No 64—2018] Fifth Session, Fifth Parliament

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

FRIDAY, 18 MAY 2018

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National Assembly and National Council of Provinces

1. The Speaker and the Chairperson

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Report of the **Portfolio Committee on Labour** on the **Basic Conditions of Employment Amendment Bill [B 30 – 2017]**, dated 18 May 2018:

> The **Portfolio Committee on Labour**, having considered the subject of the **Basic Conditions of Employment Amendment Bill** (National Assembly – sec 75), referred to it and classified by the JTM as a section 75 Bill, reports the Bill with amendments [B 30A – 2017].

The list of amendments is attached hereto.

Minority Views:

1. On clause 3, the DA objected to the minimum number of hours allowed for a worker to be paid, citing that someone who worked less than 4 hours should not be paid for 4 hours. The reason provided for the objection was that such a provision would destroy employment.
2. On clause 5, the DA objected to the definition of a worker as it seems to include an independent contractor.
3. On clause 16, the DA objected to the use of the word "fine" as, in their view, it criminalizes non-compliance with the National Minimum Wage Act; and legislation of the amount ties the hands of the adjudicator.
4. On clause 18(2), the DA objected to the concept that every union representative is given the right to inspect any record kept in terms of the National Minimum Wage Act, stating that this will interrupt business operations.

Report to be considered.

REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE AMENDMENTS TO

BASIC CONDITIONS OF EMPLOYMENT AMENDMENT BILL

[B 30—2017]

(As agreed to by the Portfolio Committee on Labour (National Assembly))

[B 30A—2017] ISBN 978-1-4850-0465-3

No. of copies printed 400

AGREED AMENDMENTS

BASIC CONDITIONS OF EMPLOYMENT AMENDMENT BILL
[B 30—2017]

CLAUSE 1

1. On page 2, after line 12, to insert the following:

   (b) by the substitution for the definition of "Commission" of the following definition:
   " **'Commission'** means the **[Employment Conditions Commission]** National Minimum Wage Commission established by section **[59 (1)]** 8 of the National Minimum Wage Act, 2018;".

2. On page 3, in line 6, to omit "or", and to substitute "and".

3. On page 3, in lines 7 and 10, to omit "2017", and to substitute "2018".

CLAUSE 2

1. On page 3, in line 20, after "41," to insert "section 62A and chapters 3, 4, 5 and 6,".

2. On page 3, in line 20, to omit "does", and to substitute "**[does]** do".

3. On page 3, in line 22, to omit "**[a sectoral determination]**" and to substitute "a sectoral determination and".

4. On page 3, in line 23, to omit "2017", and to substitute "2018".

CLAUSE 3

1. On page 3, in line 27, after "employee", to insert "or a worker as defined in section 1 of the National Minimum Wage Act, 2018,".

2. On page 3, in line 29, after "employees", to insert "or workers".

NEW CLAUSES

1. That the following be the new clauses:

Amendment of section 51 of Act 75 of 1997

4. Section 51 of the principal Act is hereby amended by the addition of the following subsections:

"(3) If any sectoral determination at the date of the promulgation of the National Minimum Wage Act, 2018, prescribes wages that are higher than the national minimum wage, the wages in that sectoral determination and the remuneration and associated benefits based on those wages must be increased proportionally to any adjustment of the national minimum wage in terms of the National Minimum Wage Act, 2018.

(4) Notwithstanding the provisions of any sectoral determination, an employer must pay a learner an allowance as prescribed in Schedule 2 of the National Minimum Wage Act, 2018, as is adjusted from time to time, from the date that the National Minimum Wage Act, 2018, comes into force.

(5) For the purpose of subsection (4)—

(a) **'learner'** means a learner as defined in Schedule 2 of the National Minimum Wage Act, 2018; and

(b) **'allowance'** means an allowance as defined in Schedule 2 of the National Minimum Wage Act, 2018.".

Amendment of section 52 of Act 75 of 1997

5. Section 52 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) Before making a sectoral determination, the Minister must direct the **[Director-General]** Commission to investigate conditions of employment in the sector and area concerned.";

(b) by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

"The **[Minister must]** Commission must, on its own accord or on the direction of the Minister, as contemplated in subsection (1), determine terms of reference for the investigation, which must include—";

(c) by the substitution for subsection (3) of the following subsection:

"(3) The **[Minister]** Commission must publish a notice in the Gazette setting out the terms of reference of the investigation and inviting written representations by **[members of]** the public."; and

(d) by the substitution in subsection (4) for paragraph *(a)* of the following paragraph:

"*(a)* direct the **[Director-General]** Commission to conduct an investigation; or".

Amendment of section 53 of Act 75 of 1997

6. Section 53 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"For the purposes of conducting an investigation in terms of section 52 (1), the **[Director-General]** Commission may—"; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) A person may not refuse to answer any relevant question by the **[Director-General]** Commission that he or she is legally obliged to answer.".

Amendment of section 54 of Act 75 of 1997

7. Section 54 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) On completion of an investigation, and after considering any representations made by members of the public, the **[Director-General]** Commission must prepare a report.

(2) A copy of the report must be submitted to the **[Commission for its]** Director-General for his or her information and the Minister for consideration.".

CLAUSE 4

1. On page 3, in line 31, to omit "**Chapters 8 and**", and to substitute "**Chapter**".

2. On page 3, in line 32, to omit "Chapters 8 and 9 of the principal Act are hereby repealed.", and to substitute "Chapter 9 of the principal Act is hereby repealed.".

CLAUSE 5

1. On page 3, in line 38, to omit "2017" and to substitute "2018".

CLAUSE 6

1. On page 3, in line 44, to omit "2017" and to substitute "2018".

CLAUSE 8

1. On page 4, in lines 17 and 24, to omit "2017" and to substitute "2018".

2. On page 4, from line 27, to omit "apply to" and substitute "**[apply to]** request".

CLAUSE 9

1. On page 4, in line 37, to omit "2017" and to substitute "2018"

CLAUSE 10

1. On page 5, in line 7, to omit "2017" and to substitute "2018".

2. On page 5, in line 14, to omit "or".

3. On page 5, in line 17, to omit "**[; or]**", and to substitute "; or".

4. On page 5, from line 18, to omit "***(d)*** **that amount has been made payable by the employer to the employee for longer than 12 months before the date on which a complaint was made to a labour inspector by or on behalf of the employee or, if no complaint was made, the date on which a labour inspector first endeavoured to secure a written undertaking by the employer in terms of section 68 or issued a compliance order in terms of section 69]**", and to substitute the following:

   "*(d)* that amount has been made payable by the employer to the employee for longer than **[12]** 36 months before the date on which a complaint was made to a labour inspector by or on behalf of the employee or, if no complaint was made, the date on which a labour inspector first endeavoured to secure a written undertaking by the employer in terms of section 68 or issued a compliance order in terms of section 69".

CLAUSE 11

1. On page 5, in line 28, to omit "**an arbitration award**" and to substitute "**an arbitration award**".

2. On page 5, from line 34, to omit

> "(2) After considering any representations made to it, the **[Labour Court]** CCMA may issue an **[order]** arbitration award in terms of subsection (1) requiring—
> *(a)* the employer to comply with the provisions of **[this Act]** an employment law;
> *(b)* subject to section **[70 *(d)*]** 76A, the payment of any amount owing to an employee; **[or]**
> *(c)* the payment of a fine calculated in terms of Schedule 2 to this Act; or
> *(d)* the payment of the amount that the employer is required to pay in terms of the Unemployment Insurance Contributions Act, including interest and penalties calculated in terms of section 12 and 13 of that Act.",

and to substitute the following:

> "(2) The CCMA may issue an arbitration award in terms of subsection (1) requiring the employer to comply with the compliance order, if it is satisfied that—
> *(a)* the compliance order was served on the employer; and
> *(b)* the employer has not referred a dispute in terms of section 69(5).".

