

INKOMATI-USUTHU CATCHMENT MANAGEMENT AGENCY

INDUCTION OF NEW GOVERNING BOARD MEMBERS AND EMPLOYEES

1. INTRODUCTION

1.1 Establishment of the Inkomati-Usuthu Catchment Management Agency (IUCMA)

The Inkomati Catchment Management Agency (ICMA) was established in terms of section 78(1) of the National Water Act 36 of 1998 by the then Minister of Water Affairs and Forestry, Mr Ronald Kasrils under Government Notice No. 397 of 26 March 2004 in Government Gazette No. 26185.

The area of operation of the ICMA includes all the properties in respect of which any person is entitled to use water by virtue of entitlements in terms of section 22(1) of the National Water Act from –

- (i) the Sabie-Sand-, Crocodile (East)-, Komati River-, Nwaswitsontso- and Nwanedzi Catchments (Primary drainage region X); and
- (ii) any other water resource situated outside the area described in paragraph (i) above, which water resource and accompanying area the Department of Water Affairs and Forestry or the responsible authority may require the ICMA to control,

Which is situated in the Water Management Area number 5 in the Province of Mpumalanga, southern part of the Limpopo Province and the northern part of the Kingdom of Swaziland.

With the municipal elections in March 2006, the provincial and municipal boundaries were re-demarcated. With this process the part of the area of the ICMA that was within the southern part of Limpopo became part of Mpumalanga.

After the institutional realignment process by the then Department of Water Affairs, the former Minister of Water and Environmental Affairs, Ms Edna Molewa promulgated the Inkomati-Usuthu Catchment Management Agency (IUCMA) under Government Notice No. 330 of 2 May 2014 in Government Gazette No. 37602. In terms of section 78(4) of the National Water Act 36 of 1998 the area of the ICMA was extended by merging the Inkomati water management area with the Usuthu Catchment which was part of the dissolved Mhlatuzi-Usuthu Catchment Management Agency and the name was changed to Inkomati-Usuthu Catchment Management Agency (IUCMA). It is still the same legal person or entity. After the national and provincial elections on 7 May 2014, the Department of Water and Environmental Affairs became the Department of Water and Sanitation with Ms Nomvula Makonyane as the Minister.

1.2 Legal Status of the IUCMA and Governing Board

In terms of section 79(1) of the National Water Act a catchment management agency is a body corporate and has the powers of a natural person of full capacity, except those powers which –

- (a) by nature can only attach to natural persons; or
- (b) are inconsistent with the National Water Act.

A catchment management agency may perform any of its functions or any function which is reasonably incidental to its functions, outside its water management area, if it does not –

- (a) limit its capacity to perform its functions in its water management area; or
- (b) detrimentally affect another water management area.

In performing its functions, a catchment management agency must –

- (a) be mindful of the constitutional imperative to redress the results of past racial and gender discrimination and to achieve equitable access for all to the water resources under its control;
- (b) strive towards achieving co-operation and consensus in managing the water resources under its control; and
- (c) act prudently in financial matters.

The IUCMA is listed as a national public entity in Schedule 3A of the Public Finance Management Act 1 of 1999. A national public entity is defined in section 1 of the Public Finance Management Act to mean –

- (a) a national government business enterprise; or
- (b) a board, commission, company, corporation, fund or any other entity (other than a national government business enterprise) which is –
 - (i) established in terms of national legislation;
 - (ii) fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation; and
 - (iii) accountable to Parliament.

In terms of section 49 of the Public Finance Management Act the Governing Board is the accounting authority of IUCMA.

2. LEGISLATION APPLICABLE TO THE IUCMA

Inter alia the following legislation is applicable on the IUCMA:

- Constitution of the Republic of South Africa, 1996
- National Water Act 36 of 1998 and Regulations
- Public Finance Act 1 of 1999 and National Treasury Regulations
- Water Act 54 of 1956 in respect of Irrigation Boards
- Labour Relations Act 66 of 1995

- Basic Conditions of Employment Act 75 of 1997
- Skills Development Act 97 of 1998
- Skills Development Levies Act 9 of 1999
- Employment Equity Act 55 of 1998
- Occupational Health and Safety Act 85 of 1993
- Compensation for Occupational Injuries and Disease Act 130 of 1993
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
- Medical Aid Scheme Act 131 of 1994
- Prevention and Combating of Corrupt Activities Act 12 of 2004
- Protected Disclosures Act 26 of 2000
- Road Traffic Act and Regulations
- National Archives Act 43 of 1996
- Legal Deposit Act 54 of 1997
- Public Audit Act 25 of 2004
- Income Tax Act 58 of 1962

3. POWERS AND FUNCTIONS OF THE IUCMA

The IUCMA is an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996. Section 41(1) (f) of the Constitution reads as follows:

(1) All spheres of government and all organs of state within each sphere must:

(f) not assume any power or function except those conferred on them in terms of the Constitution;

The meaning of section 41(1) (f) of the Constitution is that an organ of state may exercise powers and perform functions only if such powers or functions are conferred on it by the Constitution or legislation in terms of the Constitution.

In the case of the IUCMA, the empowering legislation in terms of the Constitution regarding powers and functions are mainly the National Water Act and Public Finance Management Act.

3.1 National Water Act

3.1.1 “responsible authority” is defined in section 1 and in relation to a specific power or duty in respect of water uses, means –

- (a) if that power or duty has been assigned by the Minister to a catchment management agency, that catchment management agency; or
- (b) if that power or duty has not been assigned, the Minister;

3.1.2 Section 19

The IUCMA as catchment management agency has the powers and functions in respect of the prevention and remedying of water resource pollution as stipulated in section 19.

3.1.3 Section 20

The IUCMA as catchment management agency has the powers and functions in respect of the control of emergency incidents in respect of water resource pollution or potential water resource pollution as stipulated in section 20.

3.1.4 Chapter 4

Chapter 4 lays the basis for regulating water use. The various types of licensed and unlicensed entitlements to water use are dealt with in detail. Water use is controlled by the relevant responsible authority which can be either the Minister or the relevant assigned catchment management agency. At present the water use powers and duties are not assigned to the IUCMA.

