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**FEDERAL MINISTRY OF AGRICULTURE & WATER**  
**RESOURCES**

**NATIONAL URBAN WATER SECTOR REFORM**  
**PROJECT**

**MODEL WATER SUPPLY SERVICES REGULATORY**  
**LAW (WSSRL)**

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# INTRODUCTION AND GUIDANCE NOTES ON IMPLEMENTING MODEL WSSRL

The attached draft document is a model State Water Supply Services Regulatory Law (WSSRL) to be used as the basis for legislation to be adopted in each of the States that are participating in National Urban Water Sector Reform Project.

The state governments and their regulatory agencies are advised to familiarise themselves with the content of these reports in order to understand the reasoning behind the approach taken in the model document.

## **Purpose of model WSSRL**

The purpose of the model WSSRL is to promote sound water laws and policies (consistent with the National Water Policy) as follows:

- Establish a clear legal basis for the regulator's powers and the separation of functions between the government (policy and planning), the regulator and the Water Services Providers (including state water agencies).
- Provide for the promotion of rights of access to basic water, set standards for consumer service, water quality, regulation of tariffs and to hold providers of water supply services accountable.
- Define the organisational structure and funding of the regulator and to support an independent and autonomous regulator.
- Establish the regulatory processes and procedures for the sector, including monitoring and enforcement of service licences.
- Establish a basis for improved reporting and data collection (the State Information System).
- Establish rights and obligations of Water Services Providers (WSP), consumers and third parties, and establish offences relating to water supply services.

The model WSSRL is intended to serve as a basis for water reform legislation to be considered by the participating states' houses of assembly, in conjunction with the relevant stakeholders. Accordingly, it is anticipated that some provisions of the model WSSRL will change during the legislative process, and adapted to particular local circumstances and needs. In this Introduction certain areas are identified that may require further consideration by the state legislature.

The review of the laws and practices of each participating state did not, however, identify any differences that should impact on the State ability to adopt the model WSSRL in its current form. Moreover, it is a goal of national urban water sector reform project, and it is in the interests of improved water development at the state and national level that, as far as possible, a consistent approach be adopted to the regulation of water supply services, including through the use of a single model WSSRL as the basis for the laws of each state.

## **Structure and contents of model WSSRL**

This section briefly summarises the structure and content of the model WSSRL, which follows this introduction.

**Part I** makes provision for preliminary matters, including definitions of words used throughout and the principle objects of the law. Water Services Provider expressly includes the state water agency (which term is used to refer to the state water board or corporation operating in the state), acting in that capacity, as well as other entities such as water service intermediaries (e.g. housing estate managers, mine operators etc. who are providing water services in conjunction with the relevant employment or housing contract).

**Part II** provides for the role and duties of the state government with respect to water supply services, which includes responsibility for policy and overall sector planning and investment coordination.

**Part III** provides for the establishment of the State Water Regulatory Commission (SWRC) as a body corporate and the objectives of the SWRC. The part provides for the composition of the SWRC, their appointment, tenure and removal and for the appointment of staff, and for the business of the SWRC. The revenue basis and the financial and other reporting procedures of the SWRC are also set out.

**Part IV** contains the principal functions and powers of the SWRC. These include to approve and monitor WSP licences, to fix tariff methodology and approve tariffs, and to establish and enforce service standards of each Water Services Provider.

**Part V** sets out the licensing provisions which require all Water Services Providers (including the state water agency) to obtain a licence to provide the Prescribed Water Services, unless expressly exempted from that obligation. The section includes transition provisions to enable Water Services Providers to comply with this obligation.

**Part VI** contains provisions concerning standards and tariffs. The SWRC is empowered to fix one or more tariff methodologies for the provision of all Prescribed Water Services. All Water Services Providers must set tariffs in accordance with the prescribed methodology applicable to it. The section anticipates that the SWRC will develop additional provisions for fixed and extraordinary reviews of tariff methodologies. The SWRC is authorised to set and/or monitor and enforce compliance with service standards, including water quality standards

**Part VII** provides for the obligations, rights and powers of the Water Services Providers, for reporting requirements.

**Part VIII** sets out the rights and obligations of consumers including the right to access information on the service obligations of the Water Services Provider, and the obligation to pay for water service.

**Part IX** establishes the right of consumers to make complaints to the SWRC, which is the body authorised to hear and resolve disputes between consumers and Water Services Providers, and for the SWRC to have power to investigate Water Services Providers. It also provides for enforcement powers which include issuing enforcement orders, cancelling or suspending licences and appointment of statutory managers. This part also creates a right for affected parties to apply to the SWRC for reconsideration of a decision and the right to appeal against a decision of the SWRC to an appellate body to be established under the law (with further right of appeal on the permitted grounds to the High Court).

**Part X** sets out detailed requirements for the development of water services development plans (by each Water Services Provider) and the state-wide development plans.

**Part XI** sets out minimum requirements concerning the award of private sector participation agreements.

**Part XII** sets out the obligations with respect to the State Information System, which is intended to form part of a national system of information gathering,

**Part XIII** includes miscellaneous provisions including rights regarding entry and inspection of properties, offences under the law and repeal and savings provisions.

## **Guidance for adopting the WSSRL**

### ***Scope of law and licensing***

The model WSSRL regulates Water Services Providers as widely defined. However, its structure anticipates that the primary focus of the regulator, at least in the medium term, will be on regulating the activities of the state water agency and, where appropriate, private sector operators of the piped water supply system appointed by the state water agency or the state government.

It is proposed that water supply provided by community based organisations be expressly excluded from the law, and this is provided for in Part IV.

The state water agency and private sector participation operators will be required to obtain a licence and will be regulated under the licence. The licence is the formal permission to operate the water services and the instrument through which specific regulations are imposed on the relevant service provider.

The model WSSRL authorises the SWRC to exempt classes of Water Services Providers from the requirement to obtain a licence. This power is not intended to be used to exempt the state water agency from a licence requirement, but rather to enable the SWRC to limit the scope of its activities to those sensible in terms of capacity and costs, and to ensure that the costs involved in a licensing scheme are appropriate to returns. It is envisaged that pursuant to these provisions the SWRC may exempt from the requirement to obtain a licence entities such as water service intermediaries, e.g. mines and housing estate managers.

However, in such cases the SWRC retains the power to regulate the activities of these entities, for example to ensure that minimum standards are complied with, although in the medium term it is likely that resource constraints will require the SWRC to focus on regulation of the state water agency.

### ***Local government authorities***

At present the law does not incorporate express procedures requiring local government authorities to be involved in water regulatory processes. However, where a local government authority is acting as a water services provider, it would be subject to regulation under the law, unless exempted).

State governments may wish to incorporate procedures for ensuring that local governments are involved in processes, where this reflects state policy.

### ***Private sector participation agreements***

The law provides for the state government (directly or through a state agency, such as the state water agency) to enter into private sector participation agreements for the delivery of water services. Best practice experience on the award of private sector participation agreements indicates that these must be properly designed, and that proper approval processes should be put in place to ensure that the financial implications to the state are properly assessed.

In the absence of separate state laws on the award of private sector participation agreements in infrastructure, the model WSSRL sets out minimum requirements, and proposes that the SWRC plays a role in ensuring that the award of private sector participation agreements follows appropriate procedural requirements. However, it is recommended that detailed procedures be developed for the award of private sector participation agreements, including requirements for approval by the relevant state ministries (which should include the Commissioner of Finance), even where the agreement is to be entered directly with the state water agency. The model WSSRL empowers the SWRC to develop such regulations after the law is adopted, but these would need to be guided by state government policy (and commitments of the state under, for example, WIMAG). Alternatively, detailed provisions could be prepared and included in a schedule to this law before it is adopted.

### ***Appeals and dispute resolution***

Establishment of an appeals mechanism in relation to regulatory decisions is a key aspect of providing appropriate checks and balances to independent regulation.

The model WSSRL makes provision for an appellate body, but does not determine the nature or composition of such body.

Alternative approaches include:

- A body appointed from within the SWRC itself (it is understood that this approach has been taken in the national power sector reform legislation)
- Use of an external appeal body. Here, the options include:
  - Ad-hoc panels formed on an as-needed basis, possibly drawing from a fixed pool of experts – this approach is provided for in the regulatory laws of Australia and previously in Chile
  - Formal standing appeals panels (for example, the Lagos law provides for the establishment of a Water ‘Court’ consisting of a magistrate (chairman), an environmental engineer and an economist, all appointed by the governor)
  - Utilisation of other existing specialist panels (for example, the UK Competition Commission is the appeals panel for all utility and infrastructure regulators except airports and the London Underground).

A final approach is to provide for appeals in the first instance directly to the general court system. However, the matters determined by a regulator are of a specialist technical nature, and it is generally not considered appropriate for appeals in the first instance to be to the general courts .

The States will have to determine the approach that they wish to take, having consideration to the following matters:

- The creation of a standing ‘Water Court’ will involve significant costs, and is unlikely to be necessary in the medium term given that the sector has a single dominant Water Services Provider.
- Private sector participants will need to be confident that the appellate body has both the technical expertise to determine matters and can be considered to be independent of both the regulator and government. Therefore, a model (such as in Lagos) where all members are appointed by the governor may not be acceptable.
- The appellate body performs a very different function to that of any entity responsible for resolving disputes between consumers and Water Services Providers, and it is recommended that these are not combined (the regulator or an ombudsman should be responsible for hearing and resolving consumer complaints).
- The possibility of pooling resources with other states, by using some form of national panel of experts.

### ***Regulatory advisor***

The model WSSRL permits the SWRC to appoint sector experts to advise on, or to carry out, certain regulatory functions. The model WSSRL also requires the SWRC to appoint such an advisor during the initial five year period, and for that advisor to provide one of the commissioners. This approach has been taken in Lagos.