CLAUSE 12

1. On page 5, in line 49, to omit "person" and to substitute "employee or worker as defined in section 1 of the National Minimum Wage Act, 2018".
2. On page 5, in line 51, to omit "2017", and to substitute "2018".
3. On page 6, in line 1, after "employees", to insert "or workers".
4. On page 6, in line 3, after "employee", to insert "or worker".
5. On page 6, in line 3, to omit "person" and to substitute "employee or worker".
6. On page 6, after line 6, to insert the following:

> "(4) The CCMA must appoint a Commissioner in terms of section 135 of the Labour Relations Act, to attempt to resolve by conciliation any dispute that is referred to the CCMA in terms of subsection (1).
> (5) The CCMA must commence the arbitration of a dispute contemplated in subsection (1) immediately after certifying that the dispute remains unresolved in terms of section 135(5).".

CLAUSE 13

1. On page 6, in lines 12, 17 and 19, to omit "2017", and to substitute "2018".

CLAUSE 14

1. On page 6, in line 27, to omit "2017", and to substitute "2018".

CLAUSE 15

1. On page 6, in lines 35 and 40, to omit "2017", and to substitute "2018".

CLAUSE 16

1. On page 6, in line 45, after "**76A**", to insert "(1)".

2. On page 6, after line 49, to insert the following:

> "(2) For second or further non-compliances, a fine that may be imposed on the employer is an amount that is greater of—
> *(a)* thrice the value of the underpayment; or
> *(b)* thrice the employee's monthly wage.
> (3) The Minister may issue guidelines on the determination of whether a non-compliance is a second or further non-compliance, as envisaged in subsection (2).
> (4) The Department must maintain and publish on its official website, on a quarterly basis, a list of all employers who were issued with compliance orders.".

CLAUSE 18

1. On page 7, in lines 12, 16, 18, 21 and 28, to omit "2017", and to substitute "2018".

CLAUSE 20

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

> **Transitional provisions**
>
> **24.** With effect from the date of the establishment of the National Minimum Wage Commission established by section 8 of the National Minimum Wage Act, 2018—
> *(a)* the Employment Conditions Commission established by section 59 of the principal Act, is hereby disestablished;
> *(b)* the functions of the Employment Conditions Commission are hereby transferred to the National Minimum Wage Commission; and
> *(c)* the term of office of the members of the Employment Conditions Commission lapses.

CLAUSE 21

1. On page 8, in lines 23 and 24, to omit "2017", and to substitute "2018".

LONG TITLE

1. On page 2, in third line, to omit "repeal the", and to substitute, "amend certain".

2. On page 2, in third line, after "and", to insert "to disestablish".

3. On page 2, in the 7th line, to omit "2017", and to substitute, "2018".

Report of the **Portfolio Committee on Labour** on the **National Minimum Wage Bill [B 31 – 2017]**, dated 18 May 2018:

> The **Portfolio Committee on Labour**, having considered the subject of the **National Minimum Wage Bill** (National Assembly – sec 75), referred to it and classified by the JTM as a section 75 Bill, reports the Bill with amendments [B 31A – 2017].

The list of amendments is attached hereto.

Minority views:

1. On clauses 1, 3, 4, 5, and Schedule 1, the DA objected to the definition of a 'worker' as it seems to include an independent contractor and proposed that it be substituted by 'employee' instead.
2. On clause 9, the DA objected to the Commission having association with any government official. It should comprise of totally independent experts with no vested interest in the outcomes.
3. On clause 10, the DA objected to the Minister having powers to remove a member of the Commission; as well as to the reason of 'serious misconduct' which seems wide and unclear.
4. On clause 14, the DA objected on the basis that the Commission should have its own funding or budget and not rely on the Department of Labour. The reason provided for objection was that the Department will have influence over the Commission if the funds of the Commission are defrayed from its budget vote.
5. On clause 15 (Exemptions) and 16 (Regulations), the DA objected on the basis that such exemptions and regulations should be outlined and not left solely to the Minister.
6. On Schedule 1(2)(c), DA objected on the basis that Government can afford to pay the national minimum wage.

Report to be considered.

REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE AMENDMENTS TO

NATIONAL MINIMUM WAGE BILL

[B 31—2017]

(As agreed to by the Portfolio Committee on Labour (National Assembly))

[B 31A—2017]

ISBN 978-1-4850-0467-7

No. of copies printed 400

AMENDMENTS AGREED TO

NATIONAL MINIMUM WAGE BILL
[B 31—2017]

CLAUSE 1

1. On page 4, in line 15, to omit "responsible for labour" and to substitute "of Labour".

2. On page 4, from line 26, to omit the definition of "organised community" and to substitute the following definition:

   " **'organised community'** means those non-governmental organisations contemplated in the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);"

3. On page 4, from line 37, to omit the definition of "worker" and to substitute the following definition:

   " **'worker'** means any person who works for another and who receives, or is entitled to receive, any payment for that work whether in money or in kind.".

CLAUSE 3

1. On page 4, after line 50, to insert the following subsection:

   "(2) This Act does not apply to a volunteer, who is a person who performs work for another person and who does not receive or is not entitled to receive, any remuneration for his or her services."

CLAUSE 4

1. On page 5, in line 4, to omit "The" and to substitute "Subject to subsections (2) and (3), the".

2. On page 5, after line 5, to insert the following subsections:

   "(2) *(a)* The Commission must, within 18 months of the commencement of this Act, conduct a review of the national minimum wage contemplated in item 2*(a)* and *(b)* of Schedule 1—
   (i) in accordance with the process contemplated in section 6; and
   (ii) taking into account the goals contemplated in section 7*(a)* and the factors listed in section 7*(b)*,
   make recommendations to the Minister on the adjustment of the national minimum wage contemplated in item 2*(a)* and *(b)* of Schedule 1, which recommendations must, subject to the findings of the review contemplated in this paragraph, reflect an adjustment that is equivalent to the national minimum wage contemplated in item 1 of Schedule 1, or as close to that amount as the Commission's findings allow.
   (b) The Minister must, within two years of the commencement of this Act, and taking the recommendations of the Commission into account, determine an adjustment of the national minimum wage contemplated in item 2*(a)* and *(b)* of Schedule 1 in accordance with the process contemplated in section 6.

(3) The national minimum wage in respect of workers in the extended public works programme as contemplated in item 2*(c)* of Schedule 1 must be increased proportionately to any adjustment of the national minimum wage as contemplated in section 6.".

3. On page 5, in line 12, after "agreement", to insert ", sectoral determination".

4. On page 5, in line 20, to omit "32 and 33" and to substitute "32, 33 and 34".

CLAUSE 5

1. On page 5, in line 27, after "allowance", to insert ", unless specified otherwise in a sectoral determination".

2. On page 5, in line 28, after "accommodation", to insert ", unless specified otherwise in a sectoral determination".

3. On page 5, in line 31, to omit "A" and to substitute "Subject to section 9A of the Basic Conditions of Employment Act, a".

4. On page 5, in line 33, to omit "If" and to substitute "Subject to subsection (2), if".

5. On page 5, in line 34, after the first "the", to insert "national".

6. On page 5, after line 34, to insert the following subsection:

"Any deduction made from the remuneration of a worker must be in accordance with section 34 of the Basic Conditions of Employment Act, provided that a deduction made in terms of section 34(1)*(a)* of the Basic Conditions of Employment Act does not exceed one quarter of a worker's remuneration.".

CLAUSE 6

1. On page 5, in line 38, to omit "1 May of the next year" and to substitute "a date fixed by the President by proclamation in the *Gazette*".

2. On page 5, in line 39, after "views", to insert ", including those of the public,".

3. On page 5, in line 42, to omit "by 31 October of each year" and to substitute "on a date fixed by the President by proclamation in the *Gazette*".

4. On page 5, in line 45, to omit "alter their recommendation" and to substitute "reconsider its recommendations".

5. On page 5, from line 46, to omit subsection (5).

6. On page 5, from line 48, to omit subsection (6) and to substitute the following subsection:

"(6) The Minister must, by a date fixed by the President by proclamation in the *Gazette*, determine the adjustment to the national minimum wage, and by notice in the *Gazette*, amend the national minimum wage contained in Schedules 1 and 2.".