3.1.5 Section 25

However, in terms of section 25 a water management institution may at the request of a person authorised to use water for irrigation under the NWA, allow that person on a temporary basis and on such conditions as the water management institution may determine, to use some or all of that water for a different purpose, or to allow the use of some or all of that water on another property in the same vicinity for the same or a similar purpose. In terms of section 1 of the NWA a “water management institution” means a catchment management, a water user association, a body responsible for international water management or any person who fulfils the functions of a water management institution in terms of the NWA. Considering the content of section 25 and the definition of a water management institution, confusion exists regarding who would administer the temporary authorisations in terms of section 25 where there are more than one kind of water management institution within one area such as is the case within the water management area of the IUCMA.

3.1.6 On 15 January 2015 the Minister of Water and Sanitation delegated the following provisions of the Responsible Authority to the IUCMA that were withdrawn on 12 December 2015:

3.1.6.1 Section 33

The Responsible Authority powers and functions in terms of section 33 was delegated to the IUCMA on 15 January 2015 by the Minister of Water and Sanitation. This is about the declaration of a water use that does not fall within the

definition of an existing lawful water use in section 32 to be an existing lawful water use.

3.1.6.2 Section 34

The powers and functions of a Responsible Authority in terms of section 34 have been delegated to the IUCMA on 15 January 2015 by the Minister of Water and Sanitation.

Section 34(1) is about the continuation of an existing lawful water use, even for successors in law. This is not a power or function of a Responsible Authority.

Section 34(2), the power to register an existing lawful use subject to section 26(1) (c) and section 35 the power to verify the lawfulness or extent of an existing water use by written notice requiring any person claiming an entitlement to that water use to apply for a verification of that use were delegated on 17 December 2010 to the ICMA by the Minister of Water and Environmental Affairs and in terms of Government Notice 330 of 2 May 2014 the IUCMA received the same delegations as what the ICMA had. On 15 January 2015 this power of a Responsible Authority was delegated again to the IUCMA by the Minister of Water and Sanitation.

3.1.6.3 Section 35

On 15 January 2015 the Minister of Water and Sanitation delegated the powers and functions of a Responsible Authority in section 35(1) to (4) to the IUCMA. In short it is the power to determine the extent and lawfulness of any existing lawful water use applied for verification in terms of section 35(1) and contemplated in section 32(1).

3.1.6.4 Section 40

The Minister of Water and Sanitation delegated the powers and functions in section 40 on 15 January 2015 to the IUCMA. This section stipulates that an application for a water use licence must be submitted to the Responsible Authority which is more about a procedure to be followed.

3.1.6.5 Section 41

On 15 January 2015 the Minister of Water and Sanitation delegated the powers and functions of a Responsible Authority in section 41 to the IUCMA. These powers and functions include the determination of the form of water use licence applications, the information to be submitted with water use licence applications and the licence application processing fees.

It also includes the power to require an applicant to give notice in newspapers or other media of the water use licence application.

3.1.6.6 Section 42

The Minister of Water and Sanitation delegated on 15 January 2015 the duties of a Responsible Authority in terms of section 42 to provide reasons for its decision on a water use licence application to the applicant and any person who lodged an objection to the application, to the IUCMA.

3.1.6.7 Section 44

The power of a Responsible Authority to condone a late application for a water use licence and the charging of a reasonable additional fee for processing the late application in terms of section 44 has been delegated to the IUCMA on 15 January 2015 by the Minister of Water and Sanitation.

3.1.6.8 Section 51

The power of a Responsible Authority to adjudicate upon conflict claims between a licensee and successor-in-title or between different successors-in-title in respect of claims for the amendment or substitution of licence condition in terms of section 51(1) has been delegated by the Minister on 15 January 2015 to the IUCMA.

3.1.6.9 Section 52

The provisions of section 52(1) and (2) have been delegated by the Minister of Water and Sanitation to the IUCMA on 15 January 2015 allowing a licensee to apply to the Responsible Authority for the renewal of a licence before the expiry date of the licence. However, the powers of the Responsible Authority in terms of section 52(3) and (4) to amend or renew a licence are not delegated to the IUCMA.

3.1.6.10 Section 53

The powers and functions in section 53 of the Responsible Authority to issue notices and directives in respect of contraventions of provisions of the NWA in Chapter 4 have been delegated on 15 January 2015 to the IUCMA by the Minister of Water and Sanitation. The powers and functions of the Responsible Authority also include civil procedure action that may be instituted in the case of failure of compliance to directive by a person.

3.1.6.11 Section 54

The powers of the Responsible Authority in terms of section 54 to suspend or withdraw the entitlement to use water of a person under the specified circumstances of non-compliance have been delegated on 15 January 2015 to the IUCMA by the Minister of Water and Sanitation.

3.1.6.12 Section 55

The duty of the Responsible Authority to accept the surrendering of any licence if there is no good reason not to do so in terms of section 55(1) has been delegated on 15 January 2015 to the IUCMA by the Minister of Water and Sanitation together with the power to refund the licensee any charge or part of any charge paid in respect of a licence surrendered.

3.1.7 Responsible Authority Powers and Functions that should also be delegated

The following in respect of the powers and functions of the Responsible Authority should have been delegated as well:

Section 28(3) to (6) – Extension of licence period if done as part of general review of licences in terms of section 49.

Section 29 – Conditions for issue of (general authorisations) and licences (Only in respect of licences)

Section 30 – Security by applicant (if necessary for the protection of water resource or property)

Section 49 – Review and amendment of licences

Section 50 – Formal amendment of licences

3.1.8 Section 57

In terms of section 57 water use charges may be made within a specific water management area or on a national or regional basis. Charges made within a specific water management area may be made by and are payable to the relevant water management institution. In the case of the Inkomati-Usuthu Catchment Management area the IUCMA is the relevant water management institution. The water charges must be made within specifically the IUCMA water management area and such charges must be made by the IUCMA and are payable to the IUCMA as relevant water management institution. Currently the charges are made by the Minister and the charges are paid to the state. The process to correct this has started.

