Abstract

State-owned entities significantly influence South Africa's social and economic landscape. They carry public mandates yet operate with corporate forms, which creates distinctive governance risks. This research examines whether the current legal framework, centred on the Public Finance Management Act, the Companies Act, King IV, and constitutional principles, is adequate to ensure effective governance and accountability in state-owned entities. Using a doctrinal and socio-legal approach, the study maps the framework, tests it against findings from the Auditor-General and the Judicial Commission of Inquiry into Allegations of State Capture, and distils comparative guidance from the OECD. The report finds that the core problem is not the absence of rules, but weak enforcement, diffuse accountability, politicised appointments, and limited consequence management. It recommends targeted statutory amendments, professionalisation of the state ownership function, stronger board appointment and removal safeguards, full use of the Auditor-General's "material irregularity" remedial powers, and the selective codification of King IV practices for state entities. The proposals aim to convert declared standards into enforceable obligations, enhance institutional incentives, and safeguard the constitutional values of transparency, stewardship of public resources, and public service.

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CHAPTER 1: Introduction

1.1 Background

State-owned entities live in two worlds at once; they exist to serve public purposes, yet they operate through corporate forms that demand clear decision-rights, competent leadership, transparent reporting, and real consequences for failure. In this setting, corporate governance is best understood as the system by which a company is directed and controlled, a concise formulation first given by the Cadbury Committee and now widely adopted in scholarship and practice.[1] In South Africa, contemporary practice adds a sharper emphasis. The King IV Report frames corporate governance as the exercise of ethical and effective leadership by the governing body to achieve the outcomes of an ethical culture, good performance, effective control, and legitimacy.[2] For state-owned enterprises, the OECD distils these ideas into a practical benchmark, corporate governance becomes the arrangements that ensure the state acts as a professional, informed owner, that boards are competent and independent, and that disclosure and accountability match listed-company standards.[3]

These definitions matter in concrete ways. They remind us that governance is not a compliance ritual; it is a living system of roles, information, and incentives that must work under pressure. When electricity fails or trains stall, the chain usually traces back to a few predictable weak points: how boards were appointed, how conflicts were handled, how procurement was run, and whether audit findings translated into timely recovery and sanction. A sound definition anchors the analysis that follows, it foregrounds leadership, control, and legitimacy as outcomes, and it sets the bar for the legal and institutional design choices that can make those outcomes more likely in practice.

With that lens, the South African framework can be read straightforwardly. Constitutional values require accountable, transparent, and efficient public administration. The PFMA turns those values into organisational duties and artefacts like corporate plans,[4] shareholder compacts, and audited reports, the Companies Act

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1 Cadbury Committee 1992:15.
2 King IV Report 2016:11.
3 OECD 2024:9-11
4 *Public Finance Management Act* No.1 of 1999.

personalises responsibility through directors' duties and liability, the King IV Report offers outcomes-based guidance, and the Public Audit Act supplies a remedial hinge that links audit to consequence. The central question is whether these moving parts, taken together, reliably convert duty into everyday accountability, or whether targeted, feasible reform is required to close the gap between policy promise and lived experience.

1.2 Research Questions

This study is organised around one main question and three supporting questions to keep the analysis focused and testable.

- **Main question:** Is South Africa's current governance architecture for state-owned entities, taken as a whole, adequate to secure accountable, efficient, and ethical performance in practice, or are targeted reforms required to ensure that duties translate into predictable, timely consequences and, in turn, into better outcomes for the public?
- **Supporting questions:**
  1. What is the current legal and policy framework that governs corporate governance in South African SOEs, and how do its instruments fit together in practice?
  2. Where are the principal shortcomings in design and enforcement, especially in appointments, procurement remedies, and consequence management?
  3. Which legal and institutional reforms, tested against comparative guidance, are most likely to strengthen accountability without undermining operational agility?

1.3 Research Objectives

To address the questions above, the report pursues four practical objectives that align with the study design and maintain a cumulative argument rather than a repetitive one.