States will need to determine whether this is to be a requirement. To minimise costs, the advisor may be a consultancy firm appointed to support in the establishment of the SWRC in all three participating states (rather than a separate advisor in each state which may be expensive).

### **Setting tariffs and expert review panels**

The model WSSRL provides for procedures for annual approval of tariffs (in accordance with the approved tariff methodology) and fixed and extraordinary reviews of the tariff methodology will need to be developed.

In developing these, it is important to consider the likely concerns of potential private sector investors. The law permits the procedures to provide for an expert panel to review tariff methodology, which may consist of a representative of each of the SWRC, Consumers and the Water Services Providers. While this procedure does not have to be adopted, it is advised that the possibility for such approach be provided for in the law.

### **Enabling instruments - the State Water Authority/Board Law**

The model WSSRL is not intended to replace the legislation establishing the state water agency. However, it is stated to repeal or amend those provisions of the State Water Agency Law that are inconsistent with the model WSSRL.

It is recommended that specific amendments be made to the State Water Agency Law in order to facilitate the implementation of the model WSSRL and to avoid confusion.

Amendments are needed to support the clear separation of operational responsibilities (with the state water agency) from regulatory responsibilities (with the SWRC) and to ensure that the SWRC is fully empowered to regulate the activities of the state water agency. International best practice suggests that the state water agency serve solely in its capacity as a water services provider and that it does not retain any residual water sector regulatory functions.

Such amendments may be made in conjunction with revisions required to support commercialisation/introduction of private sector participation to the relevant state water agency.

The following table identifies the key amendments required to the state water agency laws. This is intended to serve as a guide only, and is not intended as a comprehensive set of required amendments. In amending the state water agency laws it will be important that a legal vacuum is not created pending establishment of the SWRC.

**Table 1 Key amendments required to SWA Laws to give effect to Model WSSRL**

<b>Provisions to be repealed or amended</b>
All definitions should be reviewed to ensure consistency with the WSSRL
Duties of the state water agency that involve regulatory matters (now the responsibility of the SWRC) or policy formulation (the role of Government) should be repealed. These include those relating to setting of requirements in relation to - service coverage, quality of service provisions, water quality regulations, and level of service regulations. References to the 'Governor' or to the 'Commissioner' in the remaining provisions should be replaced with 'SWRC'.
Powers of the state water agency - Powers that relate to the making of regulations or rulings in relation to water services should be repealed, and references to the 'Executive Governor' or to the 'Commissioner' in the remaining provisions should be replaced with a reference to the SWRC.
A general provision should be included requiring the state water agency to comply with all regulatory rulings and decisions of the SWRC.
Provisions concerning the fixing of tariffs, water standards and targets should be repealed or made subject to the approval of the SWRC
Powers conferred on the Governor or the Commissioner to give directions to the state water agency or to approve expenditures should be repealed (the state water agency should be autonomous subject to regulation by the SWRC)
Provisions on borrowing should be reviewed to ensure that borrowing pursuant to the MOU/WIMAG will be allowed.

**Table 1 Key amendments (continued)**

<p>Provisions concerning powers and procedures in respect of setting of water rates and to levy general rates should be amended so that references to the 'Governor' or to the 'Commissioner' are replaced with references to the SWRC.</p> <p>Those provisions specifically concerning methodology for determining rates and categorisation of rate payers should be repealed in full.</p>
<p>Powers in relation to discontinuing service will need to be made consistent with the provisions of the WSSRL.</p>
<p>Provisions empowering the state water agency to make regulations in respect of water services or works, or third party activities in relation to water services should be repealed – the SWRC shall now be responsible for regulating these matters.</p>
<p>Requirements relating to accounting and reporting by the state water agency should be repealed in full. These matters will now be specified and regulated under the WSSRL.</p>
<p>The provisions setting out water sector offences should be repealed in full. Offences and the applicable penalties will now be provided for in the WSSRL. However, the SWRC may, under the WSSRL, delegate back to the state water agency certain enforcement responsibilities.</p>
<p>Those provisions setting out general powers in relation to entry onto property, installation of water works, and use of water services by fire authority should be deleted, as they are now dealt with under the WSSRL</p>
<p>The powers of the Commissioner for Water Resources to impose surcharges in relation to debts to the state water agency should be repealed.</p>
<p>All other provisions concerning the rights and obligations of consumers or third parties vis-à-vis the state water agency should be repealed, as these will be set out in the WSSRL.</p>

**State of [relevant State]**

**WATER SUPPLY SERVICES REGULATORY LAW**

**[Model]**

To provide for the establishment of a State Water Regulatory Commission that would, among other things, promote the rights of access to basic water supply; set standards and norms for Consumer service standards, regulate tariffs charged to Consumers; issue Water Services Provider Licences; promote private sector participation in the provision of water supply services ; promote National Water Laws and Policies and State Water Laws and Policies; ensure the preparation of and compliance with Water Services Development Plans; facilitate financing from the Federal Government and international sources for projects within the State-Wide Development Plan; promote the gathering of information in a State Information System; to repeal certain laws to extent such laws conflict with this Law; and to provide for related matters.



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## PART I: INTRODUCTORY PROVISIONS

### 1 Citation and Commencement

(1) This Law may be cited as the [*relevant State*] State Water Supply Services Regulatory Law 200[...], and be deemed to have come in force on .....day of .....200[...]

### 2 Definitions

(1) In this Law, unless the context shows that another meaning is intended:

"Appellate Body" means the body established herein as having the authority to review SWRC decisions, in accordance with this Law and such other procedures established by the Appellate Body.

"Basic Water Supply" means the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene, as specified from time to time by the SWRC.

"Chairman" means the Chairman of the SWRC appointed in accordance with this Law.

"Consumer" means any actual or potential end user who receives Prescribed Water Services from a Water Services Provider and does not deliver or resell the service to others including an end user in an informal settlement.

"Emergency Situation" means any situation declared as such by the Governor.

"Federal Constitution" means the Constitution of the Republic of Nigeria 1999.

"Federal Government" means the Federal Government of the Republic of Nigeria.

"Federal Ministry" means the relevant Ministry of the Federal Government including the Federal Ministry for Water Resources, the Ministry of Environment or other ministries as applicable.

"Gazette" means official gazette of the State.

"Governor" means the Executive Governor of the State.

"Law" means this Water Supply Services Regulatory Law.

"LGA" means the local government authority, agency or organization, municipality, city government or authority, in each case, pre-existing this Law.

"National Water Laws and Policies" means all applicable Federal Water laws and regulations, the National Water Policy and guidelines prescribed by Federal Ministries.

"National Water Policy" or "NWP" means [(i) the National Water Supply and Sanitation Policy (First Edition, 2000), as amended, (ii) the National Water Resources Management Policy (2nd draft, 2003), and other national water policies promulgated from time to time]<sup>1</sup>.

"Person" means a corporate entity, limited liability company, partnership or individual that is not prohibited from entering into a PSP Agreement by regulations prescribed by the SWRC

"Prescribed Water Services" means the abstraction, conveyance, treatment and distribution of potable water, water intended to be converted to potable water or water for commercial use, where such water is provided to Consumers or other Water Services Providers.

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<sup>1</sup> This definition should be updated if the proposed new Water Policy is adopted prior to enactment of this law.

"PSP Agreement" means a concession agreement, affermage agreement, management agreement or any agreement entered into by or on behalf of the State and a private sector Person selected by the State through a competitive bidding process (i) to provide Prescribed Water Services or (ii) to improve, rehabilitate or expand the network of Prescribed Water Services capabilities within the State.

"Relevant State Ministry" means the relevant Ministry of the State including the Water Resources Ministry, Ministry of Health, or the Ministry of Environment and Physical Planning as applicable.

"State Government" means the State Government of *[relevant State]*.

"State Information System" means the system for the collection of information pertaining to Prescribed Water Services to be created and maintained in accordance with regulations prescribed by the SWRC and this Law.

"State Water Agency" means the *[relevant State]* Water *[Board/Corporation]*, established pursuant to the *[insert details of law establishing State Water Authority]* as the same is amended by this Law, and pursuant to this Law acting as a Water Services Provider.

"State Water Laws and Policies" means all applicable State Water laws, regulations and policies including regulations, orders and guidelines issued by the SWRC or otherwise pursuant to this Law.

"State Water Regulatory Commission" or "SWRC" means the State agency established herein to perform Water Services Regulatory Functions.

"State" means the State of *[relevant State]*.

"State-Wide Development Plan" means the aggregate 5-year investment plan and development plan created by the SWRC, as approved in accordance with this Law.

"SWRC" means the State Water Regulatory Commission.

"SWRC Commissioner" means an officer of the SWRC, including the Chairman, appointed in accordance with this Law.

"Tariffs" mean the charges for Prescribed Water Services set in accordance with this Law, the prescribed regulation of the SWRC and the conditions for service of the applicable Water Services Provider.

"Water Quality Standards" means the health, environmental, and sanitation standards relating to the quality of drinking water consistent with National and State Water Laws and Policies.

"Water Sector Programme Commitments" means any commitment entered into by the State Government (whether by contractual agreement or memorandum of understanding or otherwise) in relation to discretionary funding that the Federal Government may make available to Water Services Providers.

"Water Services Development Plan" means a water services development plan created and implemented in accordance with regulations prescribed by the SWRC and this Law.

"Water Services Intermediary" means a Person who is obliged to provide Prescribed Water Services to another Person under terms of a contract where the obligation to provide such Prescribed Water Services is incidental to the main object of that contract, including, without limitation under a contract relating to a housing estate or under an employment contract with a farm, mine or other industry.

