developed and submitted For Ministerial concurrence	Process commenced.	None.
		Revise the Tribunal procedure manuals to respond to challenges that had been experienced in initial tribunals.	Revised Tribunal Manual Developed	Process commenced, manual to be developed alongside revised development process.	None.
		Tribunal training for existing Regulator Members on advanced aspects of tribunal procedure and decision making	Deliver training	No training delivered over period.	Develop and implement training program for new members to be appointed.
		Tribunal manual, training course and tutor support for new members and refresher for existing members	Develop training materials and deliver training	Project not commenced as yet, awaiting new Member determination.	Develop and implement training program for new members to be appointed.

Key Result Area	Business Objective	Annual Target	Performance Indicator	Actual achievement	Action required
		Tribunal to have at least 18 days availability in year	Tribunal availability or days in sitting.	Approval of delegation to allow any 3 members to hear matter received. Matters required, were dealt with and resolved.	None.

## 6. Statement of estimated income and expenditure

Statement of Estimated Income and Expenditure		2012/13
<b>Revenue</b>		
<b>Tax revenue</b>		-
<b>Non-tax revenue</b>		-
Sale of goods and services other than capital assets		
<i>of which:</i>		
<i>Admin fees</i>		
<i>Sales by market establishments</i>		
<i>Other sales</i>		
<i>Other non-tax revenue</i>		307
<b>Transfers received</b>		<b>15,069</b>
<b>Total revenue</b>		<b>15,376</b>
<b>Expenses</b>		
<b>Current expense</b>		<b>15,376</b>
Compensation of employees		9,200
Goods and services		5,249
Depreciation		927
Interest, dividends and rent on land		-
Interest		-
Dividends		-
Rent on land		-
<b>Transfers and subsidies</b>		-
<b>Total expenses</b>		<b>15,376</b>
<b>Surplus / (Deficit)</b>		<b>-</b>

## 7. Programme for 2012/2013

### Annexure to Ports Regulator Performance Agreement 2012/2013

KRA	Objective	Strategies	2012/2013 Targets	Indicator
Establishment and maintenance of administration	Expansion of technical staff complement to meet capacity requirements and reduce external resource utilisation.	Human resource acquisition, management, capacitation and benefits structure development and implementation	2 <sup>nd</sup> quarter 2012/13	Staff appointed in all funded and approved vacancies within approved staffing regime(current 12 regime 21)
	Internship Programme complexity increased and formalised in Economic Regulation branch.	Human resource acquisition, management, capacitation and benefits structure development and implementation	continuous	HRD plan for all interns developed within 2 months of appointment.
	Staff performance management system (PMS) implemented	Human resource acquisition, management, capacitation and benefits structure development and implementation	1 <sup>st</sup> quarter 2012/13	PMS on organizational level.
	Ensure skills and capacity development in alignment with Single Transport Economic Regulator perspectives of DOT	Single Transport Economic Regulator preparation.	3 <sup>rd</sup> quarter 2012/13	Skills and capacity planning in line with DOT Single Transport Economic Regulator
Economic regulation (Price, access, institutional structure, etc) of the port industry	Tariff methodology development	Establish elements of the regulatory framework within its mandate	2 <sup>nd</sup> quarter 2012/13	Tariff approach resolved for 2013/2014
	Normalisation of specific tariffs process and standards of determination	Establish elements of the regulatory framework within its mandate	3 <sup>rd</sup> quarter 2012/13	Consulted tariff strategy and implementation plan