7. On page 5, from line 53, to omit subsection (7) and substitute the following subsection:

   "(6) The Minister must, within 7 days of the publication of the amended Schedules in the *Gazette*, table the amended Schedules 1 and 2 in Parliament and publish the final report of the Commission in a prescribed manner.".

CLAUSE 9

1. On page 6, in line 25, to omit "An independent" and to substitute "A".
2. On page 6, in line 29, after "experts", to insert ", who are knowledgeable about the labour market and conditions of employment,".

CLAUSE 10

1. On page 6, in line 33, after "Minister", to insert ", after consultation with NEDLAC,".
2. On page 6, from line 34, to omit "after consultation with NEDLAC".
3. On page 6, after line 52, to insert the following subsections:

   "(5) The chairperson and members of the Commission—
   (a) must act impartially when performing any function of the Commission;
   (b) may not engage in any activity that may undermine the integrity of the Commission; and
   (c) must recuse themselves from advising the Minister on any matter in respect of which they have a direct or indirect financial interest or any other conflict of interest.

   (6) The Commission must appoint a member to act as chairperson whenever the chairperson is absent from the Republic or from duty, or for any reason is temporarily unable to function as chairperson.".

CLAUSE 11

1. On page 7, in line 6, after "differentials", to insert "and make such information available to the public".
2. On page 7, in line 12, to omit the fullstop and to substitute a semi-colon.
3. On page 7, after line 12, to insert the following paragraphs:

   "*(f)* advise the Minister on sectoral determinations;
   (g) advise the Minister on any matter concerning basic conditions of employment; and
   (h) perform any such function as may be required of the Commission in terms of any other employment law.".

CLAUSE 13

1. On page 7, in line 20, after "secretariat", to insert "and the necessary resources".

CLAUSE 14

1. On page 7, from line 26, to omit "appropriated by Parliament and which are subject to audit by the Auditor-General in terms of section 188 of the Constitution" and to substitute "defrayed from the budget vote of the Department".

CLAUSE 15

1. On page 7, in line 33, to omit "its members" and to substitute "a member".

CLAUSE 16

1. On page 7, in line 45, to omit "may" and to substitute "must".
2. On page 8, from line 7, to omit paragraph *(b)* and to substitute the following paragraph:

   "*(b)* the publication of data on exemptions.".

3. On page 8, after line 9, to insert the following subsection:

   "(2) The Minister may make regulations which the Minister considers necessary or expedient to be prescribed in order to achieve the primary objects of this Act.".

4. On page 8, in line 11, to omit "30" and to substitute "21".
5. On page 8, after line 15, to insert the following subsection:

   "(5) The Minister must table the regulations in Parliament.".

CLAUSE 17

1. On page 8, in line 17, to omit "2017" and to substitute "2018".
2. On page 8, in line 20, to omit "1 May 2018" and to substitute "a date fixed by the President by proclamation in the *Gazette*".

SCHEDULE 1

1. In paragraphs *(a)*, *(b)* and *(c)* of item 2, to omit "1 May 2018" and to substitute "a date fixed by the President by proclamation in the *Gazette*".

LONG TITLE

1. On page 2, from the fifth line, to omit "**to provide for transitional provisions in respect of farm workers and domestic workers;**".

Report of the **Portfolio Committee on Labour** on the **Labour Relations Amendment Bill [B 32 – 2017]**, dated 18 May 2018:

> The **Portfolio Committee on Labour**, having considered the subject of the **Labour Relations Amendment Bill** (National Assembly – sec 75), referred to it and classified by the JTM as a section 75 Bill, reports the Bill with amendments [B 32A – 2017].

The list of amendments is attached hereto.

Minority views:

1. On clause 1, the DA objected to subsection 1(a), stating that extension of collective agreements concluded in bargaining councils to non-parties have negative impact on small businesses and non-unionized workers.
2. On clause 7, the DA objected to the idea of a panel appointed by the essential services committee, on the basis that there should be an agreement between the employer and the trade union.
3. On clauses 13 and 14, the DA objected to the governing body being given absolute autonomy to accredit dispute resolution panels, stating that the accreditation process should be more structured.

Report to be considered.

REPUBLIC OF SOUTH AFRICA

PROPOSED AMENDMENTS TO

LABOUR RELATIONS AMENDMENT BILL

[B 32—2017]

(As proposed by the Portfolio Committee on Labour (National Assembly))

[B 32A—2017] ISBN 978-1-4850-0000-0

No. of copies printed 400

PROPOSED AMENDMENTS

LABOUR RELATIONS AMENDMENT BILL
[B 32—2017]

CLAUSE 1

1. On page 3, in line 3, after "*(b)*" to insert "(i)".

2. On page 3, in line 6, after the semi-colon, to add "or".

3. On page 3, in line 7, before the first "the" to omit "*(c)*" and to substitute "**[*(c)*]**(ii)".

CLAUSE 3

1. On page 4, in line 24, after "32(3)*(b)*", to omit ", 32(3)*(c)*" and to substitute "**[, 32(3)*(c)*]**".

2. On page 4, in line 27, after "section", to omit "32(3)*(c)*" and to substitute "32(3)*(b)*".

CLAUSE 8

1. On page 6, from line 22, after "amended", to omit "by the addition of the following subsection:" and to substitute the following:

"—

(a) by the substitution for subsection (8) of the following subsection:

"(8) The Minister, **[in]** after consultation with NEDLAC, may by notice in the Government *Gazette* publish guidelines to be applied by the registrar in determining whether an applicant is a genuine trade union or a genuine employers' organisation and guidelines for the system of voting as contemplated in subsection (9)."; and

(b) by the addition of the following subsection:".

CLAUSE 13

1. On page 7, in line 11, after "of", to omit "its dispute resolution panel" and to substitute "the persons".

NEW CLAUSE

1. On page 7, after line 25, to insert the following new clause:

"**Substitution of section 130 of Act 66 of 1995**

15. The following section is hereby substituted for section 130 of the principal Act:

"**Withdrawal of accreditation**

130. If an accredited *council*, **[or]** accredited agency or a person accredited by the governing body fails to comply to a material extent with the terms of its accreditation, the governing body may withdraw its accreditation after having given reasonable notice of the withdrawal to that *council*, **[or]** accredited agency or the accredited person.".".

CLAUSE 16

1. On page 8, in line 29, after "subsection", to omit "(4)*(b)*" and to substitute "(3)*(b)*".

2. On page 8, in line 32, after "subsection", to omit "(4)*(b)*" and to substitute "(3)*(b)*".

3. On page 8, in line 34, after "(5)", to omit "No person may" and to substitute "A person may not".

4. On page 9, in line 15, after "section", to omit "150A(2)*(a)*" and to substitute "150A(3)*(a)*".

5. On page 9, in line 33, after "subsection", to omit "(6)" and to substitute "(7)".

6. On page 10, in line 17, after "section", to omit "150C(4)*(c)*" and to substitute "150C(5)*(c)*".

4. REPORT OF THE PORTFOLIO COMMITTEE ON WATER AND SANITATION: CONSIDERATION OF THE 2018/19 STRATEGIC PLANS, ANNUAL PERFORMANCE PLANS AND BUDGET ALLOCATION OF THE DEPARTMENT OF WATER AND SANITATION, VOTE 36, DATED 17 MAY 2018

1. BACKGROUND

The Portfolio Committee on Water and Sanitation (the Portfolio Committee) having considered the request of the National Assembly to analyse and report on the Strategic Plans, Annual Performance Plans and budget allocations of the Department of Water and Sanitation (the Department), tabled by the Minister of Water and Sanitation (the Minister), and in terms of the Public Finance Management Act of 1999 (PFMA), as well as the Money Bills Amendment Procedure and Related Matters Act, 2009, reports as follows:

2. INTRODUCTION

The Portfolio Committee considered the Strategic Plans for the period and the Annual Performance Plan of the Department of Water and Sanitation on the 18 April, 2 and 16 May 2018. The Portfolio Committee has also further considered the adequacy of financial resources for the implementation of these plans and integrated the allocation received by the Department and the entities (Trans Caledon Tunnel Authority, Water Research Commission and Inkomati Usuthu and Breede Gouritz Catchment Management Agencies) both in terms of allocations and expenditure and, in the instance of the Entities, in terms of revenue collected.