The Minister delegated on 15 January 2015 the provisions of section 57 to the IUCMA while it already empowers the IUCMA to make and receive the water resource management charges that must be made per water management area. This delegation should be withdrawn.

3.1.9 Section 58

The Minister may direct any water management institution to recover any water use charges made by the Minister on a national or regional basis from water users within

its water management area or area of operation as the case may be. The IUCMA as water management institution can be directed by the Minister as such.

The delegation of the provisions of section 58 to the IUCMA on 15 January 2015 should also be withdrawn.

3.1.10 Section 63

The Minister may delegate a power and duty vested in the Minister inter alia to a water management institution that includes the IUCMA.

3.1.11 Section 72

In areas where a catchment management agency is not operational all the powers and duties of a catchment management agency including those described in sections 79 and 80 and in Schedule 3 vest in the Minister. Those powers and duties in Schedule 3 not assigned by the Minister to the catchment management agency still vest in the Minister.

3.1.12 Section 73

The Minister may after consultation with the relevant catchment management agency by notice in the Gazette assign to that catchment management agency a power or duty of a responsible authority and any power or duty in Schedule 3. The Minister must also promote the management of water resources at catchment management level by assigning powers and duties to catchment management agencies when it is desirable to do so. In terms of a governing board resolution of 7 July 2008 a request was submitted during August 2008 that the Minister assign all the powers and duties in Schedule 3 to the ICMA. Currently Schedule 3 is delegated to the IUCMA as was the case when it was the ICMA.

3.1.13 Section 75

The director-general may delegate any power including a power granted or delegated director-general under the National Water Act to inter alia a water management institution which includes catchment management agencies. The IUCMA did not receive any such delegated powers.

3.1.14 Section 79

As catchment management agency the IUCMA is a body corporate and has the powers of a natural person of full capacity, except those powers which by nature can only be attached to natural persons and which are inconsistent with the Act.

Schedule 4 of the Act applies to the IUCMA and its governing board, committees and members.

A catchment management agency may perform any of its functions and functions reasonably incidental to its functions outside its water management area if this does not limit its capacity to perform its functions in its water management area or detrimentally affect another water management institution.

A catchment management agency must in performing its functions be mindful of the constitutional imperative to redress the results of past racial and gender discrimination and to achieve equitable access for all to the water resources under its control, strive towards achieving co-operation and consensus in managing the water resources under its control and to act prudently in financial matters.

3.1.15 Section 80

The IUCMA as catchment management agency has the following initial functions in respect of the protection, use, development, conservation, management and control of water resources:

- Investigate and advise interested persons;
- Development of catchment management strategy;
- Co-ordinate the related activities of water users and water management institutions;
- Promote the co-ordination of the implementation of water services development plans; and
- Promote community participation

3.1.16 Section 84

A catchment management agency may raise any funds required by it for the purpose of exercising any of its powers and carrying out any of its duties in terms of this Act.

A catchment management agency must be funded by money appropriated by Parliament, water use charges and money obtained from any other lawful source.

3.1.17 Section 86

The catchment management agency may delegate any of its powers to a member of the governing board, an employee or a committee of the catchment management agency consisting which consists only of members of the governing board or employees of the catchment management agency.

With the written consent of the Minister the catchment management agency may also delegate powers to any other person or body.

The catchment management agency may not delegate the power to delegate or any power to make water use charges.

The power to authorise the use of water may be delegated only to a committee consisting of three or more members of the Governing Board.

3.1.18 Section 92

The establishment of Water User Associations were delegated to the ICMA on 17 December 2010 by the Minister of WEA subject to certain conditions, which is now a delegated power to the IUCMA. This delegation includes the amendment of Water User Associations.

3.1.19 Section 124

In terms of section 124 the Minister or a water management institution may, in writing, appoint any suitable person as an authorised person to perform the functions contemplated in section 125(1), (2) and (3). The ICMA as a catchment management agency is a water management institution as defined in section 1 of the NWA.

Section 125(1), (2) and (3) read as follows:

- 1) *An authorised person may, at any reasonable time and without prior notice, enter or cross a property with the necessary persons, vehicles, equipment and material in order to carry out routine inspections of the use of water under any authorisation.*
- 2) *An authorised person may enter a property with the necessary persons, vehicles, equipment and material--*
 - a) *after giving reasonable notice to the owner or occupier of the property, which notice must state the purpose of the proposed entry; and*
 - b) *after obtaining the consent of the owner or occupier of that property, in order to--*
 - i) *clean, repair, maintain, remove or demolish any government waterwork operated by any water management institution;*
 - ii) *undertake any work necessary for cleaning, clearing, stabilising and repairing the water resource and protecting the resource quality;*
 - iii) *establish the suitability of any water resource or site for constructing a waterwork;*
 - iv) *undertake any work necessary to comply with an obligation imposed on any person under this Act, where that person has failed to fulfil that obligation;*
 - v) *erect any structure and to install and operate any equipment on a temporary basis for monitoring and gathering information on water resources; or*

vi) *bring heavy equipment on to a property or occupy a property for any length of time.*

3) *An authorised person may, at any reasonable time and without prior notice, on the authority of a warrant, enter a property with the necessary persons, vehicles, equipment and material, and perform any action necessary to-*

a) *investigate whether this Act, any condition attached to any authorised water use by or under this Act or any notice or directive is being contravened;*

b) *investigate whether any information supplied in connection with the use of water is accurate; or*

c) *carry out any of the activities referred to in subsection (2) where the consent of the owner or occupier of that property has been withheld.*

3.1.20 Schedule 3

This schedule reflects all the powers and duties that may be exercised and performed by a catchment management agency when assigned or delegated to it by the Minister. On 17 December 2010 the Minister of Water and Environmental Affairs delegated Schedule 3 to the ICMA which is now the IUCMA. On 15 January 2015 the Minister of Water and Sanitation delegated Schedule 3 to the IUCMA. It is attached as **Annexure A**. This delegation was also withdrawn on 12 December 2015.