<b>KRA</b>	<b>Objective</b>	<b>Strategies</b>	<b>2012/2013 Targets</b>	<b>Indicator</b>
	including individual tariff level setting considerations agreed/established			
	Perform NPA 2013/2014 Tariff Assessment	Perform annual NPA tariff assessment	3 <sup>rd</sup> quarter 2012/13	Tariff determination completed for 2013/2014
	Track and monitor the NPA capital expenditure planning for 2012/2013 through the PCC and NPCC processes and integrate into the tariff decision for 2013/2014 and establish capital medium and long term planning.	Implementation of the tariff methodology	3 <sup>rd</sup> quarter 2012/13	Review the port capital expenditure plans for 2012/2013 and integrate into the tariff decision.
	Revise Directives to include procedures for monitoring and compliance filing by all port industry participants.	Develop legal instruments to expand activities into remaining areas of mandate.	4 <sup>th</sup> quarter 2012/13	Revised directives published.
	Tariff baseline RAB methodology development for real estate and port assets resulting from current and medium term capex programme	Further formalise regulatory certainty over the medium-term	3 <sup>rd</sup> quarter 2012/13	Valuation methodology for real estate and port assets consulted.
	Revise Directives to include procedures for monitoring and compliance filing by all port industry participants	Develop legal instruments to expand activities into remaining areas of mandate.	4 <sup>th</sup> quarter 2012/13	Amendment completed, consulted and gazetted
	Tariff strategy assessment to benchmark regulatory, policy and strategy alignment	Benchmarking port tariffs	3 <sup>rd</sup> quarter 2012/13	Global Port Tariff comparator study published for Iron Ore, Containers, Coal and Automotives



<b>KRA</b>	<b>Objective</b>	<b>Strategies</b>	<b>2012/2013 Targets</b>	<b>Indicator</b>
Monitoring the port industry and its compliance with the port policy, strategy and regulatory instruments	Monitor regulatory and strategy compliance in major processes within the Ports Industry.	Develop compliance scan methodology in consultation with industry to target concerns not yet capable of tribunal submission	4 <sup>th</sup> quarter 2012/13	Methodology established
	Monitor strategy and policy compliance in major processes within the Ports Industry.	Benchmarking port efficiency and outputs	4 <sup>th</sup> quarter 2012/13	Baseline joint port efficiency study with DOT 50% completed Traffic audit 50% complete
	Perform regulatory compliance review of Port of Durban s56, s57 and leases	Monitor regulatory compliance in major processes within the Ports Industry.	4 <sup>th</sup> quarter 2012/13	Review completed for Durban s 56/s57.
	BBBEE status review of all s56 and s57, leases and port service providers port of Durban	Monitor regulatory compliance in major processes within the Ports Industry.	3 <sup>rd</sup> quarter 2012/13	BBBEE Review completed
Establishing and operating a tribunal to hear complaints and appeals under the National Ports Act.	Develop and consult revised directives for information filing and requirements for port sector participants, and compliance reviews	Develop information filing requirements for port participants and implement instruments	4 <sup>th</sup> quarter 2012/13	Amendment completed, consulted and gazetted
	Finalising the Directives for amended tribunal processes and procedures	Develop proposed revisions to the Act, Regulations and Directives that increase the efficiency of the Tribunal and its procedures	4 <sup>th</sup> quarter 2012/13	Amendment completed, consulted and gazetted
	Tribunal manual, training course and tutor support for new Members and refresher for existing Members	Ensure high quality tribunal service	1 <sup>st</sup> quarter 2012/13	Develop training materials and deliver training
	Tribunal to have at least 18 days availability in year	Deliver adequate tribunal service availability to industry	4 <sup>th</sup> quarter 2012/13	Tribunal availability or days in sitting.

KRA	Objective	Strategies	2012/2013 Targets	Indicator
	Revise the Tribunal procedure manuals to respond to challenges that had been experienced in initial tribunals.	Develop proposed revisions to the Act, Regulations and Directives that increase the efficiency of the Tribunal and its procedures	3 <sup>rd</sup> quarter 2012/13	Revised Tribunal Manual developed



## Annual Financial Statements

for

The Ports Regulator of South Africa

for the year ended 31 March 2012

# The Ports Regulator of South Africa

## ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2012

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## The Ports Regulator of South Africa

### REPORT OF THE ACCOUNTING AUTHORITY for the year ended 31 March 2012

The Regulator Members are responsible for the maintenance of adequate accounting records and the preparation and integrity of the financial statements and related information. The auditors are responsible for reporting on the fair presentation of the financial statements. The financial statements have been prepared in accordance with Generally Recognised Accounting Practice (GRAP) issued by the Accounting Standards Board in accordance with Section 91 of the Public Finance Management Act, 1999 (Act No.1 of 1999)(PFMA).