"Water Services Provider" means the State Water Agency acting in that capacity and any other Person who provides Prescribed Water Services to Consumers or other Water Services Providers within a specific jurisdiction together with or without the responsibility to collect any Tariffs that may be due and includes a Water Services Intermediary.

"Water Services Regulatory Functions" means the prescribing of rules, orders and regulations for the provision of Prescribed Water Services, granting of WSP Licences and other functions of the State Water Regulatory Commission in accordance with this Law.

"Water Services Work" means a reservoir, dam, well, pumphouse, borehole, pumping

installation, purification work, sewage treatment plant, access road, electricity transmission line, pipeline, meter, fitting or apparatus built, installed or used by a Water Services Provider to provide Prescribed Water Services.

"WSP Licence" means the licence issued pursuant to this Law granting a Person rights to provide Prescribed Water Services within a jurisdiction (that is the geographic areas specified therein).

### **3 Main objects of Law**

- (1) The main objects of this Law are to provide for:
  - (a) the establishment of the State Water Regulatory Commission;
  - (b) the setting of standards and norms for Water Services Regulatory Functions;
  - (c) the requirements for Water Services Providers;
  - (d) the gathering of information in a State Information System.

### **4 Scope of Law**

- (1) This Law will apply to the State Water Authority and other Water Services Providers for the purpose of regulating the Prescribed Water Services provided by such entity. Where the SWA undertakes activities other than as a Water Services Provider, the SWA must manage and account separately for its Water Services Provider functions.
- (2) This Act shall not apply to the supply of water provided in a community, where the supply of water is operated and managed by the community.

*[Guidance Note: Refer to discussion in Introduction and Guidance Notes to this Law]*

## **PART II: ROLES AND DUTIES OF THE STATE GOVERNMENT WITH RESPECT TO THE WATER SECTOR**

### **5 The State Government**

- (1) The State Government is responsible for setting State policy and co-ordinating State-wide planning for water sector matters in accordance with all applicable National Water Laws and Policies and State Water Laws and Policies, and the Federal Constitution, including approving changes to the structure of the water supply sector in the State, and approving the basis for private sector participation in the provision of Prescribed Water Services; and
- (2) The State Government including applicable State Ministries may issue general policy guidance to the SWRC on matters concerning regulation of Prescribed Water Services, including guidance on overall system planning and co-ordination, which the SWRC shall take into consideration in discharging its Water Services Regulatory Functions; provided that all such guidance shall be made publicly available and is published in the Gazette and is not in conflict with this Law, applicable Federal and State Water Laws and Policies and State Water Sector Programme Commitments.
- (3) The State Government including applicable State Ministries may carry out the Water Services Regulatory Functions until the SWRC has a functioning board and a requisite level of qualified officers and employees necessary to perform such functions, but in any event for no longer than [one year] from the enactment of this Law.
- (4) The Governor together with the applicable State Ministries is responsible for regulating and managing water resources forming part of State waters, in accordance with National and State Water Laws and Policies and the Federal Constitution.

## **PART III: ESTABLISHMENT OF THE STATE WATER REGULATORY COMMISSION**

### **6 Establishment of SWRC**

- (1) There is hereby established a commission to be known as the State Water Regulatory Commission, which shall be a body corporate and can sue or be sued in its corporate name and, subject to this Law, perform all acts that bodies corporate may by law perform.
- (2) The SWRC shall have the following principal objects:
  - (a) to promote State Water Laws and Policies and National Water Laws and Policies;
  - (b) to create, promote, and preserve efficient industry and market structures, and to ensure the optimal utilisation of resources for the provision of Prescribed Water Services;
  - (c) to maximize access to Prescribed Water Services, by promoting and facilitating Consumer connections to distribution systems in both rural and urban areas;
  - (d) to ensure that an adequate supply of water is available to Consumers and ensure that Consumers (including low-income or vulnerable Consumers) benefit from any gains from increased competition and efficiency;
  - (e) to ensure that the prices charged by Water Services Providers are sufficient to allow the Water Services Providers to finance their activities and to allow for reasonable earnings for efficient operation;
  - (f) to ensure the safety, security, reliability, and quality of service in the production and delivery of water to Consumers;
  - (g) to ensure that regulation is fair and balanced for Water Services Providers, Consumers, investors, and other stakeholders;
  - (h) to receive complaints and resolve disputes between Consumers and Water Services Providers;
  - (i) to ensure that regulatory decision-making has regard to all relevant health, safety, environmental and social legislations applying to the water sector; and
  - (j) To promote consistency in regulation between States on a national basis.
- (3) Without derogating from subsection (1) the Commission shall perform its functions and exercise its powers in such a manner as it considers best in achieving any of its objectives under this Law.
- (4) For the furtherance of the objects referred to in this section, the SWRC shall perform the Water Services Regulatory Functions conferred on it under this Part III and otherwise in this law.

### **7 Commission not subject to Direction**

- (1) Except as expressly provided by or under this Law, the SWRC is not subject to the direction or control of the Governor or any other person in respect of its exercise of the Water Services Regulatory Functions, including any determination, report or inquiry.

## **8 Appointment tenure, qualification and removal of SWRC Directors**

- (1) Subject to subsections (2) and (3), the SWRC shall consist of five part time voting SWRC members appointed by the Governor, subject to confirmation by the House of Assembly.
- (2) Such nominees shall include:
  - (a) a Chairman nominated by the State Commissioner for Finance;
  - (b) a representative of the Consumers;
  - (c) a representative of the organized private sector as represented by the State Chapter of the National Chambers of Commerce, Industry Mines and Agriculture;
  - (d) a legal practitioner nominated by the Honourable Attorney-General and Commissioner for Justice; and
  - (e) for the period of five years after commencement of operation of the SWRC, one member nominated by the regulatory advisor appointed under Section 25, being a person with at least five years experience in international regulation of utility and infrastructure enterprises who shall be either a public utility regulator, a contracted technical advisor or a regulatory advisor to a regulated utility.

*[Guidance Note: See discussion in Introduction and Guidance]*

- (3) In selecting potential nominees, the Governor shall ensure that individuals are chosen, from both the public and private sectors, for their experience or professional qualifications in the water sector, in utilities regulation and in law, accountancy, economics, finance or administration.
- (4) There shall be an Executive Secretary who shall be a full time and non-voting member of the Commission.

## **9 Terms of Office**

- (1) Subject to this Law, a SWRC Commissioner shall hold office for a period of five years, provided that, to ensure continuity in the SWRC, the period of appointment of the first five SWRC Commissioners shall be as follows:
  - (a) the Chairman shall be appointed for five years;
  - (b) the other SWRC Commissioners shall be appointed for four years.
- (2) A SWRC Commissioner shall continue in office after the expiry of his term until he has been re-appointed, or his successor has been appointed, provided that a SWRC Commissioner shall not continue in office pursuant to this subsection for longer than six months.
- (3) A SWRC Commissioner shall hold office on such reasonable terms and conditions as the Governor may fix in relation to SWRC Commissioners generally and in accordance with the terms hereof.
- (4) A SWRC Commissioner whose term of office has expired is eligible for re-appointment for another five year term and thereafter shall not be eligible to serve on the SWRC.
- (5) The terms and conditions of office of a SWRC Commissioner shall not, without the Chairman's consent, be altered to his detriment during his tenure of office.



## **10 Qualifications**

- (1) A person shall not be appointed as a SWRC Commissioner who:
  - (a) is neither a citizen of Nigeria nor permanently resident in Nigeria; or
  - (b) has a pecuniary interest in any Water Services Provider regulated under this Law or any entity which is in competition with or provides similar services to those supplied by a Water Services Provider regulated under this Law within the State unless the Governor is satisfied that the interest or activity is indirect and passive and will not interfere with the person's impartial discharge of his duties as a SWRC Commissioner, or unless the pecuniary interest is terminated prior to the appointment taking effect; or
  - (c) has, in terms of a law in force in any country:
    - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
    - (ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or
  - (d) has, in terms of a law in force in any country:
    - (i) been adjudged, by a court of competent jurisdiction, to be of unsound mind;
    - (ii) been banned from practicing his profession; or
    - (iii) been convicted of an offence and sentenced to a term of imprisonment imposed with or without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.
- (2) A person who is a current member of the House of Assembly or Senate or of the House of Representatives shall not be appointed as a SWRC Commissioner.

## **11 Vacation of Office**

- (1) A SWRC Commissioner shall vacate his office and his office shall become vacant:
  - (a) three months after the date upon which he gives notice in writing to the Governor of his intention to resign, or on the expiry of such other period of notice as he and the Governor may agree; or
  - (b) on the date he begins to serve a sentence of imprisonment imposed without the option of a fine:
    - (i) in Nigeria, in respect of an offence; or
    - (ii) outside Nigeria, in respect of an offence involving financial impropriety or any conduct which, if committed in Nigeria, would constitute an offence; or
  - (c) when he attains the age of 70 years; or
  - (d) if he attends fewer than 75% of the Commission's meetings in any one year period; or
  - (e) in the case of members who have professional qualifications, the SWRC Commissioner is barred or suspended from his professional body.
- (2) A SWRC Commissioner shall not be suspended or removed by the Governor unless the request is supported by a two third majority of the House of Assembly.
- (3) On the death of, or vacation of office by, a SWRC Commissioner the Governor shall nominate a candidate to fill that vacancy, and submit that nomination to the House of Assembly, within one month.

## **12 Executive Secretary and Secretariat**

- (1) The Executive Secretary shall be appointed by the Governor, subject to the approval of the State House of Assembly.
- (2) The Executive Secretary shall be a person who has served at management level in the public or private sector for a minimum of five years.
- (3) The Executive Secretary shall be the accounting and administrative officer of the SWRC and shall hold office on such terms and conditions as may be specified in his letter of appointment.
- (4) The Executive Secretary must not directly or indirectly engage in any paid employment outside the duties of the SWRC.