3. WORK OF THE DEPARTMENT OF WATER AND SANITATION

A central component of the interrogation of the work of the Department and the Entities is the extent to which the Department and the Entities translated its mandate to align it with the prescripts of the Section 27 of the Constitution, 1998, Government priorities and its legislative mandate, such as the National Water Act, 1998 and the Water Services Act, 1997. The translation and alignment of government priorities by the Department and its Entities, as envisioned in the National Development Plan are operationalised in the following Outcomes:

1. Outcome 6: An efficient, competitive and responsive economic infrastructure network;
2. Outcome 7: Vibrant, equitable and sustainable rural communities and food security for all;
3. Outcome 9: Responsive, accountable, effective and efficient local government system;
4. Outcome 10: Environmental assets and natural resources that are valued, protected and continually enhanced; and
5. Outcome 11: Create a better South Africa and contribute to a better and safer Africa and the world.

The Portfolio Committee noted the critical factors informing the setting of targets and indicators, as presented, especially the constitutional imperatives and legislative mandates, the Medium-Term Strategic Framework of Government, National Development Plan 2030; the alignment of work to Government Outcomes, Obligations and Commitments stemming from multilateral water agreements; and other international instruments such as the Millennium Development Declaration; and the obligations and priorities stemming from various inputs of the state over time. For the reporting period under review, the departmental policy priorities are the following:

a) Reviewing the water-related legislation, namely the National Water Act, 1998; the Water Services Act, 1997 and the Water Research Act, 1971;
b) Revising the water pricing strategy;
c) Developing a funding model;
d) Establishing an economic regulator; and
e) Creating and ensuring an environment for institutional reform and realignment.

Whilst Members of the Portfolio Committee of Water and Sanitation noted the planned objectives and targets set out in the 2018/19 Annual Performance Plan, members raised questions on whether these were realistic in its attainment, given that the Department would, in the current financial year, be constrained in their work due to financial challenges reflected in the past financial year and carried over to the current financial year. Another area of concern was the amendment made to the published Annual Performance Plan for 2018/19, which show that indicators for the War on Leaks programme were added to Programme 1: Administration. This was raised in the prior year as completeness findings (phased in approach) on the Annual Performance Plan

The Department of Water and Sanitation has received qualified audit outcomes with the exception of 2015/16, which showed an improvement to an unqualified outcome and a regression to a qualified outcome in 2016/17. Despite the improvement in the audit outcome, the Auditor-General raised concerns regarding irregular expenditure as well as fruitless and wasteful expenditure, and non-adherence to legislation such as the Public Finance Management Act (PFMA) and Treasury Regulations. The Water Trading Entity (WTE) also had a regression in its audit outcome leading to a qualified audit in 2015/16 and 2016/17 financial year. The Portfolio Committee on Water and Sanitation during its oversight noted a deteriorating trend and many issues leading to going concern challenges within the Department. The Portfolio Committee in its 2017 Budgetary Review and Recommendation Report (BRRR) recommended for a forensic investigation into the functioning of the Department of Water and Sanitation as well as its entities. This report was adopted by the National Assembly in November 2017. Subsequently, a commission of inquiry was established in April 2018, by the joint committees, that is, the Portfolio Committee on Water and Sanitation and Standing Committee on Public Accounts.

3.1 Strategic Goals and Strategic Objectives

To ensure that the Department's five-year Strategic Plan, and Annual Performance Plan are geared toward national water security and sustainable universal access to water and sanitation services, linked with the longer-term National Development Plan of 2030. The Department engaged with a range of stakeholders, and thereafter together with its Entities revised and finalised specific Strategic Goals and Strategic Objectives, which are to ensure:

- An efficient, effective and development oriented sector leader;
- Equitable and sustainable water and sanitation services; and
- Protection of water across the value chain.

Overall, the Portfolio Committee understood and acknowledged the planning (with related objectives and goals) of the Department of Water and Sanitation for the period under review, but concurred with the findings of the Office of the Auditor-General and National Treasury that the Department has serious systemic challenges over the years, and could be viewed negatively in terms of its "going concern". These concerns are long-standing issues that the Department was unable to resolve or improve on over a number of years, and relate to:

a) The material uncertainty related to the going concern/financial sustainability of the Department as reflected and included in the audit reports;
b) The financial viability of the Department in the 2018/19 financial years with regard to cash flow, overdraft, outstanding invoices;
c) Significant increase in accruals;

d) The regression of the Department's financial management as qualifications in areas of the work of the Department were still not addressed;
e) Leadership instability, specifically with the appointments of Director-Generals was of major concern, as it impacted negatively on the work of the Department;
f) The financial health of the budget of the Department of Water and Sanitation and Water Trading Entity; and
g) Irregular expenditure, being identified as a continuous challenge within the Department of Water and Sanitation, the Water Trading Entity and Implementing Agents.

4. BUDGET ANALYSIS – FINANCIAL VIABILITY FOR THE DEPARTMENT OF WATER AND SANITATION AS AT YEAR END ENDING 31 MARCH 2017 AND CURRENT FINANCIAL VIABILITY OF THE DEPARTMENT FOR THE 2017 – 2018 FINANCIAL YEAR

4.1 FINANCIAL VIABILITY FOR THE DEPARTMENT OF WATER AND SANITATION (MAIN ACCOUNT AND WATER TRADING ENTITY) AS AT YEAR ENDING 31 MARCH 2017[i]

4.1.1 The Department incurred a net loss of R89 million, overdraft of R194 million and unauthorised expenditure of R406 million during the year ended 31 March 2017, and, as of that date, the Department's current liabilities exceeded its total assets by R454 million. It is an indication that a material uncertainty exists that may cast significant doubt on the Department's ability to continue as a going concern (thus its inability to undertake its objectives where the vote has been depleted.

4.1.2 The qualified audit outcomes for the Water Trading Entity for the 2016/17 financial year were contested by the Department of Water and Sanitation. Subsequently, a review was undertaken, which exonerated the Auditor-General of South Africa, which noted that the conclusions to both audit reports were found to be supported by sufficient evidence an appropriate audit evidence and is in compliance with audit methodologies and standards. Following the initial appeal, the Auditor-General of South Africa received a letter from the Department of Water and Sanitation to indicate that it was withdrawing its appeal. The Auditor-General of South Africa however, stressed that its Office would continue with its own investigation to bring finality to the matter.

4.1.3 In terms of the Water Trading Entity, the Auditor-General of South Africa indicated that cash reserves consistently diminished over the years and so are the profits. This is a strong indicator of the challenges related to the going concern of the Department, more specifically as it has a negative impact, as can be seen with the current year overdraft of R2.1 billion. The overdraft, accruals, commitments and debt owing in the entire water value chain has serious implications for the current budgeting and financial management in the Department of Water and Sanitation and the Water Trading Entity.

4.1.4 The key financial indicators that is the liquidity ratios of the Water Trading Entity show a current ratio of 0.91 and a current acid ratio of 0.81. A healthy ratio is deemed at 2:1 and the Water Trading Entity's ratio is less than one. Current acid ratio should be 1:1, which is also less than one. **It thus indicates that the Entity will experience significant challenges in paying their current liabilities as and when they fall due. This inability to pay results in increased accruals.**

4.1.5 The movement in revenue, receivables, provisions for impairments and payables for the 2015/16 and 2016/17 financial year show that the increase in receivables of 22 per cent is not as a result of increase in revenue/business, but due to the inability of the Entity to collect debt owed to it. The inability to collect monies to it, resulted in a significant impairment of receivables, as these are not deemed highly unlikely to be recovered.

Payables also increased drastically from the prior year with 66 per cent as the Entity is unable to pay its short term liabilities as and when they fall due. All these indicate highly unfavourable indicators of going concern.