The Regulator Members are also responsible for the system of internal financial control. These are designed to provide reasonable, but not absolute, assurance as to the reliability of the financial statements, and to adequately safeguard, verify and maintain accountability of the assets, and prevent and detect misstatements and loss. Nothing has come to the attention of the Members to indicate any material breakdown in the functioning of these controls, procedures and systems during the year under review.

Remuneration paid to Regulator Members and the Executive Member for the year ended 31 March 2012 is R2, 011 million.

#### **Approval**

The financial statements for the year ended 31 March 2012 are set out on pages 50 to 64 were approved by the Chief Executive officer on 31 May 2012.



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Riad Khan  
Accounting Officer

# The Ports Regulator of South Africa

## REPORT OF THE AUDITOR-GENERAL

### REPORT OF THE AUDITOR-GENERAL TO THE PORTS REGULATOR OF SOUTH AFRICA

#### REPORT ON THE FINANCIAL STATEMENTS

##### Introduction

1. I have audited the financial statements of The Ports Regulator of South Africa set out on pages 50 to 64, which comprise the statement of financial position as at 31 March 2012, the statement of financial performance, statement of changes in net assets and the cash flow statement for the year then ended, and the notes, comprising a summary of significant accounting policies and other explanatory information.

##### Accounting authorities responsibility for the financial statements

2. The accounting authority is responsible for the preparation and fair presentation of the financial statements in accordance with South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No. 1 of 1999) (PFMA), and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

##### Auditor-General's responsibility

3. My responsibility is to express an opinion on the financial statements based on my audit. I conducted my audit in accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2001) (PAA), the *General Notice* issued in terms thereof and International Standards on Auditing. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.
4. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

##### Opinion

6. In my opinion, the financial statements present fairly, in all material respects, the financial position of The Ports Regulator of South Africa as at 31 March 2012, and its financial performance and cash flows for the year then ended in accordance with

# The Ports Regulator of South Africa

## REPORT OF THE AUDITOR-GENERAL

SA Standards of GRAP and the requirements of the PFMA.

### REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

7. In accordance with the PAA and the *General Notice* issued in terms thereof, I report the following findings relevant to performance against predetermined objectives, compliance with laws and regulations and internal control, but not for the purpose of expressing an opinion.

#### Predetermined objectives

8. I performed procedures to obtain evidence about the usefulness and reliability of the information in the annual performance report as set out on pages 31 to 36 of the annual report.
9. The reported performance against predetermined objectives was evaluated against the overall criteria of usefulness and reliability. The usefulness of information in the annual performance report relates to whether it is presented in accordance with the National Treasury annual reporting principles and whether the reported performance is consistent with the planned objectives. The usefulness of information further relates to whether indicators and targets are measurable (i.e. well defined, verifiable, specific, measurable and time bound) and relevant as required by the *National Treasury Framework for managing programme performance information*.

The reliability of the information in respect of the selected objectives is assessed to determine whether it adequately reflects the facts (i.e. whether it is valid, accurate and complete).

10. There were no material findings concerning the usefulness and reliability of the performance information.

#### Additional matter

11. I draw attention to the following matter below. This matter does not have an impact on the predetermined objectives audit findings reported above.

#### Achievement of planned targets

12. Of the total number of planned targets, only 12 were achieved during the year under review. This represents 65% of total planned targets that were not achieved during the year under review.

#### Compliance with laws and regulations

13. I performed procedures to obtain evidence that the entity has complied with applicable laws and regulations regarding financial matters, financial management and other related matters. My findings on material non-compliance with specific matters in key applicable laws and regulations as set out in the *General Notice*

# The Ports Regulator of South Africa

## REPORT OF THE AUDITOR-GENERAL

issued in terms of the PAA are as follows:

### **Strategic planning and performance management**

14. The accounting authority did not ensure that the public entity has and maintains an effective, efficient and transparent system of internal control regarding performance management, which describes and represents how the entity's processes of performance planning, monitoring, measurement, review and reporting was conducted, organised and managed, as required by section 51(1)(a)(i) of the PFMA.