## **13 Business of the SWRC**

- (1) Subject to this Law, the SWRC may regulate its own proceedings.
- (2) The SWRC shall meet for the dispatch of business as often as is necessary or expedient and, subject to this section, may adjourn, close and otherwise regulate its meetings and procedure as it deems fit but the first meeting of the SWRC shall be called by the Relevant State Ministry not later than 6 months after the commencement of this Law.
- (3) The Chairman or, in his absence, the Vice-Chairman shall preside at all meetings of the SWRC.
- (4) All decisions of the SWRC shall be on the basis of majority of the members present and voting.
- (5) The quorum for the meeting of the SWRC shall be three and each SWRC Commissioner present shall have one vote on each question before the SWRC and, in the event of an equality of votes, the Chairman shall have a casting vote in addition to a deliberative vote.
- (6) For a meeting of the SWRC to review any previous decision or order taken by the SWRC, the quorum shall be no less than the SWRC members present when the decision was taken or order was made.

## **14 Appointment and Remuneration of Staff**

- (1) SWRC Commissioners shall be paid from the funds of the SWRC such remuneration and allowances, if any, as the SWRC may propose from time to time for the approval of the House of Assembly, which in approving the same shall have regard to the salaries and allowances paid to the staff of other regulatory commissions operating in Nigeria and the following principles:
  - (a) the specialised nature of work to be performed by the SWRC;
  - (b) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills; and
  - (c) the nature of the expenses incurred by the SWRC employees, including national and international travel expenses.
- (2) Other staff of the SWRC shall be paid from the funds of the SWRC such remuneration and allowances as the SWRC shall determine.
- (3) No employee of the SWRC shall, for the period that is two years after his resignation or retirement, seek any form of office, employment or consultancy arrangements, either for remuneration or otherwise, connected with any Water Services Provider regulated under this Law or any entity which is in competition with or provides similar services to those supplied by a regulated Water Services Provider within the State.

- (4) For the purposes of this part, employee shall include SWRC Commissioners and staff of the Commission.

## **15 Disclosure**

- (1) If a SWRC Commissioner:
- (a) acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the SWRC,
  - (b) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the SWRC Commissioner's private interests coming or appearing to come into conflict with his functions as a SWRC Commissioner,
  - (c) knows or has reason to believe that a relative of the SWRC Commissioner,
    - (i) has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the SWRC, or
    - (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the SWRC Commissioner's private interests coming or appearing to come into conflict with his functions as a SWRC Commissioner, or
  - (d) if for any reason the private interests of a SWRC member come into conflict with his functions as a SWRC Commissioner,
- the SWRC member shall forthwith disclose the fact to the SWRC.
- (2) A SWRC Commissioner referred to in subsection (1) shall take no part in the consideration or discussion of, or vote on, any question before the SWRC which relates to any contract, right, immovable property or interest referred to in that subsection.
- (3) A SWRC Commissioner shall, prior to accepting his appointment to the SWRC, make a declaration of assets in accordance with paragraph 11 of the Fifth Schedule to the Federal Constitution.
- (4) A SWRC Commissioner who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine or to imprisonment or to both.

## **16 Validity of Decisions**

- (1) No decision or act of the SWRC done under the direction of the SWRC shall be invalid on the ground that:
- (a) there existed a vacancy or vacancies among the SWRC Commissioner; or
  - (b) there existed some defect in the constitution of the SWRC at the time the decision was taken or Law was done or authorized.
- (2) If a SWRC Commissioner referred to in section 15 takes part in the consideration of a matter in which his private interests are in conflict with his function as SWRC Commissioner, the other SWRC Commissioners may subsequently ratify any such decision or action.

## **17 Budgets**

- (1) On or before such date as the House of Assembly may specify before the beginning of every financial year, the Chairman shall prepare and submit to the House of Assembly a budget showing the expenditures which the SWRC proposes to incur in respect of that financial year in order to carry out the functions of the SWRC.
- (2) During any financial year the SWRC may prepare and submit to the Governor a supplementary budget relating to expenditures which were inadequately provided for in the annual budget due to unforeseen circumstances.
- (3) A supplementary budget shall be deemed to form part of the annual budget of the SWRC for the financial year to which it relates.
- (4) The SWRC may vary a budget prepared under this section, provided that no variation may be made which has the effect of increasing the total amount of expenditure provided for in the budget.

## **18 Funds of the Commission**

- (1) There is established for the SWRC a fund into which all monies accruable to the SWRC shall be paid and from which shall be defrayed all expenditure incurred by the SWRC.
- (2) The funds of the SWRC shall consist of:
  - (a) fees, charges and other income accruing to the SWRC from Water Services Providers and other things done by it in terms of this Law, excluding any fines or penalties recovered pursuant to this Law;
  - (b) a surcharge on Tariffs payable by Consumers of Prescribed Water Services as the SWRC may by regulation decide;
  - (c) funds allocated to the SWRC by the House of Assembly, pursuant to a request by the SWRC for additional funds required to meet its reasonable expenditures;
  - (d) such other moneys as may vest in or accrue to the SWRC, whether in the course of its operations or otherwise.

## **19 Accounts**

- (1) The Chairman shall ensure that proper accounts and other records relating to such account are kept in respect of all SWRC activities, funds and property, including such particular accounts and records as the SWRC may require.
- (2) The accounts shall be audited annually by external auditors appointed in accordance with the guidelines for the appointment of auditors issued by the Auditor-General of the State.
- (3) The auditor shall be entitled at all reasonable times to require to be produced to him all accounts and other records relating to such accounts which are kept by the SWRC or its agents and to require from any officer or employee or agent of the SWRC such information and explanation as in the auditor's opinion are necessary for the purpose of its audit.
- (4) Any officer or employee or agent of the SWRC who fails without just cause to comply with a requirement of an auditor in terms of subsection (3) commits an offence and is liable on conviction to a fine or to imprisonment or to both

## **20 Annual Reports**

- (1) The SWRC shall submit an annual report of its activities to the Governor and the State House of Assembly in accordance with the provisions of this Law.
- (2) The annual report shall, amongst other information, contain a detailed presentation of the SWRC's performance during the reporting year stated against any targets set in the SWRC's approved plans together with an analysis of the opportunities and constraints impacting upon the SWRC's performance and the actions proposed for addressing them.
- (3) The SWRC shall, within six months after the end of the financial year, furnish the State House of Assembly with:
  - (a) a copy of the audited accounts of the SWRC; and
  - (b) a copy of the report of the external auditor.
- (4) The SWRC shall publish its annual report in two national daily newspapers circulating within the State and on the Internet.
- (5) The SWRC shall cause the audited accounts and annual report to be published in the State Government Official Gazette after complying with subsection (3) of this section.

## **21 Other reports**

- (1) In addition to any report which the SWRC is required by this Law to submit to the Governor, the SWRC shall submit to the Governor or State House of Assembly such other reports as they may require and such other reports as the SWRC considers advisable.
- (2) The Governor shall publicly release any reports submitted pursuant to subsection (1), within two months following the receipt of such a report.

## **22 Protection of SWRC**

- (1) No liability shall attach to the Executive Secretary or to any employee of the SWRC or to any SWRC Commissioner for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance of any function which, by or in terms of this Law, is conferred or imposed upon such person.
- (2) No execution or attachment of process shall be issued against any property vested in the Commission except with the prior consent of the Attorney General.

## **23 Benchmarking of SWRC**

- (1) Where so required under any Water Sector Programme Commitments or otherwise by the Governor, the SWRC must submit such reports to the Governor and the Federal Ministry of Water Resources as may be required in order to facilitate the comparison of activities and performance of the SWRC against other state water regulatory commissions operating in Nigeria.

## **24 Delegation of powers**

- (1) Subject to subsection (2), the SWRC may in writing delegate any power vested in it by or under this Law, and may impose separate or concurrent duties with respect to enforcement of any regulations or orders made by the SWRC in a relevant area on any Water Services Provider [or a Local Government Authority].
- (2) The SWRC may not delegate the power:
  - (a) to make regulations; or
  - (b) to issue or cancel WSP Licences.

## **25 Advisory support and outsourcing**

- (1) The SWRC may appoint advisory committees to advise on the exercise of the Water Services Regulatory Functions.
- (2) The SWRC may (and for the period of five years after commencement of operation of the SWRC shall) enter arrangements with private sector experts to advise on or to undertake the performance of any Water Services Regulatory Functions (which experts may act as advisor to more than one state water regulatory commission).

*[Guidance Note: refer to discussion in Introduction and Guidance Notes]*

- (3) Any private sector expert appointed under this section shall be appointed by an open and competitive bidding, subject to all applicable bidding and award guidelines, including adequate technical requirements.