4.1.6 The overdraft of the Water Trading Entity is mainly caused by budgeting for collection of old debt from municipalities and water boards, amounting to R2.9 billion. The Department, however, at the time of this particular ‘crisis’ did not put in place more stringent measures to collect the amounts. When the collection of these amounts were not realised, the Water Trading Entity did not timeously review their expenditure downwards. Furthermore, the Water Trading Entity incurred expenditure on projects not budgeted for and repayments on projects not within the mandate of the Water Trading Entity. The cash flow rate of 0.81 clearly indicates that the Water Trading Entity is unable to utilise all its cash from operators to cover the debt in the near future.

4.1.7 Another huge area of concern to the Members of the Portfolio Committee are the projects operating without budgets, but which reflected significant overspend – these relate to the War on Leaks Programme; the Drop a Block Programme; the Mopani Project; Bucket Eradication Programme; and the acquisition of SAP software for water boards and municipalities without following due process in procurement and supply chain management.

4.2 CURRENT FINANCIAL VIABILITY OF THE DEPARTMENT OF WATER AND SANITATION (MAIN ACCOUNT AND WATER TRADING ENTITY) FOR THE 2017 – 2018 FINANCIAL YEAR

The overall budget of the Department, as reflected in the Table below, decreases from R15 607.5 billion in 2017/18 to R15 571.5 billion in 2018/19. However, Members of the Portfolio Committee were concerned on whether the Department would be financially viable in the current financial year.

Table 2: Budget Allocations

Programme	Budget				Nominal Rand change	Real Rand change	Nominal % change	Real % change
R million	**2017/18**	**2018/19**	**2019/20**	**2020/21**	**2017/18-2018/19**		**2017/18-2018/19**	
P1: Administration	1 649,9	1 714,6	1 808,0	1 921,9	64,7	- 24,7	3,92	-1,50
P2: Water Planning and Information Management	802,4	862,1	964,8	1 029,8	59,7	14,8	7,44	1,84
P3:Water Infrastructure Development	12 760,4	12 496,2	13 232,5	13 958,5	- 264,2	- 915,7	-2,07	-7,18
P4: Water Sector Regulation	394,8	498,6	461,4	498,8	103,8	77,8	26,29	19,71
TOTAL	15 607,5	15 571,5	16 466,7	17 409,0	- 36,0	- 847,8	-0,23	-5,43

As can be seen from the table above, the overall budget of the Department decreases from R15 607/5 billion in 2017/18 to R15 571.5 million in 2018/19. This represents a nominal decrease of R36 million. The table above shows that Programme 3: Water Infrastructure Development dominates expenditure under this Vote, consuming 80 per cent of the total allocation of the Vote. This is followed by Programme 1: Administration (11 per cent); Programme 2: Water Planning and Information Management (5.54 per cent) and Programme 4: Water Sector Regulation (3.20 per cent). Whilst Programme 4: Water Sector Regulation and Programme 2: Water Planning and Infrastructure Management consume the smallest portions of the Vote allocation, they are the only two programmes that experience real increases of 19.71 and 1.84 per cent, respectively. The significant real increase experienced in Programme 4 is in line with the Department's plans to strengthen regulation, pricing and policy in 2018/19, as per its 2017/18 to 2018/19 Annual Performance Plan.

Whilst the Department of Water and Sanitation's presentation on its overall budget project highlighted the budget projections for each of its programmes, and sub-programmes, the Office of the Auditor-General of South Africa raised the following critical challenges that may hamper the financial viability of the Department in the current financial year:

4.2.1 The prior year unauthorised expenditure has still not been approved by Parliament and might still need to be refunded to the National Revenue Fund, while the Department of Water and Sanitation is likely to incur additional unauthorised expenditure by 31 March 2018.

4.2.2 The War on Leaks sub-programme was not budgeted for in the 2017/18 financial year, but the revised Annual Performance Plan has been adjusted to include the Programme. Funds had to be reprioritised for the Programme, which would affect the completion of other projects, and service delivery. A prepayment of R524 million was made for the Programme, without an allocated budget, which still needed to be allocated to expenditure.

4.2.3 There are also major concerns regarding the cash flow of the Department of Water and Sanitation for February 2018 and March 2018 as presented at an audit committee meeting on 13 February 2018.

4.2.4 The Department indicated the following as some of the factors that led to the monthly overdrafts:

(a) Payment of 'unavoidable and unanticipated' invoices;
(b) Payment on war on leaks invoices to the value of R524 million that was made without an approved budget and is currently in a suspense account. This amount will be allocated to Programme 1: Administration for expenditure on War on Leaks programme as reflected in the revised Annual Performance Plan;
(c) The challenges associated with absorbing the 2016/17 overdraft balance;
(d) Condonement of unauthorised expenditure of the prior year still outstanding;
(e) Payment of 2016/17 accrued invoices; and
(f) Accruals and payables from the 2016/17 financial year amounting to R1.015 billion was paid up to 30 September 2017, by using 2017/18 financial year budget.

4.2.5 The Water Trading Entity committed to reduce the overdraft of R2.7 billion with the South African Reserve Bank by R748 million by 31 March 2018. As at 30 September 2017, the overdraft with the

South African Revenue Bank was R1.9 billion and as at 28 February 2018 was R1.6 billion. Although the overdraft balance has decreased in line with commitments made to National Treasury, the Auditor-General South Africa noted that payables as at 30 September 2017 increased by R1 billion.

Furthermore, the Auditor-General South Africa noted that engagements with management showed that these are outstanding invoices owing to the Trans-Caledon Tunnel Authority of R2.5 billion. If the increased payables and the Trans-Caledon Tunnel Authority unaccounted invoices are taken into account, the Entity did not actually meet the commitment made to National Treasury to reduce the overdraft with the South African Reserve Bank by R748 million.

4.3 Responses to the financial and non-financial performance of the Department of Water and Sanitation by the Office of the Auditor-General and Members of the Portfolio Committee on Water and Sanitation

Whilst the Members of the Portfolio Committee understood and acknowledged the manner in which the Department has planned and spent its budget over the financial year, Members were extremely scathing on the form, function and deliverable outcomes related to the financial and budgeting management in the Department of Water and Sanitation. Members concurred with the Office of the Auditor-General, in its assessment of the work of the Department and Entities, which highlighted the following:

4.3.1 Financial management[ii]

(a) The Department's action plans tabled to the internal audit committee do not address the qualification areas for the Main Account, which relate to fruitless and wasteful expenditure, transfers linked to direct and indirect grants, and irregular expenditure for the 2016/17 financial year. This is mainly due to the appeals that were lodged. Subsequently, the Department did indicate that consultants are being used to assist with the qualification areas and that all information pertaining to this will be provided for audit only in conjunction with the submission of the Annual Financial Statements on 31 May 2018.

(b) The audit action plan for the Water Trading Entity was initially not endorsed by top management, as it was not reviewed/validated by the internal audit function and the timelines within the plan were towards the end of the financial year. The action plan has since been tabled at a top management meeting in February 2018. Through inspection of the action plan and engagements held with management, no adjustments were made in the interim financial statements, as the matters that were qualified were under appeal by the Department. The audit will therefore be delayed and management may not have sufficient time to ensure the complete disclosure of irregular as well as fruitless and wasteful expenditure in the prior year.

(c) Although management has processed adjustments to significantly reconcile the financial liability of the Water Trading Entity to the financial records of the Trans-Caledon Tunnel Authority, the Office of the Auditor-General noted various concerns when reviewing the adjustments. These concerns relate to the adjustments not being reviewed by management; Value Added Tax not being accounted for on non-valuable transactions with the Trans-Caledon Tunnel Authority; and

(d) Amounts were capitalised to assets under construction without an engineer’s certificate and/or supporting invoices.

(e) Although management has embarked on a process to review all transactions in all accounts related to assets under construction to address the qualification, the process is extensive, and involves tracing each transaction to invoices, determining whether the costs qualify for capitalisation and whether the project has been completed or not. To date, no adjustments have been made to the financial records. Thus, the necessary reconciliation of assets under construction to individual projects has not been performed.