1. **Map and clarify the framework** by setting out the constitutional values, the PFMA duties and Treasury Regulations, the Companies Act standards for state-owned companies, King IV's outcomes-based practices, and the Auditor-General's material-irregularity powers, showing how they interact in real decision chains.

2. **Evaluate enforcement in practice** by reading audit reports, commission findings, and case law against the legal standards, with particular attention to appointments, conflict-of-interest controls, procurement review and debarment, internal control remediation, and consequence management.
3. **Develop targeted reforms** by proposing specific, workable changes to legislation, regulations, and oversight practices that would make accountability more certain and timely, and by testing those proposals against comparative models used in OECD jurisdictions.
4. **Show implementation paths** by indicating who must act, what instruments they can use, and how progress should be measured and reported to Parliament and the public, so that recommendations move beyond aspiration to credible execution**.**

The case for asking that question is written into recent history. Over roughly a decade, failures in appointments, procurement, internal control, and consequence management produced a repeating pattern across several major SOEs, with fiscal, operational, and reputational damage that spread beyond the entities themselves. The Judicial Commission of Inquiry into Allegations of State Capture set out, in fine detail, how appointment practices were bent, how procurement systems were bypassed, and how oversight was blunted, and it recommended safeguards to insulate governance from political interference and to embed real accountability.[5] In parallel, amendments to the Public Audit Act introduced a material-irregularity regime that allows the Auditor-General to issue binding remedial directives, to refer matters for investigation, and to seek certificates of debt where losses are not addressed, which begins to shift the story from description to consequence.[6]

Against that backdrop, this report poses a focused research question. Is South Africa's current governance architecture for state-owned entities, taken as a whole, adequate to secure accountable, efficient, and ethical performance in practice, or are targeted reforms needed to ensure that duties translate into predictable, timely consequences and, in turn, into better outcomes for the public? The question is framed to offer proposals that are normatively sound and institutionally workable, not merely

[5] Judicial Commission of Inquiry into State Capture 2022:1041-1064.
[6] *Public Audit Act* 25 of 2004:sec. 20.

aspirational. It is also timely, because two system-level reforms are unfolding: the Public Procurement Act 28 of 2024, which consolidates procurement rules and establishes new oversight institutions, and the National State Enterprises Bill of 2024, which proposes a professionalised state ownership function for key entities.[7]

State-owned entities sit at the intersection of public purpose and commercial discipline,[8] and they carry obligations that touch daily life in visible ways, from electricity and transport to broadcasting and finance. The governance of these entities is framed by a dense body of law and soft standards that together seek to anchor stewardship, integrity, and performance. In South Africa, the core instruments include the Public Finance Management Act,[9] the Companies Act,[10] and the King IV Report with its sector guidance for public entities,[11] and these are complemented by shareholder compacts, treasury instructions, and sector-specific statutes that calibrate obligations to mandates.

The question that animates this study is not whether rules exist, but whether the mix of rules and institutions reliably turns legal duty into everyday accountability, and whether targeted, realistic reform can close the distance between what is promised in policy and what is delivered to citizens, as provided by section 195 of the Constitution,1996.

The objectives follow directly from the research question. First, the study maps the legal and policy framework that shapes SOE governance, including the statutory duties of accounting authorities and directors,[12] and the soft-law practices that structure ethical leadership,[13] risk oversight, and disclosure.[14] Second, it interrogates how enforcement operates in practice, with particular attention to appointments, procurement remedies, and the Auditor-General's material-irregularity powers, and it evaluates whether these levers now create a closed loop from breach to recovery and sanction. Third, drawing on comparative guidance, especially the OECD's principles

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7 National State Enterprises Bill (B1-2024).
8 *Companies Act* 71 of 2008.
9 *Public Finance Management Act* No.1 of 1999.
10 *Companies Act* 71 of 2008.
11 King IV Report on Corporate Governance for South Africa 2016:Principles 1-4.
12 *Public Finance Management Act*:sec. 38(1)(a), 40(1) & 51(1)(a)-(b).
13 King IV Report.
14 *Companies Act*:sec. 75.

on the state as an informed, professional owner, the study proposes targeted legal and institutional reforms designed to make accountability certain and timely without undermining operational agility.[15]

The contribution is deliberately practical. Much of the South African literature has already catalogued the duties that apply to SOEs and how they have been evaded or ignored. This report instead treats governance as an institutional design problem and asks which specific legal levers move behaviour at reasonable cost, with the least scope for evasion, and with the greatest visibility to Parliament and the public. That approach aligns with the module's emphasis on method, argument, and scholarly intervention, and it keeps the analysis close to the incentives that determine real-world outcomes.