## **PART IV: WATER SERVICES REGULATORY FUNCTIONS OF THE SWRC**

### **26 Water Services Regulatory Functions**

- (1) The functions of the SWRC are to do all things necessary or conducive to the regulation of the provision of Prescribed Water Services in the State including:
  - (a) Advise the State Government on water supply matters;
  - (b) Licence Water Services Providers;
  - (c) Develop sector guidelines on the technical and financial management of Water Services Providers;
  - (d) Make regulations prescribing all matters which by this Law are required or permitted to be prescribed or which, in the opinion of the SWRC, are necessary or convenient to be prescribed for carrying out or giving effect to this Law, including:
    - (i) the administration of the affairs of the SWRC, including, inter alia, the holding of meetings, hearings and proceedings, arbitration and mediation proceedings, the conduct of inquiries and investigations, becoming a party, the handling of information, the rules by which evidence shall be taken, and generally the conduct of its business;
    - (ii) the procedure for issuing WSP Licences;
    - (iii) the determination of the standards for the provision of Prescribed Water Services including Water Quality Standards;
    - (iv) the method and manner by which the Tariffs that may be charged by Water Services Providers for their Prescribed Water Services will be determined (including a metering scheme for certain large use Consumers, to the extent practicable and cost-effective);
    - (v) the duties, powers, rights, and obligations of a Water Services Provider;
    - (vi) the resource procurement policies of, and entry into PSP Agreements by, the Water Services Providers, including, as may be applicable, the review and approval of same;
    - (vii) the requirements of Water Services Development Plans;
    - (viii) procedures for monitoring compliance with National Water Laws and Policies and State Water Laws and Policies
    - (ix) guidelines to eliminate illegal connections, unregulated or illegal use of Prescribed Water Services; and

- (x) practices, procedures and reporting requirements for monitoring and enforcing this Law (including establishment of fines and penalties).

## **27 Discharge of Functions**

- (1) In the discharge of its Regulatory Functions under this Law , including the making of regulations and of any decision or determination, the SWRC shall –
  - (a) consult in good faith with persons who are or are likely to be affected by the decision including Water Services Providers, Consumers and any consumer associations;
  - (b) give to such persons an opportunity to make submissions to and to be heard by the SWRC;
  - (c) have regard to the evidence adduced at any hearing and to matters contained in any submissions;
  - (d) give reasons in writing for every decision;
  - (e) ensure that notice is given of each regulation, decision or determination in the Government Gazette, in a national daily newspaper circulating in the State and on the internet;
  - (f) ensure that decisions are accessible to the public at reasonable times and places; and
  - (g) ensure that decisions are consistent with all applicable National and State Water Laws and Policies and Water Sector Programme Commitments of the State.
- (2) The SWRC may make interim orders pending the final disposition of a matter before it.

## **28 Other Powers of the SWRC**

- (1) The SWRC may exercise such other powers in relation to economic regulation (including the power to make determinations and the power to act as an arbitrator in disputes under a PSP Agreement ) as may be conferred on it under a PSP Agreement .
- (2) In making a determination under this Section the SWRC must have regard to any factors specified in the PSP Agreement in relation to economic regulatory matters.

## **PART V: LICENCES**

### **29 WSP Licence Required to Operate as Water Services Provider**

- (1) No Person may operate as a Water Services Provider unless such person:
  - (a) holds a WSP Licence from the State Water Regulatory Commission; or
  - (b) is exempted from the requirement to obtain a licence in respect of the provision of the relevant Prescribed Water Services.
- (2) Any Person, including without limitation the State Water Agency, who, at the commencement of this Law, was acting as a Water Services Provider without a WSP Licence from the SWRC, may continue to do so until the expiry of reasonable notice, which notice must not be longer than one year, given by the SWRC that the continuation will be subject to the issuance of a WSP Licence.
- (3) The SWRC shall have the authority to make determinations as to whether a person is engaging, or is about to engage in a business for which a WSP Licence is required under this Law and may, by an order published in the Gazette, exempt a person from the requirement to obtain a WSP Licence in respect of the provision of the Prescribed Water Services specified in the order. An exemption may be of general or specific application.

- (4) An exemption will be subject to the terms, conditions and limitations specified in the order and may retain powers and functions of and leave any matter to be determined by the SWRC in relation to the regulation of the provision of Prescribed Water Services by such Water Services Providers.

### **30 WSP Licensing**

- (1) The SWRC may issue an interim WSP Licence for Prescribed Water Services to any person as specified under the Law for a period not exceeding eighteen months, or such shorter period as may be specified in this Law, if it determines that it is necessary in the public interest to do so.
- (2) Any person who contravenes the requirements of this Law on obtaining the required WSP Licences commits an offence and is liable on conviction to a fine or to imprisonment or to both such fine and imprisonment.
- (3) The SWRC shall have the authority to order any person who contravenes the law as stated in subsection (2) above to cease his operations, and to make such other orders, including an order to another Water Services Provider to disconnect facilities, as may be necessary to prevent the continuation or reoccurrence of the contravention.

### **31 Limitations on Transfer**

- (1) A Water Services Provider shall not, except as provided under this Law, assign or cede its WSP Licence or transfer its undertaking, or any part thereof, by way of sale, mortgage, lease, exchange or otherwise without the prior written consent of the SWRC provided that, should the SWRC determine that in any instance the circumstances so require, it may establish WSP Licence terms and conditions providing it specific or general consent for any or all of the foregoing.

### **32 Application**

- (1) An application for a WSP Licence shall be made to the SWRC in the form and manner prescribed by the SWRC and be accompanied by the prescribed fee and such information or documents as may be prescribed or as the SWRC may require.
- (2) Within thirty days after applying for a WSP Licence, the applicant shall, at his own expense, cause a notice of the application to be published in the Gazette and in a national newspaper in circulation in the area in which it intends to operate as a Water Services Provider, in accordance with such directions as may be given by the SWRC, stating the period, prescribed by the SWRC, within which objections or representation in connection with the application may be made to the SWRC, and the SWRC shall not issue any WSP Licence until all objections or representations received by the SWRC have been considered.
- (3) Subject to subsection (4), if on consideration of an application that satisfies the requirements of subsection (1), the SWRC is also satisfied that:
  - (a) the applicant is likely to comply with such provisions of this Law, including, without limitation, all codes of conduct, standards, regulations and WSP Licence terms and conditions, as apply to the service or system it intends to provide or operate; and



- (b) the grant of the WSP Licence is in the public interest after consideration of all relevant factors, including but not limited to the following:
    - (i) existing lawful services;
    - (ii) efficient/beneficial use of Prescribed Water Services in the relevant geographic area; and
    - (iii) the socio-economic impact of issuing or failing to issue a WSP Licence,
- the SWRC shall issue the appropriate WSP Licence, as the case may be, to the applicant.
- (4) If on consideration of an application that satisfies the requirements of subsection (1), the SWRC is not satisfied as to the additional matters referred to in subsection (3), it shall refuse to issue a WSP Licence to the applicant, subject to affording the applicant an adequate opportunity to make representations in the matter.
  - (5) The period between the SWRC's receipt of an application under subsection (1) and all documents and information submitted in support of it and the date on which it notifies the applicant of the adequacy of the documents and information shall not exceed one month.
  - (6) The period between the SWRC's receipt of an application that satisfies the requirements of subsection (1), and the date on which the SWRC notifies the applicant of its decision or proposed decision in accordance with subsection (3) or subsection (4), as the case may be, shall not exceed six months, unless the applicant consents to an extension of the period.
  - (7) Notwithstanding subsections (1) to (6) the SWRC may establish simplified procedures for different Water Services Providers such as Water Services Intermediaries so as to expedite the application and licensing process.

### **33 Terms and Conditions of Licence**

- (1) A WSP Licence shall be issued subject to such terms and conditions as are required by this Law or may be prescribed, or as the SWRC may determine, which terms and conditions shall not be inconsistent with the PSP Agreement, where applicable.
- (2) Unless expressly indicated in the WSP Licence, the grant of a WSP Licence shall not hinder or restrict the grant of a WSP Licence to another person for a like purpose and, in the absence of such an express indication, the Water Services Provider shall not claim any exclusivity, provided that the SWRC may allow a WSP Licence to be exclusive for all or part of the period of the WSP Licence, for a specific purpose, for a geographic area, or for some combination of the foregoing.
- (3) A WSP Licence may contain terms and conditions for the WSP Licence to cease to have effect or to be modified or amended by the SWRC in such circumstances as may be specified in the WSP Licence.
- (4) A WSP Licence shall be valid for the period set out in the Licence.

### **34 Determination of Fees and Charges**

- (1) The SWRC shall impose a fee in accordance with this section in relation to all WSP Licences issued under this Law, which shall be payable in such amounts as determined by the SWRC to be a reasonable estimate of the costs which will be incurred by the SWRC in relation to regulation of the Prescribed Water Services to which the WSP Licence relates, and at such intervals as determined by the SWRC.

### **35 Renewal of Licence**

- (1) Subject to this Law, a Water Services Provider may apply to the SWRC for a renewal of the WSP Licence before it expires in the form and manner prescribed and within the period prescribed, which application shall be accompanied by the prescribed fee, if any.

### **36 Amendment of Licence**

- (1) Subject to this section, the provisions of a WSP Licence may be amended:
  - (a) in accordance with the procedures specified in the Licence; or
  - (b) by agreement between the SWRC and the Water Services Provider.
- (2) The Water Services Provider or the SWRC, as applicable, shall publish a notice of the proposed alteration or amendments to the WSP Licence in accordance with such directions as may be given by the SWRC, stating the period, prescribed by the SWRC, within which objections or representations in connection with the amendments may be made to the SWRC, and the SWRC shall not amend any WSP Licence until all objections or representations received by the SWRC have been considered.

## **PART VI: STANDARDS AND TARIFFS**

### **37 Standards**

- (1) The SWRC shall develop, in consultation with applicable Federal and State Ministries, Water Services Providers, Consumers and other interested parties, the following performance standards and codes:
  - (a) standards of overall performance in connection with the provision of Prescribed Water Services and in connection with the promotion of the efficient use of water by Consumers;
  - (b) Water Quality Standards;
  - (c) such technical codes and manuals as may be required for the safe, reliable, and efficient operation of the system; and
  - (d) such other standards, codes and manuals as the SWRC may require.
- (2) Standards, codes and manuals approved by the SWRC pursuant to Subsection (1) shall be binding on the applicable Water Services Providers and shall be published by the applicable Water Services Providers in such manner as the SWRC may direct.
- (3) Different standards may be determined for different Water Services Providers under this section.
- (4) In carrying out its functions under this Law, including setting and monitoring standards under this Section, the SWRC shall consult and cooperate with the State Environmental Protection Agency and other State, Federal and regional agencies responsible for environmental and water resource management regulation.