Considering the volume of transactions and documents to be reviewed and adjustments to be processed, a **risk exists that the current process to address the prior year qualification might not be completed in time for the preparation of the 2017/18 financial statements.**

(f) The Mopani emergency project (portion undertaken by the WTE's construction unit) was reported in the prior year as fruitless and wasteful expenditure, due to the project being halted and the unavailability of funds. For the 2017/18 financial year, **fruitless and wasteful expenditure of approximately R17 million had been incurred as at 31 December 2017, mainly due to idle labour costs.** Similarly, the **Clanwilliam dam project costs by the construction unit of the Water Trading Entity will also be reported as fruitless and wasteful expenditure due to these idle labour costs.** Costs incurred up to 31 December 2017 on the project amounted to **R9.5 million**. These amounts, as well as costs incurred for the remainder of the financial year, should be accounted for as fruitless and wasteful expenditure, as these labour costs are incurred while the project has been halted.

(g) With regard to the **SAP licences, management continues to disagree that the costs for the elapsed period of the five-year licences are fruitless and wasteful expenditure.** Management is yet to provide evidence that the SAP licences acquired have been deployed and used by any of its intended beneficiaries. Approximately, R90 million in fruitless and wasteful expenditure will be incurred in this regard in the 2017/18 financial year.

(h) Through engagements with the Chief Director: Revenue Management, there has been **some improvement in the collection of debt** relating to the current year, but there has been no movement with regard to the old debt. After the previous minister's notices on water cuts, numerous meetings were held with municipalities, and some payment arrangements were entered into. However, the majority of customers are disputing the amounts owed. **The Water Trading Entity did not budget for the recovery of this old debt.**

4.3.2 Oversight and monitoring

(i) There is inadequate monitoring and oversight responsibility as the recommendations of the Office of the Auditor-General to the Department of Water and Sanitation in the prior year were not fully implemented due to inadequate action plans.

(j) Monitoring and oversight of budget controls and financial spending remains a concern, as the **Department of Water and Sanitation and the Water Trading Entity keep incurring expenditure without having funds available**, which results in possible unauthorised expenditure and pressure on the financial health of the Department of Water and Sanitation. This was made worse by **expenditure incurred in the 2016/17 financial year on multi-year projects that had not been budgeted for**, specifically relating to the Mopani project and SAP licences, as well as overspending on the bucket eradication programme, none of which have been condoned.

4.3.3 Financial health

(k) The Department of Water and Sanitation reflected an **overdraft of R757 million** in its interim financial statements ended 30 September 2017. The Department of Water and Sanitation reduced its targets in the adjusted Annual Performance Plan as a result of budget constraints. This may have an impact on current planned service delivery achievement, as **71 slow moving projects relating to the regional bulk infrastructure grant (RBIG) will be stopped.** The water services infrastructure grant (WSIG) (100%) will be utilised to pay accruals relating to this grant. **All 92 new projects relating to the accelerated capital infrastructure plan will be stopped and only three in Kwazulu-Natal will be finalised.** This raises a serious concern about the extent to which service delivery will be achieved in the 2017/18 financial year.

(l) Based on the review of the interim financial statements for the Water Trading Entity for the period ended 30 September 2017, the Water Trading Entity managed to decrease the overdraft amount slightly, but management still needs to put in place stringent measures to curb and reduce expenditure to reasonable proportions to decrease the overdraft considerably and to move from a deficit to a surplus. **This has also placed strain on the Trans-Caledon Tunnel Authority (TCTA), as some TCTA invoices amounting to approximately R1.4 billion were not timeously paid.**

(m) Based on the audit evidence obtained during the 2016/17 audit, the Office of the Auditor-General concluded that a material uncertainty existed relating to events or conditions that individually or collectively cast significant doubt on the Water Trading Entity's ability to continue as a going concern. As such, **the Water Trading Entity was required to include a going concern note to address the negative mechanisms and recovery plans,** and this was included as an emphasis of matter in the audit report.

4.4.4 Compliance management

(n) **Consequence management is not adequately implemented by the Department of Water and Sanitation**, as many cases of transgressions relating to irregular and fruitless and wasteful expenditure were only followed up by the Department of Water and Sanitation upon further scrutiny by the Standing Committee on Public Accounts and oversight by the Portfolio Committee on Water and Sanitation.

(o) The Office of the Auditor-General assessed the progress made by management to investigate irregular expenditure.

4.4.5 Procurement and contract management

(p) The Department of Water and Sanitation and Water Trading Entity have not **finalised their update of the Supply Chain Management policy** at the beginning of the year to incorporate the new Preferential Procurement systems.

(q) The **systems of internal control are inadequate as they fail to identify irregular expenditure, especially relating to implementing agents.** The practice was for implementing agents to use the emergency basis for procurement on all expenditure relating to ministerial directives. The Department of Water and Sanitation has, however developed and approved a circular, which includes the Supply Chain Management business process to guide the work of implementing agents in undertaking projects on behalf of the Department of Water and Sanitation. This aims to ensure that future contracts entered into by implementing agents follow correct Supply Chain Management processes. However, the Department of Water and Sanitation must still review all of its old contracts to ensure that all irregular expenditure incurred has been completely identified and reported as such.

4.4.6 Challenges of financial viability for both the Department of Water and Sanitation and the Water Trading Entity

(r) The following projects, War on Leaks, Drop a Block; Mopani project, Bucket Eradication Programme; and acquisition of SAP for water boards and municipalities; were implemented without a budget or there was significant overspending on them.

(s) The significant accruals in both the Department of Water and Sanitation and Water Trading Entity which **effectively takes away financial resources from the current needs** and projects has also contributed to the strained available financial resources, which together with the exceeded budgets magnifies the doubt that the entities were going concerns.

(s) An amount of R848 million owed by the Department of Water and Sanitation and Water Trading Entity, are reflected in the Water Board's (Amatola – R8. 5 million ; Bloem – R72.3 million ; Lepelle Northern – R524 million ; Umgeni - R4.1 million ; Rand Water – R88.4 million ; Magalies – R92.7 million ; Mhlathuze – R57.2 million.

5. OVERVIEW OF PROGRAMME DESCRIPTIONS, RESOURCE CONSIDERATIONS AND SELECTED PERFORMANCE INDICATORS

The Department has organised its expenditure into four programmes, which comprise:

- **Programme 1: Administration**

The purpose of this programme is to provide strategic leadership, management and support services to the Department. The programme also develops and promotes international relations on water resources management with neighbouring countries. This programme, which consumes 11 per cent of the overall departmental budget, is allocated R1 714.6 million in the 2018/19 financial year, up from R1 649.9 million in 2017/18. This reflects a nominal rand increase of R64.7 million. Half of the sub-programmes under this Programme experience real increases, with the most significant increases experienced by Financial Management, Ministry, International Water Support and Office Accommodation sub-programmes, respectively.

The Corporate Services: Office Management and Financial Management sub-programme received higher increases compared to other sub-programmes. This indicates that the Department intends to strengthen its financial management processes and enterprise wide activities, such as legal services, human resources and transformation coordination within the Department. The increase on these sub-programmes is earmarked for transfers and subsidies to foreign governments and international organisations; provinces and municipalities and departmental agencies. Transfers and subsidies to all these will amount to R20.9 million, the majority of which will be spent on Households.

- **Programme 2: Water Planning and Information Management**

The purpose of this programme is to ensure that the country's water resources are protected, used, developed, conserved, managed and controlled in a sustainable manner for the benefit of all people and the environment. This is done by developing a knowledge base and implementing effective policies, procedures and integrated planning strategies for water resources and water services.

This programme, which constitutes 5.54 per cent of the overall departmental budget, is allocated R862.1 million in the 2018/19 financial year, up from R802.4 million in 2017/18. This reflects a nominal rand increase of R59.7 million and a nominal percentage change of 7.44 per cent. This translates into a real rand increase of R14.8 million or 1.84 per cent between 2017/18 and 2018/19. This programme is one of only two of the Department's programmes that experience real increases.

Expenditure under this programme is dominated by sub-programme 4: Water Information Management, which consumes 56.9 per cent of the total budget allocated to the Programme. This is in line with the Department's plans to ensure protection of water resources by implementing an integrated water quality management strategy; coordinated approach to water and sanitation infrastructure planning, monitoring and evaluation through the development and implementation of the water and sanitation Master Plan in the medium-term.