1.4 Delimitations

Two delimitations keep the inquiry coherent. The study focuses on the national legal framework and on entities governed by the PFMA or incorporated as state-owned companies, rather than on municipal entities or public-private partnerships that raise distinct questions of law and finance. The analysis is doctrinal and socio-legal, and it does not include fieldwork or interviews; instead, it relies on legislation, case law, audit reports, policy documents, and authoritative commentary to test whether the current mix of rules and institutions is likely to deliver the intended results.

1.5 Chapter Outline

Finally, this report is structured to move from foundations to solutions in a clear line. Chapter 1 introduces the problem and situates corporate governance for SOEs in accepted definitions by Cadbury, King IV, OECD, sets the research questions and objectives, and explains the study's scope and method. Chapter 2 maps the legal framework, beginning with constitutional values, then the PFMA and Treasury Regulations, the Companies Act as it applies to SOCs, King IV (with the SOE supplement), the Public Audit Act's material-irregularity regime, and the new Public Procurement Act, showing how these instruments are meant to work together. Chapter 3 turns diagnostic, identifying where the system breaks down in practice, appointments, shareholder–board role confusion, procurement remedies,

[15] OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024.

consequence management, transparency gaps, and how King IV's stewardship, transparency, and stakeholder principles (including Principle 17) can be used to tighten accountability. Chapter 4 proposes targeted, workable reforms, standardised, skills-based appointments, reasons-and-publication duties, faster tribunal remedies with debarment and recovery, MI escalation, and a practical directors' toolkit tested against comparative practice. Chapter 5 draws the findings together, answers the research questions directly, and presents a concise set of legal and institutional recommendations with an implementation timeline, closing with a reflection on why visible rules and predictable consequences matter for citizens.

1.6 Research Methodology

Method and Theoretical Approach.

Methodology: My research will follow a qualitative, desktop-based legal research method. It will involve:

• Close reading and interpretation of primary legal sources: statutes (e.g., PFMA, Companies Act), case law, and constitutional provisions.

• Analysis of secondary sources: peer-reviewed academic articles, legal textbooks, policy documents, and official reports.

• Comparative reference to international governance models where relevant (e.g., OECD guidelines on SOEs).

No interviews, surveys, or quantitative data will be conducted or used. The research will be analytical, doctrinal, and interpretive.

Theoretical Approach: The research is grounded in public accountability theory and the rule of law framework. It draws on the assumption that law is not only a framework of rules but a tool to ensure just, transparent, and responsible governance. The study will also refer to governance theory, which explores how institutional structures and legal mechanisms affect the behaviour of public bodies and officials. By applying these frameworks, the study will evaluate whether South Africa's laws are structured and enforced in a way that upholds constitutional values, especially those in section 195, and whether they can withstand the political and operational pressures facing SOEs.

CHAPTER 2: Legal Framework Governing State-Owned Entities

2.1 Constitutional foundations

South African public administration is bound to values of accountability, transparency, and good stewardship of public resources, and these values set the horizon for corporate governance in state-owned entities, even when those entities operate through company law forms. The Constitution requires that public administration be governed by democratic values and principles, including accountability, transparency, and ethical conduct, and that procurement systems be fair, equitable, transparent, competitive, and cost-effective.[16]