### **Annual financial statements**

15. The financial statements submitted for auditing were not prepared in all material respects in accordance with the requirements of section 55(1)(a) and (b) of the PFMA. Material misstatements relating to the accounting of leases identified by the auditors were subsequently corrected.

### **Audit committee**

16. The chairperson of the audit committee fulfilled an executive function in the entity as required by Treasury Regulation (TR) 27.1.3.
17. The majority of audit committee members were not non-executive members appointed by the accounting authority, as required by Treasury Regulation 27.1.4.
18. The audit committee did not meet with the Auditor-General at least annually, as required by Treasury Regulation 27.1.13.
19. The audit committee did not meet at least twice a year, as required by section 77(b) of the Public Finance Management Act.
20. The audit committee did not review the:
  - effectiveness of the internal audit function,
  - coordination between the internal audit function and the external auditors,
  - risk areas of the entity's operations covered in the scope of internal and external audits,
  - effectiveness of the internal control systemsas required by Treasury Regulation (TR) 27.1.8(a), (b) (c), (e) and (g).
21. The audit committee did not review the adequacy, reliability and accuracy of the financial information provided to management and other users, as required by Treasury Regulation 27.1.8(d).
22. The audit committee did not review the entity's compliance with legal and regulatory provisions, as required by Treasury Regulation 27.1.8(f).

### **Internal audit**

23. Internal audit was not under the control and direction of the audit committee, as



# The Ports Regulator of South Africa

## REPORT OF THE AUDITOR-GENERAL

required by section 51(1)(a)(ii) of the Public Finance Management Act.

24. Internal audit did not submit reports, detailing performance against the annual internal audit plan, to the audit committee every quarter, as required by Treasury Regulation 27.2.7(d).
25. Internal audit did not evaluate the effectiveness and efficiency of controls and/or did not make recommendations for its enhancement and improvement, as required by Treasury Regulation 27.2.10.
26. Internal audit did not evaluate the reliability and integrity of financial and operational information, as required by Treasury Regulation 27.2.10(b).
27. Internal audit did not evaluate compliance with laws and regulations, as required by Treasury Regulation 27.2.10(e).

### Internal control

28. I considered internal control relevant to my audit of the financial statements, annual performance report and compliance with laws and regulations. The matters reported below under the fundamentals of internal control are limited to the significant deficiencies that resulted in the findings on the annual performance report and the findings on compliance with laws and regulations included in this report.

### Leadership

29. The accounting authority did not take satisfactory steps to ensure that the entity has adequate and sufficiently skilled resources to appropriately manage the entity's performance management processes.

### Governance

30. The entity did not have an effective internal audit unit to identify internal control deficiencies and recommend corrective action. The audit committee was not fully effective in evaluating and monitoring risks and providing oversight over the effectiveness of the internal control environment, including financial and performance reporting and compliance with laws and regulations.

*Pietermaritzburg*

Pietermaritzburg

31 July 2012



AUDITOR-GENERAL  
SOUTH AFRICA

*Auditing to build public confidence*

# The Ports Regulator of South Africa

## REPORT OF THE AUDITOR-GENERAL

**The Ports Regulator of South Africa**  
**STATEMENT OF FINANCIAL PERFORMANCE**  
**for the year ended 31 March 2012**

	<i>Notes</i>	<b>2012</b> <b>R'000</b>	<b>2011</b> <b>R'000</b>
<b>REVENUE</b>			
<i>Non-exchange revenue</i>			
Transfers and subsidies	2	14 361	8 832
<i>Exchange revenue</i>			
Sale of goods and rendering of services		232	198
Interest, dividends and rent on land	3	206	178
<b>TOTAL REVENUE</b>		<b>14 593</b>	<b>9 030</b>
<b>EXPENDITURE</b>			
Administration expenses	4	758	1 094
Staff costs	5	6 444	3 655
Audit fees		209	250
Gifts		1	3
Other operating expenses	6	4 076	4 018
<b>TOTAL EXPENDITURE</b>		<b>11 488</b>	<b>9 020</b>
<b>SURPLUS FOR THE YEAR</b>		<b>3 105</b>	<b>10</b>