- **Programme 3: Water Infrastructure Development**

The purpose of this programme is to develop, rehabilitate and refurbish the raw water resources and water services infrastructure to meet the socio-economic and environmental needs of South Africa. This is a priority programme of the Department, as it receives the highest allocation of the overall departmental budget. The regional bulk water infrastructure grant and water services infrastructure grant sub-programmes are prioritised under this programme. The Water Infrastructure Grant provides for, amongst others, the construction of new infrastructure and the rehabilitation of existing water and sanitation infrastructure through the grant transfer of water services schemes to water service institutions. The allocation prioritises the 27 poorest district municipalities.

This is the priority programme of the Department, as it receives the highest allocation of the entire departmental budget. This programme has received R12 496 million in the 2018/19 financial year, which constitutes 80 per cent of the overall departmental budget.

Under this programme, the regional bulk water infrastructure grant and water services infrastructure grant are the priority sub-programmes, within this programmes. The Water Services Infrastructure Grant provides for, amongst others, the construction of new infrastructure and the rehabilitation of existing water and sanitation infrastructure through the grant transfer of water services schemes to water service institutions. The allocation prioritises the 27 poorest district municipalities.

The Strategic Infrastructure Development and Management sub-programme displays the highest nominal and real growth of 20.21 per cent and 13.95 per cent, respectively, but the Accelerated Community Infrastructure sub-programme declines by approximately half between the 2017/18 and 2018/2019 financial years.

Of concern to the Portfolio Committee within this programme was the construction unit of the Water Trading Entity**.** There has been a decline in the operational activity of the unit due to construction work being awarded to implementing agents and or awarded to external service providers. On certain projects, due to budget constraints, projects had to be halted, which resulted in fruitless and wasteful expenditure on idle labour costs incurred. Price escalations will further impact the costs of the projects once the funding is made available on the projects. Furthermore, the basis for allocating the excessive overhead costs to individual projects was inappropriate due to the reduced number of projects undertaken by the unit. This resulted in excessive overhead costs allocated to individual projects due to reduced operational activity of the unit. **The Mopani emergency and Clanwilliam Dam projects serve as examples in this regard.**

- **Programme 4: Water Sector Regulation**

The purpose of this programme is to ensure the development, implementation, monitoring and review of regulations across the water supply value chain in accordance with the provisions of the National Water Act, 1998 and Water Services Act, 1997.

The programme is allocated R498.6 million in the 2018/19 financial year. One of the key focus priority areas is the Department's intention to focus on a major policy review to align water policy with the National Development Plan and the Medium-Term Strategic Framework 2014-2019 priorities.

6. RESPONSES BY THE DEPARTMENT OF WATER AND SANITATION

6.1 Impact of the accruals on the 2018/19 budget of the Department

The Department indicated that there is a shortfall of R3.08 billion in the 2018/19 financial year; and the areas of the budget impacted include outstanding transfers to municipalities and water boards, funds surrendered to National Treasury and the bank overdraft.

6.2 Breakdown of 2016/17 unauthorised expenditure

The Department indicated that it closed its 2016/17 financial statement with unauthorised expenditure amounting to R406 million and overspending of R110 million. The unauthorised expenditure less the overspending of R110 million, amounted to R296 million, which was paid back to National Treasury during the 2017/18 financial year.

6.3 Breakdown of the War on Leaks budget and where it is located

The Department indicated that the War on Leaks Programme has been moved from the Water Trading Entity to the Main Account and is under Programme 1: Administration. This programme was moved without a budget.

6.4 Budget in respect of the construction of the Clanwilliam Dam

The Minister indicated that the Department was meeting with the Public Investment Corporation and the New Development Bank who expressed interest in getting involved in this project. A technical team is in the process of being established, which includes technical expertise from the Water Research Commission.

6.5 Outstanding monies owed by the Department of Water and Sanitation to Water Boards and municipalities

The Department indicated that it could not transfer R198 million to water boards and municipalities in the 2017/18 financial year due to the unavailability of funds, due to the R134 million overdraft. It was reported that R156 million of the R198 million has since been paid to the water boards with an outstanding balance of R42 million, which is still to be paid to municipalities.

6.6 Slow pace of transformation in respect of the equitable distribution of water rights

The Minister acknowledged the slow pace of transformation in respect of water rights. He noted that when land was acquired through the land reform programme of government, land was acquired but the water rights associated with it did not form part of the programme. Water rights are attached to individuals and there needs to be review of legislation so as to ensure that the land and water rights are packaged together in order to facilitate water allocation reform.

6.7 Progress towards the establishment of National Water Infrastructure Agency

The Minister indicated there is a move towards the establishment of a state controlled construction company. The ownership comprise as follows, state 51%, 31% for black industrialists and 19% for investors. The Trans-Caledon Tunnel Authority (TCTA) will also be included as part of the state owned construction unit.

6.8 Irregular appointments of senior officials within the Department without requisite qualifications

The Minister indicated that he had been informed through the Acting Director General of the Public Service Commission that certain Deputy Director Generals of the Department did not meet the requisite qualifications and were therefore irregularly appointed. These matters will be considered when the new structure of the Department is drafted, but consideration also needs to be made to follow due process in terms of the labour relations laws of the country.

6.9 The feasibility of the repayment of the overdraft by the Water Trading Entity to National Treasury and its impact on the commitments and projects of the Entity

The Water Trading Entity (WTE) indicated that it wrote to National Treasury requesting that the reduction of the remainder of the overdraft be spread over three years rather than ending in the 2018/19 financial year. In response, National Treasury requested a meeting, which was held on the 20 April 2018. At this meeting, the WTE suggested its proposal to spread the repayment over three years, or alternatively not making any payments during the 2018/19 financial year. This would enable the WTE to make payments to the Trans Caledon Tunnel Authority to service its loans of approximately R9 billion in August 2018. A further key issue raised by the WTE include the need for a cash injection to pay to TCTA. National Treasury indicated that it would meet internally to discuss this matter, but a follow up meeting is yet to be scheduled.

6.10 Effectiveness of water quality monitoring within the Department given that the last Green Drop and Blue Drop report was in 2014

The Department acknowledged that monitoring water quality management was a problem as the management of the function was spread over different units and branches working in silos. It was reported that the Department has appointed a consultant to draft a water quality management strategy, which will place this entire function under one comprehensive unit. The consultancy fee paid for this initiative was approximately R8 million.

6.11 Effectiveness of river management monitoring

It was reported that this activity is being completed by the catchment management agencies where they exist and not the regional offices of the Department. In the last financial year, 66 rivers of an approximate 2000 rivers in the country were assessed. In the current annual performance plan of the Department, the plan notes the intended target for the 2018/19 financial year, which constitute 71 rivers.

6.12 Breakdown of the underspending by the Department

The Department indicated that it has underspending of R486 million for the 2017/18 financial year. The reason for this is that Programme 1: Administration had an overspending of R348 million, mainly for payment towards the War on Leaks programme which was not budgeted for. Programme 2: Water Planning and Information Management had an underspending of R149 million whilst Programme 3: Water Infrastructure Development had an underspending of R587 million with the last programme, Water Sector Regulation reflecting underspending of R98 million. The Department noted that the R486 million underspending does not translate into cash in the bank for the Department as there is still a R134 million overdraft in the bank as at 31 March 2018.

6.13 Clarity on the delay in respect of the De Hoop Dam

The Department indicated that Phase 2A of the De Hoop Dam is complete, but there are still certain technical issues outstanding as the specifications for the construction of the dam was not consistent with industry norms and standards. This related to the outdated technology used during the design phase of the project. The Department noted that the dam is operational but one of the key challenges relating to this project are the mining houses who have rescinded their initial agreement with the Department. However, engagements with the Chamber of Mines on this issue is ongoing.

6.14 Clarity on the Umzimvubu Dam payment on behalf of the Water Trading Entity

It was reported that in April 2017, the bank account of the WTE was closed by National Treasury and payments could not be made to suppliers, which resulted in a payment of R124 million being made to the Main Account of the Department on behalf of the WTE. This amount is yet to be refunded.