### 38 Tariffs

- (1) The SWRC shall adopt and provide to the Water Services Provider Tariff methodologies for Tariffs that may be charged by the Water Services Provider for the Prescribed Water Services.
- (2) No Water Services Provider shall fix any Tariff to be charged for Prescribed Water Services unless the Tariff is in accordance with the applicable Tariff methodology adopted by the SWRC.
- (3) In determining Tariff methodologies the SWRC shall have regard to:
  - (a) the particular circumstances of the Prescribed Water Services for which the determination is being made;
  - (b) the costs of producing and supplying the Prescribed Water Services;
  - (c) the interests of the Water Services Provider including assurance of the financial integrity of the Water Services Provider;
  - (d) the cost of complying with relevant health, safety, environmental and social legislation;
  - (e) the need to provide incentives for continued improvement in technical and economic efficiency and quality of Prescribed Water Services;
  - (f) the interests of Consumers, including the need to avoid undue discrimination between Consumers and Consumer categories.
- (4) The SWRC may establish simplified Tariff methodologies for different Water Services Providers such as Water Services Intermediaries.
- (5) Notwithstanding subsection (3)(f) , in establishing Tariff methodologies the SWRC may differentiate among Consumers on the basis of differences in total water consumption, the time periods on which water is consumed, and other such criteria as may affect the cost of providing a service and may allow a lifeline Tariff for some Consumers.
- (6) Prior to approving a Tariff methodology, the SWRC shall give notice in the Gazette and in one or more National newspapers with wide circulation in the State, of the proposed establishment of a Tariff methodology, indicating the period within which objections or representations in connection with the same may be made to the SWRC.
- (7) The SWRC shall fix the date on which the Tariff methodology shall come into operation and it shall cause notice to be given in the Gazette of that date.
- (8) The SWRC shall establish procedures for undertaking fixed and extraordinary reviews of the Tariff methodology, which procedures may provide for the use of an expert review panel including members from outside the SWRC.

*[Comment: Refer to discussion in Introduction and Guidance]*

- (9) Every person upon whom any function has been conferred or imposed in connection with setting Tariffs shall be bound by a Tariff methodology that has come into operation under this Section.
- (10) Every Water Services Provider shall, within the time prescribed by the SWRC, file with the SWRC in such form as the SWRC may prescribe, a schedule showing the Tariffs charged by it for the Prescribed Water Services it provides.
- (11) Any fines or penalties levied against a Water Services Provider in terms of this Law or any other law or regulation shall not be transferable to Consumers.

## PART VII: WATER SERVICES PROVIDERS

### 39 Conditions for provision of Prescribed Water Services

- (1) Prescribed Water Services must be provided on terms and conditions set by the Water Services Provider and consistent with applicable laws and regulations.
- (2) These conditions must:
  - (a) be in writing accessible to the public and available free of charge to any Consumer;
  - (b) accord with applicable National and State Water Laws and Policies;
  - (c) accord with conditions for the provision of Prescribed Water Services contained in this Law and all regulations made pursuant to this Law;
  - (d) accord with every applicable Water Services Development Plan adopted in terms of this Law; and
  - (e) provide for:
    - (i) the technical conditions of existing or proposed extensions of supply;
    - (ii) the determination and structure of Tariffs;
    - (iii) the conditions for payment;
    - (iv) the circumstances under which Prescribed Water Services may be limited or discontinued;
    - (v) procedures for limiting or discontinuing Prescribed Water Services; and
    - (vi) measures to promote water conservation and demand management.
- (3) Procedures for the limitation or discontinuation of Prescribed Water Services must:
  - (a) be fair and equitable; and
  - (b) provide for the required notice of intention to limit or discontinue Prescribed Water Services and for an opportunity to make representations, unless:
    - (i) other Consumers would be prejudiced;
    - (ii) there is an Emergency Situation; or
    - (iii) the Consumer has interfered with the limited or discontinued service;
- (4) Every person who uses Prescribed Water Services provided by a Water Services Provider does so subject to any applicable condition set by that Water Services Provider.
- (5) Where one Water Services Provider provides Prescribed Water Services to another Water Services Provider, it may not limit or discontinue those services for reasons of non-payment, unless it has given at least 30 days' notice in writing of its intention to limit Prescribed Water Services or 60 days' notice in writing of its intention to discontinue those Prescribed Water Services to:
  - (a) the other Water Services Provider;
  - (b) the SWRC .

#### **40 Duty to provide access to Prescribed Water Services**

- (1) Every Water Services Provider has a duty to all Consumers or potential Consumers in its area of jurisdiction, as designated in its WSP Licence, to ensure efficient, affordable, economical and sustainable access to Prescribed Water Services in accordance with the terms of its WSP Licence.
- (2) This duty is subject to:
  - (a) the terms of the WSP Licence and any applicable PSP Agreement;
  - (b) the availability of water resources;
  - (c) the need to regulate access to Prescribed Water Services in an equitable way;
  - (d) the duty of Consumers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for Tariffs for Prescribed Water Services;
  - (e) the duty to conserve water resources;
  - (f) the nature, topography, zoning and situation of the land in question; and
  - (g) the right of the relevant Water Services Provider to limit or discontinue the provision of Prescribed Water Services if there is a failure to comply with reasonable conditions set for the provision of such services.
- (3) A Water Services Provider may not unreasonably refuse or fail to give access to Prescribed Water Services to a Consumer or potential Consumer in its area of jurisdiction.
- (4) In Emergency Situations, a Water Services Provider must take reasonable steps to provide Basic Water Supply to any person within its area of jurisdiction and may do so at cost to the State Government in accordance with standards prescribed by the SWRC.
- (5) A Water Services Provider may impose from time to time reasonable limitations on the use of Prescribed Water Services.
- (6) No provisions of this Section shall be interpreted to expand the obligations of a Water Services Provider under a PSP Agreement awarded and approved in accordance with the provisions of this Law or pre-existing this Law.

#### **41 Rights of Water Services Provider**

- (1) The Water Services Provider may:
  - (a) construct, operate, alter or repair any Water Services Work in accordance with the terms of its WSP Licence and, where applicable, any applicable PSP Agreement and with the permission of the relevant State and Federal Government authorities;
  - (b) levy Tariffs for Prescribed Water Services provided by it in accordance with this Law and the Tariff methodology applicable to it in accordance with this Law; and
  - (c) apply for, enter into agreements for, and perform all obligations related to grants or loans under a Water Sector Programme Commitment.

## **42 Obligations of Water Services Provider**

- (1) A Water Services Provider must:
  - (a) comply with the provisions of its WSP Licence, and regulations, general codes, and other requirements issued by the SWRC from time to time, unless stayed by a court of competent jurisdiction and notwithstanding that the Water Services Provider has or may intend to take legal action challenging any such order or notice;
  - (b) provide the Prescribed Water Services in accordance with all applicable State and Federal Water Laws and any other laws applicable to it;
  - (c) unless expressly exempted by the SWRC, prepare and submit to the SWRC each year such accounting information as the SWRC may require;
  - (d) provide to the SWRC complete and regular information, in the form and substance prescribed, as may be called for by the SWRC concerning the provision of Prescribed Water Services and so as to prove compliance with the approved Tariff, Tariff methodology and with any other obligation of the Water Services Provider under this Law or its WSP Licence and to enable the SWRC to monitor implementation of the Water Service Development Plan.
- (2) Every Water Services Provider shall establish procedures for dealing with complaints by its Consumers or potential Consumers, which procedure and any amendment must be approved by the SWRC.

## **PART VIII: CONSUMERS**

### **43 Consumers**

- (1) In addition to any other right contained in the contract between the Consumer and the Water Services Provider, a Consumer shall have the right to be informed by the Water Services Provider of the rights and obligations of the Water Services Provider under the WSP License.
- (2) A Consumer shall in addition to any other obligation contained in any contract between the Consumer and the Water Services Provider :
  - (a) pay for the services provided or made available in accordance with the applicable Tariff;
  - (b) Pay the surcharge on Tariff imposed under this Law;
  - (c) Comply with the technical regulations issued by the Water Services Provider related to consumer installations including their maintenance;
  - (d) Allow the Water Services Provider to install a meter on the property where appropriate, and keep the meter in the same condition as existed when installed, fair wear and tear excepted;
  - (e) Report a damaged meter as soon as the damage occurs or becomes known to the Consumer;
  - (f) Permit the Water Services Provider or its agents and employees to read the meter in accordance with the terms established in the WSP Licence.
- (3) Where the Consumer fails, after the prescribed notice, to comply with subsection (2) the Water Services Provider may suspend the service of that Consumer except where the Consumer is an essential service.

## **PART IX: COMPLAINTS, ENFORCEMENT AND APPEALS**

### **44 Right of Complaint to the SWRC**

- (1) Any Consumer or Water Services Provider may submit a complaint to the SWRC in respect of a matter arising under this Act.
- (2) A dispute between a Consumer and a Water Services Provider that relates to the provision of Prescribed Water Services or the Tariff chargeable for the service provided by a Water Services Provider shall in the first instance be referred to the SWRC for investigation and settlement.
- (3) The SWRC must investigate complaints received by it unless it is of the opinion that:
  - (a) the complaint is trivial, frivolous, vexatious or not made in good faith; or
  - (b) the complaint is on the same subject already under investigation.