# The Ports Regulator of South Africa

## STATEMENT OF FINANCIAL POSITION at 31 March 2012

	<i>Notes</i>	<b>2012 R'000</b>	<b>2011 R'000</b>
<b>ASSETS</b>			
<b>Non-current assets</b>		<b>1 011</b>	<b>1 075</b>
Property, plant and equipment	7	780	1 047
Intangible asset	8	229	26
Loans and receivables	9	2	2
<b>Current assets</b>		<b>5 954</b>	<b>5 322</b>
Loans and receivables	9	-	-
Inventory	10	74	74
Trade and other receivables	11	120	85
Cash and cash equivalents	12	5 760	5 163
<b>TOTAL ASSETS</b>		<b>6 965</b>	<b>6 397</b>
<b>LIABILITIES</b>			
<b>Current liabilities</b>		<b>1 496</b>	<b>4 033</b>
Bank – credit card account	12	44	46
Trade and other payables	13	1 200	3 822
Provisions	15	252	165
<b>TOTAL LIABILITIES</b>		<b>1 496</b>	<b>4 033</b>
<b>NET ASSETS</b>			
<b>CAPITAL AND RESERVES</b>			
Accumulated surplus		5 469	2 364
<b>TOTAL NET ASSETS</b>		<b>5 469</b>	<b>2 364</b>
<b>TOTAL NET ASSETS AND LIABILITIES</b>		<b>6 965</b>	<b>6 397</b>

## The Ports Regulator of South Africa

### STATEMENT OF CHANGES IN NET ASSETS for the year ended 31 March 2012

	<b>R'000 Accumulated Surplus</b>
<b>Opening balance at 1 April 2010</b>	2 354
Surplus for the year	<u>10</u>
<b>Balance as at 31 March 2011</b>	<b>2 364</b>
Surplus for the year	3 105
<b>Closing balance as at 31 March 2012</b>	<b><u>5 469</u></b>

## The Ports Regulator of South Africa

### CASH FLOW STATEMENT for the year ended 31 March 2012

	<i>Note</i>	<b>2012</b> <b>R'000</b>	<b>2011</b> <b>R'000</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Receipts		14 387	8 855
Transfers received		14 361	8 832
Other income		26	23
Payments		<b>(13 650)</b>	<b>(8 714)</b>
Employee cost		(6 444)	(3 325)
Suppliers and other payments		(7 206)	(5 389)
Net cash flows from operations		<b>737</b>	<b>141</b>
Interest paid		(11)	(1)
Finance income		206	178
<b>Net cash flow available from operating activities</b>		<b>932</b>	<b>318</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Acquisition of :			
Property, plant and equipment	7	(333)	(135)
Intangible assets		-	-
<b>Net cash flows from investing activities</b>		<b>(333)</b>	<b>(135)</b>
Net increase in cash and cash equivalents		599	183
Cash and cash equivalents at beginning of the year		5 117	4 934
<b>Cash and cash equivalents at end of year</b>		<b>5 716</b>	<b>5 117</b>

# The Ports Regulator of South Africa

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2012

### 1 Accounting Policies

#### 1.1 Basis of preparation

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

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

The principal accounting policies adopted in the preparation of these annual financial statements are set out below.

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

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

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

#### 1.2 Presentation currency

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

#### 1.3 Rounding

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

#### 1.4 Property, plant and equipment

Plant and Equipment are stated at historical cost and adjusted after taking into account residual values, impairment of assets and depreciation

Depreciation is provided on all property, plant and equipment to write down the cost, less residual value where appropriate, on a straight line basis over their useful lives as follows :

Office furniture and fittings	- 8 years
Computer equipment	- 3 years
Motor vehicles	- 5 years
Intangible assets	- 2 years

# The Ports Regulator of South Africa

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2012

The useful lives of property, plant and equipment and their residual values are reassessed at the end of each financial year. Where the carrying amount of an asset is greater than its estimated recoverable amount, it is written down immediately to its recoverable amount (i.e. impairment losses are recognised).

