



## **TERMS OF REFERENCE FOR A SOLICITED WRC PROJECT**

<b>THEME</b>	<b>Water Advisory</b>
<b>TITLE</b>	<b>Development of standardised approaches for calculating compensation for harm, loss or damage arising from offences under the National Water Act</b>
<b>TOR NUMBER</b>	

### **Rationale**

Offences under the National Water Act (NWA), such as unlawful discharges, pollution incidents, or unauthorised water use, have resulted in extensive harm, loss and damage across South Africa. These transgressions often necessitate costly remediation measures and carry substantial financial and environmental implications. Yet the financial consequences for convicted offenders often fall short of the cost of the actual harm caused.

Current enforcement practices lack consistent, defensible methods for calculating damages, particularly those related to water resources, aquatic ecosystems, and dependent communities. With respect to the latter, these include costs relating to health, livelihoods and constitutional damages such as the disruption of the right to access sufficient water. Sometimes, remediation costs are direct and can be easily determined. In other instances, they are indirect and difficult to quantify, such as when companies gain an unfair competitive advantage because their market prices fail to account for the true environmental and social costs of their activities.

South Africa's legal framework (particularly sections 19, 152 and 153 of the NWA) provides for remediation and cost recovery, but implementation is limited by the absence of standardised costing tools and approaches. Many successful interventions, such as at UPL (KwaZulu-Natal), Jagersfontein (Free State), and Loskop (Mpumalanga), have relied on ad-hoc expert estimates rather than a standardised, coherent methodology.

This research seeks to consolidate local and international experience in developing practical, transparent, and legally defensible models for quantifying the monetary value of harm, loss and damage caused by

offences committed under the NWA. It should include a review of how current legislative and institutional frameworks enable or constrain the recovery of costs and the assignment of financial liability, and identify where costing methodologies and financial quantification are required or implied.

The research must incorporate relevant case studies, such as those mentioned above, as well as environmental criminal prosecutions under other legislation, such as the National Environmental Management Act (NEMA), that have water dimensions.

The results of the project must support the Department of Water and Sanitation (DWS) in implementing sections 19, 20, 152, and 153 of the NWA. They must also be relevant to the requirements of the broader environmental enforcement framework under NEMA, the Department of Forestry, Fisheries and the Environment (DFFE) and the National Prosecuting Authority (NPA). The approach to be developed should support criminal, administrative and civil enforcement mechanisms under the NWA and NEMA, including the proposed introduction of administrative penalties for offences committed under the NWA. Where necessary and appropriate, the approach should be differentiated for application in the context of private and public sector offenders.

Further, the approach must assist prosecutors, regulators, and enforcement authorities in implementing the Polluter Pays Principle by facilitating evidence-based assessments of the cost of harm, loss and damage. These assessments must include the full lifecycle costs of remediation, including assessment, design, implementation, specialist inputs and long-term monitoring. They should also identify common cost elements (e.g., resource quality, ecological assessment, environmental remediation and restoration, ongoing monitoring, public health protection and livelihoods). Where possible, costing templates, including variables and unit rates, should be developed for use in administrative or legal proceedings. The approaches developed must be applicable to the full range of water resources as defined in the NWA.

## **Objectives**

### ***General***

Develop a standardised approach for calculating compensation for harm, loss or damage arising from offences under the National Water Act

### ***Specific***

1. Review existing relevant national and international approaches and current legislative and institutional frameworks
2. Develop and test a set of methods, tools and/or guidelines for quantifying damages that support the operationalisation of sections 19, 20, 152 and 153 of the NWA and relevant provisions of NEMA
3. Enable the involvement of DWS, DFFE, NPA, relevant experts and other stakeholders in the co-development of the approach
4. Develop and test materials for training regulators and prosecutors in the use of the approach developed

5. Where appropriate, recommend institutional and legal reforms to embed standardised costing into enforcement tools and directives.

### **Deliverables**

The following deliverables are indicative and may be tailored to suit the proposed approach:

1. Inception report, including detailed project work plan
2. Draft methods and tools for consultations with stakeholders
3. Workshops and other mechanisms for stakeholder involvement
4. Final report covering all aspects researched as per specific objectives, tools and training materials

### **Notes**

1. Proposals must be submitted online via the WRC [Business Management System](#) (BMS). A user guide to BMS is available [here](#). For technical queries regarding BMS, contact [bms-support@wrc.org.za](mailto:bms-support@wrc.org.za). Closing date for submission of proposals is 15:00 on 15 August 2025.
2. Prior to capturing a proposal on BMS, proposers should familiarise themselves with the [guidelines for submission of research proposals](#). Please take note of the section in the guidelines on budgeting.
3. Addressing this scope of work requires a diverse range of skills and experience. A multidisciplinary project team is required with experience and expertise that encompasses water resource management with knowledge of aquatic ecosystems, pollution pathways, and hydrology, environmental law, technical and environmental economic experts and other expertise on remediation planning with experience in ecological restoration, criminal prosecution and enforcement experts, and lastly specialists with ability to interpret monitoring results and model costs over time. Proposals must include the details of all team members, their experience and expertise relevant to this assignment and their role in the project.
4. Contact person for enquiries on these terms of reference: John Dini ([johnd@wrc.org.za](mailto:johnd@wrc.org.za))

### **Time Frame:**

Planned project start date: 1 April 2026

Duration: 12 months

### **Total Funds Available:**

R1,000,000 including VAT