6.15 Clarity on the overdraft of the 2016/17 financial year

It was reported that the Department closed the 2016/17 financial year with a bank overdraft of R134 million which was paid in April 2017. The bank overdraft was caused by payments for the bucket eradication programme as a result of court orders and this amount was not budgeted for.

6.16 Breakdown of the debtor’s book of the Water Trading Entity

It was reported that the debtors book of the WTE currently stands at R11.2 billion. R2 billion is owed by companies such as Sasol, Eskom and mines. There are 67 000 individuals who owe monies to the WTE. The main challenge however relates to non-paying municipalities, with Matjhabeng Municipality the worst offender, as it owes Sedibeng Water Board R2.1 billion. Debt owed by water boards to the Department has increased by R1.2 billion in the current financial year. Furthermore, the WTE owes the Trans Caledon Tunnel Authority R4.1 billion which it needs to service its loans.

7. CONCLUSION

The Auditor-General South Africa at its press briefing on the General Report of National and Provincial Outcomes, expressed the seriousness of ‘reckless’ spending of public funds by stating that “as long as the political leadership, accounting officer and senior management do not make accountability for transgressions a priority, irregular, unauthorised, fruitless and wasteful expenditure as well as fraud and misconduct will continue. An environment that is weak on consequence management is prone to corruption and fraud, and the country cannot allow money intended to service the people to be lost. Most auditees have the required policies and processes to ensure that transgressions and fraud are identified and acted upon, but choose not to use it – a clear indicator of a lack of commitment to accountability”.[1]

The sentiments and seriousness of the ‘crisis’ evident in the Department of Water and Sanitation were also reiterated by the former Statistician-General from Statistics-South Africa, Mr Pali Lehohla, at the Portfolio Committee’s workshop held in Gauteng in September 2016. The statements still hold resonance to the current budgeting and financial management in the Department of Water and Sanitation.

Mr Pali Lehohla noted that ineffective planning, and connivance and collusion at various sectors eroded the massive gains in access to water and sanitation services made by the Reconstruction and Development Programme (RDP). The correlation between the ineffective planning and inadequate skills pool stymies and derails developed plans on water and sanitation infrastructure. Mr Lehohla maintained that “there is a huge problem with the skills within the Department of Water and Sanitation, and if critical posts can remain unfilled for more than five years, it does not matter how good our plans are, as they will not be implemented”.

[1] Auditor-General South Africa, Press Briefing on Consolidated General Report on National and Provincial Audit Outcomes.

The previous Statistician-General noted that many government departments were not utilising the impressive base of statistics generated by his organisation, and this impacts on the quality of plans that will be rolled out. He stressed the importance of an integrated approach to planning, and noted that if this is incorrectly undertaken, this may lead to a fragmented approach to the developmental agenda, with some areas highly developed and in other areas, limited or under-development, which could lead to discontent amongst communities.

The previous Statistician-General emphasised the point that one needs to question the policy rationale if no concrete data evidence is used to determine priorities in the water and sanitation sectors. The questions he raised related to the manner in which departments derive policy to determine priorities, but there is no evidence of data as a driver of policy making. Due to policy incoherence through the years, he noted that this has impacted on implementation and irrespective of the amount of money allocated to address the challenges, this incoherence leads to serious outcomes.

8. RECOMMENDATIONS

After deliberating on the presentations by the Department of Water and Sanitation and its entities on Budget Vote 36 and Annual Performance Plan, the Portfolio Committee made the following recommendations to the Department of Water and Sanitation:

8.1.1 National Treasury, Auditor General of South Africa and Directorate for Priority Crime (Hawks) must conduct a forensic investigation into all unauthorised, irregular, fruitless and wasteful expenditure incurred by the Department and subject all officials implicated to lifestyle audits, and criminal charges where they apply.

8.1.2 The Minister of Water and Sanitation must provide a written report within one (1) month on water boards that were improperly constituted.

8.1.3. National Treasury, Auditor General of South Africa and the Directorate for Priority Crime Investigation (Hawks) must investigate the work of service providers that have/ are undertaking any activity on behalf of the Department without due process and diligence being followed as per the National Treasury regulations and Public Finance Management Act.

8.1.4 All recommendations on any criminal activity within the Department and its entities identified by the Special Investigating Unit, must be referred to the National Prosecuting Authority with immediate effect and be reported to Parliament.

8.1.5. In consultation with Parliament, National Treasury, Auditor General of South Africa and the Directorate for Priority Crimes (Hawks) should act on the Terms of Reference of the scope of the Parliamentary inquiry or any other inquiry as requested by the Portfolio Committee which give particular focus to the following:

- Financial in terms of:
  - Irregular expenditure
  - Unauthorised expenditure
  - Fruitless and wasteful expenditure
  - Lack of consequence management
  - Mechanisms which will be used to address the overdraft
  - Assessment and evaluations of deviations, expansions and duplicate payments to service providers especially those that have not been approved by National Treasury
- Human Resource Management in terms of:
  - Status of appointment of a permanent Director General, Chief Financial Officer and other senior officials as it creates instability in the Department

    - Consequence management and financial implications for appointment of additional posts
    - More focus on recruitment policy specifically on vetting of officials and verification of qualifications
    - Declaration of conflict of interest by officials, senior management and supply chain management officials.

- Infrastructure projects, contract management and project management
    - To probe detailed project plans, tender documentations, financial information, progress reports, documentation of project team and documentation of project management.
    - Probe causes of implementation delays and appointment of contractors and consultants
- Implementing agents
    - Ensure that internal controls over implementing agents are monitored and evaluated which should include the records of oversight and tender specifications
- Ministerial directives to water boards
    - There must be an assessment of all directives issued from 2012/13 to date to all water boards with respect to purpose, scope, budget and other related matters
- Special Investigating Unit investigations
    - Consequence management relating to disciplinary or criminal charges of transgressions by current and previous employees
- Governance of water boards and catchment management agencies
    - The Department to investigate the rationale for appointments, extension and termination of board members tenure from 2014/15 to date.

8.1.6 The Department of Public Service and Administration must investigate the organogram of the Department including investigations on the irregular appointment of all senior officials and their qualifications and report to Parliament within a period of three (3) months

8.1.7 The Department must address the audit qualifications related to transfers and assets under construction, where there are double payments between the Department and the Trans-Caledon Tunnel Authority and must recover these payments by September 2018.

8.1.8. The Department of Public Service and Administration and National Treasury must investigate the Department's capacity and effectiveness to develop systems and protocols aimed at ensuring effective procurement planning and contract management for the smooth provision and maintenance of water services infrastructure.

8.1.9 National Treasury and the Auditor General of South Africa must provide a report on the extent to which the Department has put in place processes and policies to manage litigation and claims in the current and future financial years. These impinge on budgets, which could result in limited funding for future infrastructure projects.

8.1.10 The Department is to finalise legislation and policy in the water and sanitation sectors – this relates to the Establishment of an Independent Economic Regulator, National Water Infrastructure Agency, Regional Water Utilities, National Master Plan and drafting of the new Water and Sanitation Bill within a period of three (3) months.

8.1.11 The Department of Water and Sanitation together with the Department of Planning, Monitoring and Evaluation should develop mechanisms for appropriate sanctions to discourage poor performance, especially in ensuring that the attainment of clear targets in the annual performance plans are aligned to budget planning and spending performance.

8.1.12. National Treasury together with the Auditor General of South Africa to undertake a forensic investigation on the illegalities around procurement and supply chain management in respect of the purchase of an expensive SAP software systems and must report to the Portfolio Committee within a period of three (3) months with the intention to recover the public monies spent on the system.

Report to be considered.

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[i] The information that follows was sourced from the submission made to the Portfolio Committee on Water and Sanitation by the Auditor-General South Africa, entitled, "Follow-up on audit key matters", 9 May 2018.
[ii] The information that follows was sourced from the submission made to the Portfolio Committee on Water and Sanitation by the Auditor-General South Africa, entitled, "Follow-up on audit key matters", 9 May 2018.