3.1.21 Schedule 4

Schedule 4 is dealing with the management and planning of water management institutions and is attached as **Annexure B**. In terms of section 79(2) it is applicable on the IUCMA as catchment management agency. All decisions of the IUCMA must be taken by the governing board, subject to powers delegated in terms of section 86.

3.2 Public Finance Management Act

The IUCMA is a public entity listed in Schedule 3A and the governing board is its accounting authority with the powers and duties as reflected in Chapter 6. The National Treasury Regulations apply to the IUCMA as Schedule 3A public entity to the extent as indicated in paragraph 6.1.2 of the Regulations and regulations 16, 16A, 24 to 28 and 30 to 33 are applicable, which deal with the following:

6.1.2 Receipt of transfers appropriated by vote

16. Public-private partnerships

16A Supply chain management

24. General definitions

25. Application and listing
26. Responsibilities of designated accounting officers
27. Internal control and corporate management
28. Annual financial statements and annual reports
30. Strategic planning
31. Cash, banking and investment management
32. Borrowings
33. Financial misconduct

4. GOVERNING BOARD

4.1 Status of the Governing Board

The Governing Board members are appointed by the Minister in terms of section 81 of the National Water Act. It is in terms of item 1 of Schedule 4 of the National Water Act responsible for the management of the affairs of the IUCMA as water management institution and may exercise the powers of the institution.

The role of the board is to decide the strategies and policies to be followed and to ensure that the IUCMA exercises its powers or performs its duties in a proper, efficient, economical, and sustainable manner. The board must carry out its functions as efficiently as possible, consistent with prudent commercial practice.

In terms of section 82 of the National Water Act the Minister appoints the Chairperson and Deputy Chairperson of the Board after recommendations by the Board at its first meeting convened by the Minister. In the absence of the Chairperson the Deputy Chairperson performs all the functions of the Chairperson.

The term of office of the members of the Governing Board is determined by its constitution and in the absence of such constitution by the Minister, as is the case with the IUCMA.

The IUCMA may pay a board member from its revenue an amount of remuneration determined by the board from time to time in accordance with any directive from the Minister. In the absence of such directive by the Minister the board has an open discretion. In September 2015, a directive was received from the Minister of Water and Sanitation regarding the remuneration of Governing Board Members that is in force as from 1 September 2015.

In terms of section 82(4) of the National Water Act the Chief Executive Officer may be a member of the Governing Board, but may not be the Chairperson or Deputy Chairperson.

A catchment management agency may establish committees including an executive committee and consultative bodies to perform any of its functions within a particular area or generally or to advise it. The catchment management agency must also determine how they must function. These powers of the catchment management agency must be exercised by means of resolutions of its Governing Board as stipulated in item 1 of Schedule 4 of the National Water Act.

Schedule 4 of the National Water Act prescribes the management and planning of water management institutions including the IUCMA and is attached as **Annexure B**.

In terms of section 49 of the Public Finance Management Act the Governing Board is the Accounting Authority of the IUCMA. The fiduciary duties of accounting authorities are set out in section 50 of the Public Finance Management Act stipulating that the ICMA Governing Board must:

- Exercise the duty of utmost care to ensure reasonable protection of the assets and records of the IUCMA;
- Act with fidelity, honesty, integrity and in the best interests of the IUCMA in managing the financial affairs of the IUCMA;
- On request, disclose to the Minister all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the Minister; and
- Seek within its sphere of influence to prevent any prejudice to the financial interests of the state.

4.2 General Responsibilities of the Governing Board as Accounting Authority

In terms of section 51 of the Public Finance Management Act the Governing Board –

- Must ensure that the IUCMA has and maintains –
 - Effective, efficient and transparent systems of financial and risk management and internal control;
 - A system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed;
 - An appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective; and
 - A system for properly evaluating all major capital projects prior to a final decision on the project;
- Must take effective and appropriate steps to –
 - Collect all revenue due to the IUCMA;
 - Prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the IUCMA; and
 - Manage available working capital efficiently and economically;

- Is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the IUCMA;
- Must comply with any tax, levy, duty, pension and audit commitments as required by legislation;
- Must take effective and appropriate disciplinary steps against any employee of the IUCMA who –
 - Contravenes or fails to comply with a provision of the Public Finance Management Act;
 - Commits an act which undermines the financial management and internal control system of the IUCMA; or
 - makes or permits an irregular expenditure or a fruitless and wasteful expenditure;
- is responsible for the submission by the IUCMA of all reports, returns and notices and other information to Parliament or the relevant provincial legislature and to the Minister;
- must promptly inform the National Treasury on any new entity which the IUCMA intends to establish or in the establishment of which it takes the initiative and allow the National Treasury a reasonable time to submit its decision prior to formal establishment; and
- must comply and ensure compliance by the ICMA with the provisions of the Public Finance Management Act and any other legislation applicable to the IUCMA.

If the Governing Board is unable to comply with any of the responsibilities determined for the Governing Board as accounting authority, it must promptly report the inability, together with reasons, to the Minister and treasury.

4.3 Annual Budgets

The Governing Board must in terms of section 53 of the Public Finance Management Act submit an annual performance plan including the budget of estimated revenue and expenditure for the next financial year for approval by the Minister. The current The IUCMA may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained. The Governing Board is responsible for ensuring that the expenditure of the IUCMA is in accordance with the approved budget.

The planning cycle for submission of the Annual Performance Plan (APP) for the next financial year is:

- First draft in August
- Second draft in November
- Final draft in January

4.4 Annual Report and Financial Statements

In terms of section 55 of the Public Finance Management Act the Governing Board as accounting authority –

- must keep full and proper records of the financial affairs of the IUCMA;
- prepare financial statements for each financial year in accordance with generally accepted accounting practice, unless the Accounting Standards Board approves the application of generally recognised accounting practice for the IUCMA;
- must submit its financial statements by not later than 31 May of each year to the auditors of the IUCMA for auditing;
- must submit by not later than 31 August of each year to the Minister, and if the Auditor-General did not perform the audit, to the Auditor-General –
 - an annual report on the activities of the IUCMA for that financial year;
 - the audited financial statements for that financial year; and
 - the report of the auditors on those statements.