2.2 Typology of SOEs and their location in public law

The Public Finance Management Act recognises several types of public entities, which matters for where governance duties "live" and who is answerable when things go wrong. Major public entities are listed in Schedule 2, while Schedules 3A and 3B list national public entities and national government business enterprises, respectively, each subject to the PFMA's accounting-authority regime and Treasury oversight.[17] When an SOE is incorporated as a state-owned company under the Companies Act, the dual regime applies; the entity remains bound to PFMA controls as a "public entity," and its board and executives are also subject to the Companies Act's codified duties and liability rules.[18]

2.3 The PFMA: fiduciary-style duties and organisational accountability

The PFMA creates the accounting authority and sets core fiduciary-style duties that anchor corporate governance in public entities. The accounting authority must ensure effective,[19] efficient, and transparent systems of financial and risk management and internal control,[20] must prevent irregular, fruitless, and wasteful expenditure, and must keep full and proper records and prepare timely financial statements and performance reports.[21] It must also submit corporate plans, budgets, and performance information

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16 *Constitution,* 1996:sec. 217(1).
17 *Public Finance Management Act*:schedules 2, 3A, and 3B.
18 *Companies Act*:sec. 72.
19 PFMA:sec. 51(1)(a)-(b).
20 Sec. 38(1)(c)(ii).
21 Sec. 55(1)(a)-(d).

to the executive authority and National Treasury, and must seek prior approval[22] for significant transactions that affect the risk profile or capital structure of the entity.[23]

In practical terms, the PFMA turns governance into a chain of specific obligations with visible artefacts, for example, a corporate plan, an annual performance plan, a shareholder compact, and annual reports with audited financial statements.[24] These artefacts are not paperwork; they are the public law levers that allow Parliament, Treasury, and the executive authority to test whether boards are exercising proper care and whether risks and resources are being managed with integrity.

2.4 Treasury Regulations: compacts, corporate plans, and assurance

The Treasury Regulations operationalise the PFMA duties for public entities. They require a three-year corporate plan aligned to government policy, an annual budget with key performance indicators, and a shareholder compact concluded between the executive authority and the accounting authority that sets out mandated outputs, performance measures, and reporting arrangements.[25] They also require internal audit and audit committee arrangements that dovetail with PFMA duties and the Auditor-General's external audit.[26]

2.5 Companies Act: directors' duties, conflicts, and liability in SOCs

Where an SOE is a state-owned company, the Companies Act overlays a familiar corporate governance grammar. Directors must act in good faith and in the best interests of the company, with the care, skill, and diligence that may reasonably be expected of a person carrying out the same functions, and must manage conflicts of interest through disclosure and recusal.[27] Breach attracts statutory liability for loss, including joint and several liability in defined circumstances.[28] Public companies and state-owned companies must also have audit committees meeting statutory competencies, which adds a second assurance line that interacts with the PFMA's audit-committee requirements.[29] The dual regime is deliberate. PFMA duties secure

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22 PFMA:sec. 54(2).
23 Sec. 52.
24 Treasury Regulations:part. 29.1 – 29.5.
25 Part. 29.
26 Part. 27.1 – 27.2.
27 *Companies Act*:sec. 75 – 77.
28 Sec. 77(2) – (3).
29 Sec. 94.

public-law accountability for stewardship of public resources and performance against mandate as stipulated in section 51(1)(a)-(b), while Companies Act duties personalise accountability for the quality and integrity of board decision-making as set in section 66(1). The two sets of obligations work together to reduce the space for impunity in public corporations.

2.6 King IV and the SOE Sector Supplement: outcomes over box-ticking

King IV frames governance as an outcomes-based endeavour, seeking ethical culture, good performance, effective control, and legitimacy. It recommends board skills matrices, independent and transparent appointment practices, rigorous risk governance and combined assurance, and robust stakeholder engagement, with an "apply and explain" approach tailored for the public sector.[30] For SOEs, the sector supplement makes explicit the need to align performance objectives to the shareholder compact and public mandate, and to disclose the substance of major shareholder directions that may affect board autonomy, so that accountability lines remain clear to the public.