### 1.5 Intangible assets

An intangible asset is recognised when it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity and when the cost of the asset can be measured reliably. Intangible assets are stated at cost less accumulated amortisation and adjusted for any impairment. Amortisation is calculated on a straight line basis over the useful life of the asset. The amortisation period is reviewed at each balance sheet date.

### 1.6 Provisions

Provisions are recognised when:

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

### 1.7 Leases

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

### 1.8 Inventory

Inventories comprise of library books and are stated at cost.



# The Ports Regulator of South Africa

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2012

### 1.9 Financial instruments

Financial instruments are initially recognised at cost.

#### Trade and other receivables

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

#### Trade and other payables

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

#### Cash and cash equivalents

Cash includes cash with banks. Cash equivalents are short-term highly liquid investments, readily convertible into known amounts of cash, which are held with registered banking institutions.

### 1.10 Fruitless and wasteful expenditure

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

### 1.11 Revenue recognition

Revenue arising from transfers received from the Department of Transport is recognised as income over the periods necessary to match them with the related costs that they are intended to compensate. To the extent that the criteria or obligation are not met or complied with, a liability is recognised.

# The Ports Regulator of South Africa

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2012

	2012	2011
	R'000	R'000
<b>2 Transfers received</b>		
Department of Transport	<u>14 361</u>	<u>8 832</u>
<b>3 Other income</b>		
Complaint lodging fee	9	20
Sundry income	<u>17</u>	<u>-</u>
	<b>2012</b>	<b>2011</b>
	<b>R'000</b>	<b>R'000</b>
<b>4 Administrative expenses</b>		
Accounting fee	-	47
Regulator members' remuneration	211	411
Bank charges	26	17
Entertainment	6	-
Internal audit	62	63
Legal fees	86	284
Stationery and printing	42	104
Subscriptions	270	79
Training and staff development	18	-
Venues and facilities	<u>37</u>	<u>89</u>
	<b><u>758</u></b>	<b><u>1 094</u></b>
<b>5 Staff costs</b>		
Salaries and wages	4 378	3 522
Performance bonus/awards	-	122
Employer contributions	15	11
Retirement due to ill-health	<u>2 051</u>	<u>-</u>
	<b><u>6 444</u></b>	<b><u>3 655</u></b>

# The Ports Regulator of South Africa

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2012

### 6 Other operating expenses

Advertising		142	69
Amortisation		44	33
Catering		33	6
Communication costs		130	121
Computer expenses		140	152
Consultants		1 124	1 002
Couriers and delivery charges		12	9
Contracted and temporary employees		-	9
Depreciation		353	597
Fruitless and wasteful expenditure	<i>Note 21</i>	11	124
Insurance		36	76
Maintenance and repairs		11	-
Motor vehicle expenses		7	3
Municipal services		49	43
Rental		1 192	904
Travel, subsistence and disbursements		476	347
Staff			
Travel, subsistence and disbursements Regulator members		316	523
		<b>4 076</b>	<b>4 018</b>

### 7 Property, plant and equipment

2012	Cost	Accumulated depreciated	Carrying value
	R'000	R'000	R'000
Computer equipment	1 817	(1 732)	85
Office furniture and fittings	876	(287)	589
Motor vehicle	179	(73)	106
	<b>2 872</b>	<b>(2 092)</b>	<b>780</b>

## The Ports Regulator of South Africa

### NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2012

2011	Cost R'000	Accumulated depreciated R'000	Carrying value R'000
Computer equipment	1 803	(1 475)	328
Office furniture and fittings	804	(214)	590
Motor vehicle	179	(50)	129
	<b>2 786</b>	<b>(1 739)</b>	<b>1 047</b>

#### Reconciliation of property, plant and equipment

	Opening carrying value R'000	Additions R'000	Disposals R'000	Depreciation R'000	Closing carrying value R'000
Computer equipment	328	37	-	(257)	108
Office furniture & fittings	590	49	-	(73)	566
Motor vehicle	129	-	-	(23)	106
	<b>1 047</b>	<b>86</b>	-	<b>(353)</b>	<b>780</b>