4.5 Members of the Governing Board

On 20 March 2014 the former Minister of Water and Environmental Affairs appointed the members of the Interim Governing Board of the IUCMA. The list of members of the Governing Board for the IUCMA appointed by the former Minister of Water and Environmental Affairs on 14 May 2014 is attached as **Annexure C**.

In terms of section 50 of the Public Finance Management Act and Part 2 of Schedule 4 of the National Water Act members of the Governing Board have certain fiduciary duties. Members may not have conflict of interest and must disclose to the Governing Board any direct or indirect personal or private business interest of that member, member's spouse, partner or close family member may have in any matter before the Governing Board.

Governing Board members must act diligently and consistent with the responsibilities assigned to the Governing Board. They may not abuse their positions as members and or confidential information obtained in their capacities as members of the Governing Board.

5. ADMINISTRATION

5.1 Chief Executive Officer

In terms of item 3 of Schedule 4 of the National Water Act the Governing Board may appoint a suitably qualified person as chief executive officer of the IUCMA on the terms and conditions determined by the board.

The board may remove the chief executive officer from office and the Minister may after consultation with the board direct the board to remove the chief executive officer from office and the board must comply.

The functions to be performed by the chief executive officer in terms of Schedule 4 of the National Water Act may be performed by the Chairperson or any other officer designated by the Chairperson. The Chief Executive Officer would be the head of the administration.

The board must in consultation with the Minister of Public Service and Administration determine the salary of the Chief Executive Officer subject to the approval of the Minister.

5.2 Organisational Structure of the Administration

The current top management organisational structure of the Inkomati-Usuthu Catchment Management Agency is attached as **Annexure D**. The current organisational structure of the IUCMA is provided as a separate document.

The administration of the IUCMA is headed by the Chief Executive Officer and the following departments and sections were created in the administration:

- Office of the Chief Executive Officer
- Governance
- Executive: Water Resource Management
 - Water Resource Protection & Waste
 - River Planning & Operations
 - Water Resource Utilisation
 - Institutions & Participation
- Executive: Corporate Services
 - Finance
 - Supply Chain Management
 - Human Resources
 - Records
 - Information Technology
 - Internal Audit (Outsourced)

ANNEXURE A**Schedule 3: Powers which may be exercised and duties to be performed by Catchment Management Agencies on Assignment or Delegation****1. General**

Referenced by:

[Sections 72, 73 and 151(1)(l)]

Subject to Chapter 2 and sections 72 and 73 of this Act a catchment management agency may exercise any of the powers or perform any of the duties set out in this Schedule and any other powers or duties necessary or desirable in order to ensure compliance with the Act, to the extent that such powers and duties have been assigned or delegated to it, and within the constraints of the assignment or delegation.

2. Power to manage, monitor, conserve and protect water resources and to implement catchment management strategies

A catchment management agency may--

- a) manage and monitor permitted water use within its water management area;
- b) conserve and protect the water resources and resource quality within its water management area;
- c) subject to the provisions of the Act, develop and operate a waterwork in furtherance of its catchment management strategy;
- d) do anything necessary to implement catchment management strategies within its water management area; and
- e) by notice to a person taking water, and after having given that person a reasonable opportunity to be heard, limit the taking of water in terms of Schedule 1.

3. Catchment management agencies may make rules to regulate water use

- 1) A catchment management agency may make rules to regulate water use.
- 2) The rules made under subitem (1) may relate, amongst other things, to--
 - a) the times when;
 - b) the places where;
 - c) the manner in which; and
 - d) the waterwork through which, water may be used.
- 3) A water user must adhere to any such rules which apply to that user.

- 4) A rule made under subitem (1) prevails over a conflicting distribution condition contained in any authorisation.
- 5) Before making rules a catchment management agency must--
 - a) publish a notice in the Gazette--
 - i) setting out the proposed rules;
 - ii) inviting written comments to be submitted on the proposed rules, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
 - b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the catchment management agency considers to be appropriate;
 - c) consider all comments received on or before the date specified in paragraph (a)(ii); and
 - d) consider all applicable conditions for provision of services and bylaws made under the Water Services Act, 1997 (Act No. 108 of 1997), by water services institutions having jurisdiction in the area in question.
- 6) After complying with subitem (5), a catchment management agency must-
 - a) finalise the rules; and
 - b) make it known, in an appropriate manner, that the rules have been finalised and where they may be read; or
 - c) deliver or send a copy of the rules to each water user to whom the rules apply.

4. Catchment management agencies may require establishment of management systems

- 1) A catchment management agency may require in writing that a water user-
 - a) install a recording or monitoring device to monitor storing, abstraction and use of water;
 - b) establish links with any monitoring or management system to monitor storing, abstraction and use of water; and
 - c) keep records on the storing, abstraction and use of water and submit the records to the catchment management agency.
- 2) If the water user fails to comply with a requirement of subitem (1)(a) or (b), a catchment management agency may undertake the installation or establishment of such links and recover any reasonable cost from that water user.

5. Catchment management agencies may require alterations to waterworks

- 1) A catchment management agency may, by written notice to the owner or person in control of a waterwork, require that person to collect and submit particular information within a period specified to enable the catchment management agency to determine whether that waterwork is constructed, maintained and operated in accordance with the Act.

- 2) A catchment management agency may direct the owner or person in control of a waterwork at the owner's own cost and within a specified period, to-
 - a) undertake specific alterations to the waterwork;
 - b) install a specific device; or
 - c) demolish, remove or alter the waterwork or render the waterwork inoperable in a manner specified in the directive.

- 3) A catchment agency may only issue such a directive if it is reasonably necessary in order to-
 - i) protect authorised uses of other persons;
 - ii) facilitate monitoring and inspection of the water use; or
 - iii) protect public safety, property or the resource quality.

- 4) If the owner fails to comply with a directive, the catchment management agency may-
 - a) undertake the alterations;
 - b) install the device; or
 - c) demolish, remove or alter the waterwork or render the waterwork inoperable, and recover any reasonable costs from the person to whom the directive was issued.