### **45 Investigations**

- (1) Upon:
  - (a) receiving a complaint from any Consumer or other Water Services Provider, or
  - (b) on its own initiative, the SWRC may inquire into the conduct or functioning of any Water Services Provider in carrying out the Water Services Provider's obligations under this Law, rules or regulations, codes of conduct, or the terms and conditions of the WSP Licence.

### **46 Enforcement Orders**

- (1) Without derogation from its other powers in this Part where the SWRC is satisfied that a Water Services Provider is contravening, has contravened or is likely to contravene any of the conditions of the WSP Licence, the SWRC may serve upon the Water Services Provider an enforcement order:
  - (a) requiring the Water Services Provider to do, or not to do, such things as are specified in the order for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the WSP Licence; and
  - (b) stipulating the period within which any requirement referred to in subsection (1)(a) shall be commenced and completed.
- (2) A notice of any enforcement order shall be published by the SWRC in the Gazette and in the public media or in such manner as the SWRC considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention or threatened contravention of the WSP Licence.
- (3) Before serving an order in terms of subsection (1) the SWRC shall serve a notice upon the Water Services Provider concerned:
  - (a) specifying the grounds upon which the order is to be issued and what the SWRC considers is required for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the WSP Licence;
  - (b) stipulating the maximum period that the SWRC considers reasonable for the implementation of any requirement it proposes to order; and
  - (c) allowing the Water Services Provider, to make representations to the SWRC within such period from the date of service of the notice as it shall specify.
- (4) An order served under subsection (1), may specify a penalty for each day that the Water Services Provider subjected to the order is in default of compliance with the order.

#### **47 Suspension or Cancellation of Licence**

- (1) Subject to this section, and after an inquiry, including an opportunity for the Water Services Provider to show cause as to why the WSP Licence should not be cancelled, the SWRC may cancel or suspend any WSP Licence if, in its opinion:
  - (a) the WSP Licence was issued through fraud or the misrepresentation or non-disclosure of a material fact by the Water Services Provider;
  - (b) the Water Services Provider has failed, without reasonable cause, to comply with an enforcement order issued by the SWRC;
  - (c) the Water Services Provider has failed, after appropriate notice in accordance with the terms of the Licence, to comply with any term or condition of its WSP Licence, the breach of which is expressly declared by such WSP Licence to render it liable to cancellation; or
  - (d) the financial position of the Water Services Provider is such that he is unable to fully and efficiently discharge the duties and obligations imposed by the WSP Licence.
- (2) Before cancelling a WSP Licence, the SWRC shall notify the Water Services Provider in writing of its intention to cancel the WSP Licence concerned and the reasons for doing so, and shall allow the Water Services Provider an opportunity to demonstrate, within 60 days following the delivery of such a notification, that circumstances have changed such that cancellation may no longer be warranted.
- (3) Notwithstanding subsections (1) to (2), instead of cancelling a WSP Licence, the SWRC may allow the WSP Licence to remain in force, subject to such further terms and conditions as it may deem necessary to impose, and such terms and conditions shall form part of the WSP Licence.

#### **48 Power in relation to Statutory Managers**

- (1) Without derogating from the SWRC's powers in this Part, where a WSP Licence has been suspended or cancelled the Governor may, where necessary in the State interest and acting on the recommendation of the SWRC, direct that the Water Service Provider be operated under the management and control of a competent person (in this section referred to as the 'statutory manager').
- (2) The statutory manager may exercise all relevant powers and perform all relevant duties on behalf of the Water Services Provider to the exclusion of the Water Services Provider; and may use the infrastructure of the original Water Services Provider to the extent necessary to perform those functions.
- (3) As soon as a Water Services Provider is in a position to resume its functions effectively, the statutory manager must stop exercising the delegated powers and performing the delegated duties.
- (4) The statutory manager may recover from the original Water Services Provider:
  - (a) all outstanding expenses which it incurred; and
  - (b) all losses which it suffered,as a result of having acted in accordance with this section.
- (5) The procedure set out in subsection (3) need not be followed in an Emergency Situation.
- (6) The suspension or cancellation of a WSP Licence and the appointment of a statutory manager under this section shall not prejudice or affect the security of any holder of any security interest in the Water Services Provider or any mortgage or the right of enforcing the security.



#### **49 Review of Decisions by SWRC**

- (1) Subject to this section, any person who is aggrieved by:
  - (a) a decision of the SWRC not to issue a WSP Licence;
  - (b) any term or condition of a WSP Licence issued to him, or a refusal by the SWRC to specify a term or condition in a WSP Licence;
  - (c) a refusal by the SWRC to renew a WSP Licence;
  - (d) any amendment of a WSP Licence or a refusal by the SWRC to amend a WSP Licence;
  - (e) the cancellation of a WSP Licence;
  - (f) the grant or refusal by the SWRC to grant any approval or authority in terms of this Law;
  - (g) the outcome of any arbitration or mediation by the SWRC of a dispute between Water Services Providers;
  - (h) a decision of the SWRC with respect to Tariffs; or
  - (i) any other decision of the SWRC,may within fourteen days after receipt of that decision, apply to the SWRC for reconsideration of the matter.
- (2) An application shall only be heard under this section if the applicant –
  - (a) relies on new facts or changed circumstances that could not, with ordinary due diligence, have become known to the applicant while the matter was being considered by the SWRC; or
  - (b) alleges that the decision was based upon material errors of fact or law.
- (3) Where an application has been made for review under sub-section (1) the Appellate Body may not hear an appeal under s.50 until such review has been completed.

#### **50 Right of Appeal**

- (1) A person who is aggrieved by any decision of the SWRC, including any condition imposed by the SWRC, may appeal against the decision to the Appellate Body established pursuant to Schedule 2.  
*[Guidance Note: Refer to discussion in the Introduction and Guidance Notes].*
- (2) Any such appellant must note an appeal by lodging a written notice of appeal with the Appellate Body and the SWRC within 21 days of the appellant becoming aware of the decision.
- (3) The appeal shall only be heard where the grounds for appeal are:
  - (a) the decision was not made in accordance with law; or
  - (b) the determination is based wholly or partly on a material error of fact.
- (4) The Appellate Body may dismiss an appeal if it is of the opinion that:
  - (a) the appeal is frivolous or vexatious or not made in good faith; or
  - (b) the appellant does not have a sufficient interest in the subject matter of the appeal.
- (5) A person who has made an application for a WSP Licence may appeal to the Appellate Body if the SWRC fails to take a decision on the application within a reasonable time.

- (6) An appeal under subsection (5)
  - (a) must be conducted as if the application had been refused; and
  - (b) must be noted by lodging a written notice of appeal with the Appellate Body and the SWRC .
- (7) The Appellate Body may on appeal confirm, vary or overturn any decision of the SWRC concerned.
- (8) The Appellate Body may prescribe the procedure for conducting an appeal under this section.
- (9) A person who has received an unfavourable determination from the Appellate Body may appeal against the decision of the Appellate Body to the High Court on the basis of a mistake of law only within 30 days from the decision of the Appellate Body.

## **PART X: WSP WATER SERVICES DEVELOPMENT PLAN AND STATE-WIDE DEVELOPMENT PLANS**

### **51 Duty to prepare draft Water Services Development Plan**

- (1) Every Water Services Provider within the jurisdiction of this Law must, within one year after the commencement of this Law, and thereafter at intervals prescribed by the SWRC,
  - (a) prepare and submit to the SWRC:
    - (i) a draft Water Services Development Plan for its area of jurisdiction; and
    - (ii) a summary of that plan.
- (2) Notwithstanding subsection (1), the SWRC may either
  - (a) waive the requirement for a Water Services Development Plan, or
  - (b) establish a simplified planning questionnaire,
    - for different Water Services Providers such as Water Services Intermediaries.

### **52 Contents of draft Water Services Development Plan**

- (1) Every draft Water Services Development Plan must be in the form and contain the details prescribed by the SWRC, consistent with the any applicable national guidelines and any State Water Sector Programme Commitments, and shall include details of the following:
  - (a) Details of the existing water supply situation in the Water Services Provider's service area including:
    - (i) details of the service area boundaries;
    - (ii) a schedule of the principal Water Services Works used by the Water Services Provider;
    - (iii) details of the size and distribution of the population within that area;
    - (iv) details of the existing Prescribed Water Services provided in the area (including population served and level of service received and details regarding pressure, availability, unaccounted for water losses, interruptions in service due to power failures);
    - (v) current operation arrangements including PSP arrangements, the use of secondary service providers (including vendors and tanker services) and of the estimated number and location of persons within the area who are not being provided with Basic Water Services;

- (b) Development planning objectives and priorities of the Water Services Provider;
- (c) A five year investment plan in the form and substance prescribed by the SWRC; and
- (d) An operational management plan in the form and substance prescribed by the SWRC.

### **53 Implementing Draft Water Services Development Plan**

- (1) A Water Services Provider must:
  - (a) take reasonable steps to bring its draft Water Services Development Plan to the notice of its Consumers, potential Consumers, and other Water Services Providers within its area of jurisdiction; and
  - (b) invite public comment thereon to be submitted within a reasonable time.
- (2) A copy of the draft Water Services Development Plan, including a copy of its summary, all written comments and a report on all other comments, other than written comments, must be:
  - (a) available for inspection at the offices of the Water Services Provider; and
  - (b) obtainable against payment of a nominal fee.

### **54 Approval of Water Services Development Plan**

- (1) The SWRC shall review the Water Services Development Plan to ensure that it is consistent with this Law and the terms and conditions of the WSP Licence and any applicable PSP Agreement and shall monitor implementation of the Water Services Development Plan.