## The Ports Regulator of South Africa

### 8 Intangible asset

2012	Cost R'000	Accumulated depreciated R'000	Carrying value R'000
Computer software	360	(131)	229

2011	Cost R'000	Accumulated depreciated R'000	Carrying value R'000
Computer software	113	(87)	26

### Reconciliation of Intangible assets Computer software

	Opening carrying value R'000	Disposal R'000	Additions R'000	Amortisation R'000	Closing carrying value R'000
Computer software	26	-	247	(44)	229

### 9 Loans and other receivables

	2012 R'000	2011 R'000
<b>Non current</b>		
Deposit	2	2
<b>Current</b>		
Other receivables	-	-

### 10 Inventory

Library books at cost	74	74
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# The Ports Regulator of South Africa

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2012

### 11 Trade and other receivables

Prepaid expenditure	120	85
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### 12 Cash and cash equivalents

Bank balances		
Nedbank current account	5 760	3 584
Nedbank Investment account	-	1 579
	5 760	5 163
Nedbank credit card account	(44)	(46)

### 13 Trade and other payables

	2012 R'000	2011 R'000
Accruals	352	643
Receiver of Revenue	848	606
Department of Transport *	-	2 573
- Amounts receivable at beginning of the year	-	2 573
- Transactions for the year	-	-
	1 200	3 822

\* The balance due to the Department of Transport was repaid on 01 April 2011.

### 14 Operating lease commitments

The Ports Regulator entered into a three year operating lease agreement with Old Mutual Properties that commenced on 1 October 2010 for R82 730.89 per month including vat with an escalation clause of 10% annually.

Minimum lease payments due

- not later than one year	1 135	1 044
- later than one year and not later than five years	593	1 728
- later than five years	-	-
	1 728	2 772

## The Ports Regulator of South Africa

### NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2012

#### 15 Leave pay provision

Carrying amount at the beginning of the period	165	201
Additional provisions made in the current period	-	-
Amount utilised in the current period	87	(36)
 Carrying amount at the end of period	 252	 165

Leave pay provision comprises the value of leave days owing to employees as at 31 March 2011.

#### 16 Cash generated from operations

	2012	2011
	R'000	R'000
Surplus for the year	3 105	10
<b>Non cash/ working capital changes</b>	<b>(2 173)</b>	<b>308</b>
Depreciation	353	597
Amortisation	44	32
Increase /(Decrease) in payables	(2 622)	(194)
(Decrease)/Increase in provisions	87	(36)
(Increase)/Decrease in receivables	(35)	(82)
Increase in inventory	-	(9)
<b>Net cash flow from operating activities</b>	<b>932</b>	<b>318</b>

# The Ports Regulator of South Africa

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2012

<b>17 Regulator Members' remuneration</b>	<b>No of individuals</b>		
Members	7*	211	411

\* There is a total of 8 Regulator Members. Mr Vilana, being a representative of the Department of Transport, is not remunerated.

<b>18 Executive member's remuneration</b>	<b>No of individuals</b>		
Chief executive officer	1	1 800	1 800

### 19 Contingent liabilities

There were no contingent liabilities as at 31 March 2012.

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

Net surplus per Statement of Financial Performance	3 105	10
Adjusted for		
Fair value adjustments	11	124
Increase/decrease in provisions	87	(36)
Increase/decrease in expenditure	(3 064)	46
Increase/decrease in revenue	(232)	(198)
<b>Net surplus/deficit per approved budget</b>	98	(54)

	<b>2012</b>	<b>2011</b>
	<b>R'000</b>	<b>R'000</b>

### 21 Unauthorised, irregular and fruitless and wasteful expenditure

Fruitless and wasteful expenditure	11	124
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Fruitless and wasteful expenditure refers to interest and penalties incurred in respect of late payment to SARS.



# The Ports Regulator of South Africa

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2012

### **22 Taxation**

No provision is made for taxation as the entity is exempt from taxation per Section 10(1) a of the Income tax Act.

### **23 Risk management**

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

### **24 Related party transactions**

There were no related party transactions.





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