2.7 Supreme audit institution and the material-irregularity regime

The Public Audit Amendment Act introduced a material irregularity regime that changed audit from description to consequence. Where the Auditor-General identifies an irregularity causing or likely to cause a material financial loss, a significant misuse or loss of a public resource, or a substantial harm to a public sector institution, the AG may issue binding remedial action with deadlines, refer matters for investigation, and, if ignored, issue a certificate of debt against the responsible accounting authority or officer.[31] The mechanism is a legal hinge; it closes the loop from finding to consequence and creates personal stakes for non-compliance.

2.8 Procurement: from constitutional principles to a consolidated statute

The procurement field sits on the Constitution's section 217 principles, now consolidated in the Public Procurement Act, which establishes a Public Procurement Office to set norms and support implementation, and a Public Procurement Tribunal to provide speedier, more coherent remedies, including setting aside unlawful awards

[30] King IV Report:principles 1-4

[31] *Public Audit Act*:sec. 5.

and debarment of non-compliant suppliers. The consolidation seeks to replace fragmented instruments and to make oversight more predictable, with transitional arrangements ensuring continuity of rules until subordinate legislation and systems are in place.

The legal framework is not a pile of disconnected rules. The Constitution sets values and procurement standards, the PFMA and Treasury Regulations operationalise organisational stewardship and reporting, the Companies Act personalises duties and liability for directors in state-owned companies, King IV provides outcomes-oriented governance practices, the Public Audit Act supplies a remedial engine, and the Public Procurement Act consolidates the rules and remedies that underpin integrity in contracting.

Most governance failures in SOEs have not occurred because rules were missing. They occurred where rules were not applied with discipline, or where appointments and incentives blunted their effect. The framework above shows that the law already provides levers for duty, disclosure, and consequence, and that recent reforms strengthen those levers. The chapters that follow test how well these levers are being used, and what targeted changes would make them bite earlier and more consistently.

CHAPTER 3: Legal Shortcomings and Enforcement Failures

3.1 Framing the problem

South Africa's governance regime for state-owned entities is elaborate on paper, yet thin in effect, where appointments are politicised, procurement is manipulated, and audit findings do not reliably trigger consequences. The shortcomings are twofold. Some are design gaps, where the law is silent or imprecise at decisive moments. Others are enforcement failures, where adequate rules exist but institutions do not apply them with speed, consistency, or transparency. The result is a predictable pattern, weak appointment safeguards at the outset, blurred lines between shareholder and board, fragmented or slow procurement remedies, and remedial directives that are not pursued to closure.

3.2 Appointment integrity and board independence

Board composition determines whether standards become practice.[32] The Companies Act makes the board the primary locus of authority in a company, including a state-owned company, and it expects directors to exercise independent judgment in the best interests of the company.[33] In many SOEs, the how of appointment is not set out in a binding, transparent process with published skills matrices, shortlists, and reasons, which allows political preference to outweigh competence and independence. This legal thinness at the gateway produces downstream fragility in oversight, risk, and procurement.[34] The Zondo Commission documented how opaque selection enabled capture and recommended skills-based, transparent appointment mechanisms insulated from day-to-day political influence, recommendations that have been accepted in principle but require binding instruments to take root.

3.3 Role confusion between shareholder and board

The shareholder's power to set strategy and appoint the board is distinct from operational decision-making, which belongs to the board. The Companies Act confirms board authority in section 66(1), and King IV urges clear role separation and disclosure where a shareholder gives binding directions, so that the public can see who is

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32 *Companies Act*:sec. 66(1).

33 Sec. 76(3) – (4).

34 Sec. 72.

accountable for outcomes. In practice, ministerial directives have sometimes travelled into operational terrain, and boards have deferred to shareholder preferences that were not reduced to transparent, reasoned instructions. The law does not consistently require publication of such directions or a reasons duty, which blurs accountability and weakens boards, as seen in principle 4. Courts have also been required to restate legality constraints when public entities ignore watchdog findings, an unnecessary detour if roles were clearer and disclosure more routine.[35]