6. Catchment management agencies may temporarily control, limit or prohibit use of water during periods of water shortage

- 1) If a catchment management agency on reasonable grounds believes that a water shortage exists or is about to occur within an area it may, despite anything to the contrary in any authorisation, by notice in the Gazette or by written notice to each of the water users in the area who are likely to be affected--
 - i) limit or prohibit the use of water;
 - ii) require any person to release stored water under that person's control;
 - iii) prohibit the use of any waterwork; and
 - iv) require specified water conservation measures to be taken.

- 2) A notice contemplated in subitem (1) must--
 - a) specify the geographical area or water resource to which the notice relates;
 - b) set out the reason for the notice; and
 - c) specify the date of commencement of the measures.

- 3) In exercising the powers under subitem (1), the catchment management agency must--
 - a) give preference to the maintenance of the Reserve;
 - b) treat all water users on a basis that is fair and reasonable; and
 - c) consider--
 - i) the actual extent of the water shortage;
 - ii) the likely effects of the shortage on the water users;

- iii) the strategic importance of any water use; and
 - iv) any water rationing or water use limitations by a water services institution having jurisdiction in the area in question under the Water Services Act, 1997 (Act No. 108 of 1997).
- 4) If the owner or person in control of a waterwork contravenes a notice issued under subitem (1), the catchment management agency may--
- a) modify, or require the owner of the waterwork to modify the waterwork so that it cannot be used to take more water than that allowed for in the notice; or
 - b) remove the waterwork or require the owner to remove the waterwork if the notice contains a prohibition on the use of that waterwork.
- 5) A catchment management agency may recover from the owner any reasonable costs incurred by it in acting under subitem (4).

ANNEXURE B**Schedule 4: Management and Planning of Water Management Institutions****Part 1: Governing board****1. Governing board****Referenced by:**

[Sections 79(2) and 82(4)]

- 1) The board--
 - a) is responsible for the management of the affairs of the water management institution; and
 - b) may exercise the powers of the institution.

- 2) Without limiting subitem (1), it is the role of the board--
 - a) to decide the strategies and policies to be followed by the institution; and
 - b) to ensure that the institution exercises its powers or performs its duties in a proper, efficient, economical and sustainable manner.

- 3) The board must carry out its functions as efficiently as possible, consistent with prudent commercial practice.

- 4) In the absence of the chairperson, the deputy chairperson performs all the functions of the chairperson.

2. Terms and conditions of appointment

- 1) A board member holds office for a term--
 - a) specified in the constitution, if the institution has a constitution; or
 - b) determined by the Minister, if the institution has no constitution.

- 2) The institution may pay a board member from the revenues of the institution an amount of remuneration, determined by the board from time to time, in accordance with any directive from the Minister.

3. Chief executive officer

- 1) The board may appoint a suitably qualified person as chief executive officer of the institution.

- 2) The chief executive officer of the institution holds office on the terms and conditions determined by the board.
- 3) The board may remove the chief executive officer of the institution from office.
- 4) The Minister may, for good reasons and after consultation with the board, direct the board to remove the chief executive officer from office.
- 5) The board must comply with a directive given by the Minister under subparagraph (4).
- 6) The functions to be performed by the chief executive officer in terms of this Schedule may also be performed by the chairperson or any other officer designated by the chairperson.
- 7) The board must, in consultation with the Minister of Public Service and Administration, determine the salary of its chief executive officer, subject to the approval of the Minister.

4. Vacancies, resignations and removal from office

- 1) The position of a board member becomes vacant if the member--
 - a) has been declared to be of unsound mind by a competent authority;
 - b) is declared insolvent;
 - c) resigns;
 - d) is convicted of any offence involving dishonesty;
 - e) is absent without prior consent of the chairperson from two consecutive meetings of the board; or
 - f) fails to make any disclosure required to be made in terms of item 7.
- 2) An ordinary member or the deputy chairperson may resign in writing addressed to the chairperson.
- 3) The chairperson may resign in writing addressed to the Minister.

5. Validity of decisions

- 1) An act or decision of the board is not invalid merely because of--
 - a) a defect or irregularity in, or in connection with, the appointment of a board member; or
 - b) a vacancy in the membership of the board, including a vacancy resulting from the failure to appoint an original board member.
- 2) Anything done by or in relation to a person purporting to act as chairperson or as a board member is not invalid merely because--

- a) the occasion for the person to act had not arisen or had ceased;
- b) there was a defect or irregularity in relation to the appointment; or
- c) the appointment had ceased to have effect.

Part 2: Board members

6. Duties of board members

- 1) A board member must at all times act honestly in performing the functions of his or her office.
- 2) A board member must at all times exercise a reasonable degree of care and diligence in performing a member's functions, and in furtherance of this duty without limiting its scope, must--
 - a) take reasonable steps to inform himself or herself about the institution, its business and activities and the circumstances in which it operates;
 - b) take reasonable steps, through the processes of the board, to obtain sufficient information and advice about all matters to be decided by the board to enable him or her to make conscientious and informed decisions; and
 - c) exercise an active discretion with respect to all matters to be decided by the board.
- 3) A board member need not give continuous attention to the affairs of the board, but is required to exercise reasonable diligence in relation to--
 - a) the business of; and
 - b) preparation for and attendance at meetings of, the board and any committee to which the board member is appointed.
- 4) In determining the degree of care and diligence required to be exercised by a board member, regard must be had to the skills, knowledge or insight possessed by that member, and to the degree of risk involved in any particular circumstances.
- 5) A board member, or former board member, must not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to prejudice the institution.
- 6) This item must be interpreted as adding to, and not deviating from, any law relating to the criminal or civil liability of a member of a governing body of a corporate body, and it does not prevent any criminal or civil proceedings being instituted in respect of such a liability.

7. Disclosure of interest

- 1) If a board member has a direct or indirect pecuniary or other interest in any matter in which the institution is concerned, which could conflict with the proper performance of his or her duties in

relation to that matter, he or she must disclose that interest as soon as practicable after the relevant facts come to his or her knowledge.