### **55 Deviation from Water Services Development Plan**

- (1) A Water Services Provider shall not undertake activities that constitute a substantial deviation from a Water Services Development Plan approved by the SWRC unless it is embodied in a new Water Services Development Plan adopted in accordance with the procedure set out in this Part.

### **56 Reporting on implementation of Water Services Development Plan**

- (1) A Water Services Provider must report on the implementation of its Water Services Development Plan during each financial year in the form and times prescribed by the SWRC.

### **57 State-wide Development Plan**

- (1) In consultation with the applicable State Ministries, the SWRC must prepare, on an annual basis, a State-Wide Development Plan that is an aggregation and harmonization of the approved Water Services Development Plans in accordance with and in furtherance of National Water Laws and Policies and State Water Laws and Policies and any Water Sector Programme Commitments of the State, and submit the same for approval by the House of Assembly.
- (2) The State-Wide Development Plan will prioritise among the approved Water Services Development Plans funding needs to support applications for funding from the State or Federal Government (including under any Water Sector Programme Commitments of the State).
- (3) Where the House of Assembly does not approve or requires any changes to the State Wide Development Plan recommended by the SWRC is shall be required to publish written reasons for such decision.

- (4) The SWRC shall cause the State-Wide Development Plan to be published in the Gazette.

## **58 Financial Assistance**

- (1) The SWRC is authorized to perform any obligations imposed on it under any Water Sector Programme Commitments or any functions delegated to it by the Federal or State Government in accordance with such programme or otherwise in relation to the advance of financial assistance to Water Services Providers by the Federal or State Governments, including, as applicable, to make recommendations with respect to applicants for funds available under such programmes in accordance with the terms and conditions applicable to the programme.
- (2) The SWRC may refuse to recommend that financial assistance be provided to any Water Services Provider which fails to comply with its obligations in terms of this Law.

## **PART XI: PSP AGREEMENTS**

### **59 PSP Agreements**

- (1) The State Government (directly or through the State Water Agency or any publicly owned Water Services Provider) may where otherwise permitted in accordance with the provisions of this Law and other applicable State laws and policies, enter into a PSP Agreement with a Person to perform any functions, services or facilities which may be exercised, performed or provided by a Water Services Provider under this Law.

*[Comment: Refer to discussion in Introduction and Guidance]*

- (2) The award of a PSP Agreement shall be carried out in accordance with all applicable State and Federal laws and policies, including the following provisions:
  - (a) except as otherwise authorized by the SWRC, PSP Agreements shall be awarded by open and competitive bidding, subject to bidding and award guidelines, including adequate technical requirements;
  - (b) the scope of the project or activities the subject of the PSP Agreement (including the design, construction, maintenance or operation of new Water Services Works or the modernisation, rehabilitation, expansion, management or operation of existing Water Services Works) must be in conformity with the State Wide Development Plan, or otherwise have been approved by the responsible State Ministry;
  - (c) no representations shall be made of State or Federal Government funding or subsidies except as previously approved in writing by the State or the Federal Government, as the case may be;
  - (d) the awards shall be consistent with [the bidding and award guidelines developed for the PSP Agreement] and with applicable National Water Laws and Policies, and State Water Laws and Policies, any other applicable laws, circulars, regulations and guidelines relating to the tendering of public contracts and private sector investment into infrastructure; and
  - (e) the PSP Agreement shall be approved by the SWRC but such approval function is strictly limited to ensuring that the PSP Agreement is in compliance with this Law and the applicable Water Services Development Plan and that the prescribed procedures for award of the PSP Agreement have been followed.
- (3) The SWRC shall develop further provisions for the procedure for award of PSP Agreements which may include compulsory provisions to be included in a PSP Agreement.
- (4) As soon as a PSP Agreement has been concluded, the Water Services Provider must supply a copy thereof to the SWRC.

## **PART XII: STATE INFORMATION SYSTEM**

### **60 Establishment of State Information System**

- (1) The SWRC must ensure that there is a State Information System on Prescribed Water Services.
- (2) The SWRC may form part of a National information system operated by the Federal Ministry of Water Resources relating to water generally.
- (3) The SWRC must provide reports from the State Information System to the National information system.
- (4) The SWRC must take reasonable steps to ensure that information provided is in a format accessible to all stake-holders.

### **61 Purpose of State Information System**

- (1) The purpose of the State Information System is:
  - (a) to record and provide complete and accurate data for the development, implementation and monitoring of Prescribed Water Services in the State and as necessary for the implementation of National Water Laws and Policies; and
  - (b) to provide information to Water Services Providers, Consumers and other members of the public:
    - (i) to enable them to monitor and compare the performance of Water Services Providers;
    - (ii) for research purposes; and
    - (iii) for any other lawful reason.

### **62 Provision of information**

- (1) The SWRC may require any Water Services Provider and Consumer to furnish information to be included in the State Information System.
- (2) The SWRC or the provider of the State Information System may charge a reasonable fee for making information available, subject to the objectives of transparency and effective public access to relevant information.

## **PART XIII: GENERAL PROVISIONS**

### **63 Compliance with other laws**

- (1) No approval given under this Law and nothing in this Law relieves any Water Services Provider or any other person from complying with any other law relating to the management or regulation of the environment or water resources; or with any other applicable State or Federal Water Laws or Policies including, where required, any obligation on a Water Services Provider to obtain a licence or permit to abstract water to be used in providing the Prescribed Water Services.

## **64 Entry and inspection of property**

- (1) Any person authorised in writing by the SWRC or any Water Services Provider may:
  - (a) at any reasonable time and without prior notice, subject to limitations set out in subsection (3), enter any property and inspect any Water Services Work in order to ascertain whether this Law or any regulation or directive made under it is being complied with;
  - (b) after reasonable notice to the owner or occupier of any property, enter that property with the necessary persons, vehicles, equipment and material:
    - (i) to repair, maintain, remove or demolish any Water Services Work belonging to or operated by the Water Services Provider concerned;
    - (ii) to remove vegetation interfering with any Water Services Work belonging to or operated by the Water Services Provider concerned;
    - (iii) to establish the suitability of any water source or site for the construction of a Water Services Work;
    - (iv) search, excavate, bore or carry on any activity necessary for the recovery or measurement of water; and
  - (c) after reasonable notice to the owner or occupier of any property, cross the property in order to enter another property lawfully.
- (2) Any person entering property must identify himself or herself and present his or her authorisation.
- (3) A dwelling, private residence or business may only be entered:
  - (a) where it is necessary in terms of this Law to do so; and
  - (b) on reasonable notice; and
  - (c) at a reasonable time.

## **65 Offences**

- (1) No person may:
  - (a) continue the wasteful use of water after being called upon to stop by the SWRC;
  - (b) unlawfully and intentionally or negligently interfere with any Water Services Works (including destruction of pipes, tampering with meters, etc.);
  - (c) make any unauthorised connection to any Water Services Works;
  - (d) intentionally obstruct any person exercising or attempting to exercise any right of entry and inspection of property under section 64;
  - (e) fail or refuse to give information, or give false or misleading information when required to give information in terms of this Law; and
  - (f) fail to provide access to any books, accounts, documents or assets when required to do so in terms of this Law.
- (2) Any person who contravenes subsection (1) is guilty of an offence and liable, on conviction, to a fine or to imprisonment or to both such fine and imprisonment in accordance with Schedule 1.
- (3) Whenever an act or omission by any employee or agent:
  - (a) constitutes an offence in terms of this Law, and takes place with the express or implied permission of any employer, the employer shall, in addition to the employee or agent, be liable to conviction for that offence; or
  - (b) would constitute an offence by the employer in terms of this Law, that employee or agent shall in addition to that employer be liable to conviction for that offence.

## **66 Repeal of laws, and savings**

- (1) The laws [pre-existing this Law] are hereby repealed to the extent necessary to avoid a conflict with any provision of this Law, or the orderly implementation of this Law, or the achievement of the main objects of this Law as set out in Section 3.
- (2) The governance, name and service areas of the State Water Agency remains as defined in the [*State Water Agency Law*] [until the State Water Regulatory Commission determines otherwise by notice in the Gazette].
- (3) All existing rights and obligations of the State Water Agency remain in force after the commencement of this Law.
- (4) Anything done before the commencement of this Law by the State Water Agency and any regulation made or condition set under or in terms of any law repealed by subsection (1) remains valid and is deemed to have been done, made or set under or in terms of the corresponding provision of this Law if:
  - (a) it is capable of being done, made or set under or in terms of this Law; and
  - (b) it is not in conflict with the main objects of this Law as set out in Section 3.
- (5) The service areas, and existing rights and obligations of any Water Services Provider operating under a PSP Agreement pre-existing this Law remain as set out in the PSP Agreement.

## SCHEDULE 1: PENALTIES

*[Comment: States may wish to include a detailed schedule of fines or imprisonment terms applicable in the case of violations of the provisions of relevant sections of the Law. The following Schedule is an example only, incorporating the various breaches and offences referred to in this Law and where available possible fine and imprison terms ]*

S/No. Violation	FINES/Imprisonment Terms	
	Minimum	Maximum
Any officer or employee or agent of the SWRC fails without just cause to comply with a requirement of an auditor (s.19(4))		
A Water Services Provider contravenes the Law on obtaining the required WSP Licences (s30(2))		
A SWRC Commissioner contravenes the provisions of the Law relating to requirements to disclose pecuniary interests (s.14)		
Wasteful Use of Water (s.65(a))		
Interference with Water Services Works (s.65)		
Failure or refusal to give information (s.65(e))		



## **SCHEDULE 2: APPELLATE BODY**

*[Guidance Note: This Schedule is to be completed following determination by the State of the proposed structure of the Appellate Body. Refer to discussion in Introduction and Guidance.]*