- 2) If the board member is present at a meeting of the board at which the matter is to be considered, the board member must disclose the nature of his or her interest to the meeting immediately before the matter is considered.
- 3) If the board member is aware that the matter is to be considered at a meeting of the board at which he or she does not intend to be present, he or she must disclose the nature of his or her interest to the chairperson before the meeting is held.
- 4) A board member who has made a disclosure under this paragraph must not-
 - a) be present during any deliberation; or
 - b) take part in any decision, of the board in relation to the matter in question.
- 5) Any disclosure made under this paragraph must be noted in the minutes of the relevant meeting of the board.

8. Recovery of improper profits

If a person contravenes item 7, the institution, or the Minister in the name of the institution, may recover from the person as a debt due to the institution, through a competent court, either or both of the following--

- a) if that person, or any other person, made a profit as a result of the contravention, an amount equal to that profit; and
- b) if the institution has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

Part 3: Proceedings of the board

9. Convening meetings

- 1) The board must meet at least twice in each year.
- 2) Meetings must be held at the times and, subject to subitem (4), the places determined by the board.
- 3) The chairperson may convene a meeting at any time and must do so when requested by one third of the board members.
- 4) The chairperson may, from time to time, determine that a meeting be held by telephone, closed-circuit television or other means of communication.

10. Notices of meeting

- 1) Except as provided in subitem (3), the chairperson or the chief executive officer must give at least seven days' written notice to board members of any meeting convened at the request of one third of the board members.
- 2) A notice given in terms of subitem (1) must--
 - a) specify the date and time of the meeting; and
 - b) state the general nature of the business of the meeting; and either
 - c) state the place of the meeting; or
 - d) specify the means of communication by which the meeting will be held.
- 3) The chief executive officer or chairperson must give notice of a meeting--
 - a) in writing; and
 - b) not less than seven days in advance except in cases of emergency or where every board member agrees to accept short notice.
- 4) If notice of a meeting is given the board must, if requested by a board member, allow that member to participate in the meeting in the manner contemplated in item 16.
- 5) The proceedings of, or resolutions passed at a meeting of, a board are not invalid merely because--
 - a) the chief executive officer omitted to send a notice to a board member; or
 - b) a member did not receive a notice of the meeting.

11. Quorum

- 1) No business may be conducted at a meeting unless a quorum of members is present.
- 2) A quorum is a majority of the members for the time being.
- 3) If a quorum is not present within 30 minutes after the time appointed for a meeting, the person presiding at the meeting may adjourn the meeting to the same time and place, seven days after the adjournment.
- 4) If a quorum is not present at an adjourned meeting within 30 minutes after the time appointed for the meeting, the meeting is automatically cancelled.

12. Adjournment

- 1) The person presiding at a meeting at which a quorum is present--
 - a) may adjourn the meeting with the meeting's consent; and

- b) must adjourn the meeting if the meeting so directs.
- 2) An adjourned meeting must be held at the time and place agreed to by the meeting before it is adjourned.
- 3) Only unfinished business of an initial meeting can be conducted at an adjourned meeting.

13. Person presiding at meetings

- 1) Subject to item 7(4)-
 - a) the chairperson must preside at all meetings of the board at which the chairperson is present; and
 - b) in the absence of the chairperson, the deputy chairperson must preside at a meeting of the board.
- 2) If neither the chairperson nor the deputy chairperson is present, the meeting must appoint a board member present at the meeting to preside.

14. Voting

- 1) A question arising at a meeting must be determined by a majority of votes of board members present and voting.
- 2) If voting on a question is equal, the person presiding has a casting vote as well as a deliberative vote.

15. Minutes

- 1) The chief executive officer must ensure that complete and accurate minutes of each meeting are kept.
- 2) Draft minutes of each meeting must--
 - a) be presented to the next meeting of the board for amendment, if necessary, and adoption; and
 - b) be entered in a durable, bound volume of minutes.
- 3) The person presiding at the next meeting must sign and date an affirmation to the effect that any minutes of the previous meeting have been adopted by the meeting.

16. Participation in meetings

- 1) The board may, by resolution, permit board members to participate in a particular meeting by telephone, closed-circuit television or other means of communication.
- 2) A board member who participates in a meeting under permission given under subitem (1) must be regarded as being present at the meeting.

17. Resolutions without meetings

- 1) If all the board members for the time being (other than a board member who is absent from South Africa at the time) sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last member signs the document.
- 2) For the purpose of subitem (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more board members, must be taken to be one document.
- 3) A document referred to in this item may be in the form of a telex or facsimile.

18. Execution of documents

- 1) Subject to subitem (2), a document is duly executed by the board if it is executed on behalf of the board by any two board members.
- 2) The board may, either generally or in a particular case or class of cases, by resolution authorise the chief executive officer to execute documents on behalf of the board.

19. Appointment of committees

- 1) The board may, from time to time--
 - a) appoint such temporary or standing committees as it sees fit from among its members;
 - b) appoint persons other than board members to a committee;
 - c) remove any person appointed to a committee from such committee; and
 - d) determine the terms of reference of any committee, which may include--
 - i) full decision making powers on particular matters; or
 - ii) a requirement to refer decisions back to the board for ratification.
- 2) Items 7, 11, 12, 14, 15, 16, 17, 18(1) and 20 apply to a committee as if it were the board.

- 3) Part 2 also applies to any member of a committee who is not a board member.
- 4) A committee must report to the board at the times and in the manner determined by the board.

20. Power to regulate proceedings

Subject to this Part, the board may regulate its own proceedings.

Part 4: Institutional planning

21. Business plans

- 1) The board must prepare business plans.
- 2) The first business plan must be for a period of not less than three years and must begin when the first financial year starts, which must be not more than six months after the board is established.
- 3) Each subsequent business plan must be updated annually.
- 4) The board may review and revise a business plan at any time, and must do so when so directed by the Minister.

22. General matters to be included in business plans

Each business plan must be in the form determined by the Minister and-

- a) must set out the objectives of the institution;
- b) must outline the overall strategies and policies that the institution is to follow to achieve the objectives;
- c) must include a statement of the services which the institution expects to provide and the standards expected to be achieved in providing those services;
- d) must include the financial and performance indicators and targets considered by the board to be appropriate;
- e) may include any other information which the board considers appropriate; and
- f) must include any other information determined by the Minister.

23. Financial matters to be included in business plans

Each business plan--

- a) must include a financial target;

- b) must outline the overall financial strategies for the institution including the setting of charges, borrowing, investment and purchasing and disposal strategies;
- c) must include a forecast of the revenue and expenditure of the institution, including a forecast of capital expenditure and borrowings;
- d) must provide for capacity building amongst its board members and officials;
- e) may include any other financial information which the board considers appropriate; and
- f) must include any other financial information determined by the Minister.

24. Matters to be considered in setting financial targets

In preparing or revising a financial target, the board must have regard to

- a) the need to maintain the institution's financial viability;
- b) the need to maintain a reasonable level of reserves, especially to provide for-
 - i) corrective action to redress the results of past racial and gender discrimination in the use of water resources;
 - ii) any estimated future demand for the services of the institution; and
 - iii) any need to improve the accessibility of, and performance standards for, the services provided by the institution; and
- c) other matters determined by the Minister.

25. Business plans to be given to Minister

- 1) When the board prepares or revises a business plan, it must immediately make a copy of the plan available to the Minister.
- 2) The Minister may--
 - a) within 60 days after receiving a copy of a prepared plan; or
 - b) within 30 days after receiving a copy of a revised plan, make comments on the plan to the board.
- 3) The board must consult in good faith with the Minister following communication to it of the Minister's comments and must make any changes to the plan that are agreed upon by the Minister and the board.
- 4) The Minister may, from time to time, direct the board to include in, or omit from, a business plan, any matter, including a financial matter.
- 5) Before giving a directive under this item, the Minister must consult with the board as to the matters to be included in the directive.
- 6) The board must comply with a directive given under this item.

26. Board to notify Minister of significant events

If matters arise that might prevent, or materially affect, achievement of the objectives of the institution in terms of the business plan or financial targets contained in the business plan, the board must immediately notify the Minister of the existence of such matters.

27. Institution must act in accordance with business plan

The institution must act only in accordance with its business plan, as it exists from time to time, unless the Minister has directed otherwise.

28. Minister may require information

- 1) The Minister may direct the board to give him or her specific information.
- 2) The board must comply with such directive.

Part 5: Monitoring and intervention

29. Provision of information by an institution

- 1) An institution must provide the Minister or any person authorised by the Minister with--
 - a) the information which the Minister requires on the affairs and financial position of the institution; and
 - b) access to such books, accounts, documents and assets of the institution as the Minister may require.
- 2) The Minister may appoint a person to investigate the affairs or financial position of an institution and recover the reasonable fees and disbursements of that person from that institution.
- 3) A board member and an employee of a board have the same duties towards the Minister or a person authorised by the Minister as an institution has in subitem (1), except to the extent that the board member or employee can show that he or she is unable to comply.

30. Taking possession of books, records and assets

The Minister or a person authorised by the Minister may enter into the premises of any institution and take possession of any book, record or asset of the institution where this is necessary in order to obtain any information to which the Minister is entitled in terms of this Part or for the purposes of any investigation that the Minister is entitled to conduct in terms of this Part.

31. Offence

Any institution, board member or employee of the board who does not comply with items 28 to 30 or obstructs a person appointed under item 29(2) is guilty of an offence and liable on conviction to a sentence contemplated in section 151 of the Act.

Part 6: Records and reporting

32. Financial records and accountability

- 1) The financial year of an institution is for a 12-month period determined by the board.
- 2) The board must ensure that the chief executive officer of the institution keeps-
 - a) proper records and accounts of the activities, transactions and affairs of the institution and of the board; and
 - b) any other records or accounts that are necessary to explain sufficiently the financial operations and financial position of the institution.
- 3) The board and the chief executive officer of the institution must each do all things necessary to--
 - a) ensure that all money payable to the institution is properly collected;
 - b) ensure that all money spent by the institution is properly spent and properly authorised;
 - c) ensure that there is adequate control over all assets acquired for the purposes of the institution, or managed or controlled by it;
 - d) ensure that all liabilities incurred on behalf of the institution are properly authorised;
 - e) ensure efficiency and economy of operations and avoidance of waste and extravagance;
 - f) develop and maintain an adequate budgeting and accounting system; and
 - g) develop and maintain an adequate financial control system.

33. Annual report

- 1) An institution must, in respect of each financial year, prepare an annual report containing-
 - a) a report of its operations during the financial year;
 - b) financial statements for the financial year; and
 - c) a copy of each directive given to it during that year by the Minister.
- 2) The institution must submit the report to the Minister not later than six months after the end of the financial year in question.
- 3) The report of operations referred to in subitem (1)(a) must be prepared in a form and contain information determined by the Minister.

- 4) The financial statements referred to in subitem (1)(b) must be consistent with generally accepted accounting practices and must contain the information and be prepared in the manner and form determined by the Minister.
- 5) Such financial statements must--
 - a) fairly present the results of the financial transactions of the institution during the financial year to which they relate and the financial position of the institution as at the end of the year; and
 - b) be audited by a chartered accountant appointed by the board.
- 6) The institution must publish its annual report and make copies available at the offices of the institution for inspection and purchase by the public.
- 7) The institution must--
 - a) if it is a catchment management agency, table its annual report in Parliament;
 - b) if it is a water user association, send a copy of its annual report to the Secretary to Parliament.

ANNEXURE C**GOVERNING BOARD MEMBERS**

MEMBER
Ms TP Nyakane-Maluka – Chairperson
Mr MS Mthembu – Deputy Chairperson
Mr N Govender
Dr PE Molokwane
Ms SD Wiggins
Mr PA Tshabangu
Mr PJ Venter
Mr J Mathebula
Dr T Gyedu-Ababio (<i>Ex Officio</i>)

ANNEXURE D

CURRENT TOP MANAGEMENT ORGANISATIONAL STRUCTURE OF IUCMA