3.4 Procurement fragmentation, speed, and deterrence

The Constitution sets the basic procurement standard for fairness, equity, transparency, competitiveness, and cost-effectiveness as mentioned in section 217(1). For years, the framework beneath that standard was fragmented across instructions and regulations, with uneven remedies. The new Public Procurement Act consolidates institutions and creates a Tribunal intended to deliver faster, consistent relief, including set-aside of unlawful awards and debarment of non-compliant suppliers.[36] The consolidation is sound in principle. The shortcoming is transitional and operational. Remedies will only work if tribunal procedures are quick, decisions are published in an accessible database, and debarment is consistently applied across the public sector, with clear criteria and a right to be heard. The Act must also dovetail with PFMA approvals and with the Auditor-General's material-irregularity process so that a set-aside leads to quantified loss assessments and recovery, not merely to a new tender.

3.5 Consequence management and the material-irregularity hinge

The Public Audit Amendment Act introduced the material irregularity regime, allowing the Auditor-General to issue binding remedial action, refer matters for investigation, and, if ignored, issue certificates of debt against the responsible authority.[37] This is a structural advance because it links the audit to consequence. Enforcement falters when directives are not enforced to the deadline, when referrals are not tracked to closure, and when disciplinary or civil recovery steps stall. The legal remedy exists, the practical gap is follow-through and coordination between accounting authorities,

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[35] *South African Broadcasting Corporation SOC Ltd and Others v Democratic Alliance and Others* 2016 (2) SA 522 (SCA).

[36] *Public Procurement Act:*sec. 36.

[37] *Public Audit Amendment Act*:sec. 3(b)(1B).

executive authorities, investigative bodies, and the courts. Closing that gap requires a routine escalation protocol, public progress reporting, and personal accountability for missed remedial deadlines.

3.6 Transparency and public-facing accountability

Annual reports and audited financial statements are not mere formalities. They are the public's window into performance and integrity. The PFMA mandates annual reporting and audited statements,[38] while the Constitution and access-to-information legislation enable oversight by Parliament, civil society, and the media.[39] Enforcement fails where reports are late, incomplete, or dense to the point of opacity, and where shareholder compacts and letters of expectation are not disclosed. King IV's "apply and explain" philosophy, adapted for the public sector, supports fuller narrative reporting on governance choices and trade-offs, which should extend to disclosure of shareholder directions that affect board autonomy.[40]

3.7 Stewardship, transparency, and accountability: what Principle 17 adds

King IV's Principle 17 is aimed at institutional investors. In plain terms, it says the governing body of an institutional investor should ensure that responsible investment is practised so as to promote good governance and value creation in the companies it invests in.[41] When we read that alongside King IV's transparency expectation, namely that organisational reports must enable stakeholders to make informed assessments of performance and prospects, the thread is obvious: visible stewardship and visible reporting go hand in hand.[42]

Although the SOE sector supplement notes that Principle 17 "does not apply to SOEs," that caveat is about SOEs as organisations. In our context, the state is the investor, so the stewardship logic still fits; the executive authority can publish ownership expectations, engage boards on ethics, risk, and control, and require clear reporting against those expectations.[43] Finally, the same paragraph of the supplement reminds SOEs to apply the stakeholder-inclusive approach in Principle 16, which strengthens

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38 PFMA:sec. 40.
39 *Constitution,* 1996:sec. 16(1)(b).
40 King IV Report:37.
41 King IV Report:73.
42 King IV Report:40.
43 King IV Report:118.

accountability because citizens and Parliament can see how trade-offs are made over time. Read with this chapter's earlier analysis on transparency and public-facing accountability, the practical takeaway is simple: publish the state's stewardship expectations, make SOEs report against them in a way that ordinary readers can understand, and escalate when outcomes fall short.

The legal framework is not empty. It is misaligned at critical seams, appointments, role separation, procurement remedies, and consequence management. The design fixes are specific, codify transparent, skills-based appointments, require disclosure and reasons for shareholder directions that affect operations, integrate tribunal set-asides with material-irregularity recovery, and tie board and executive performance to the closure of audit findings. The enforcement fixes are equally specific, publishable timelines, escalation protocols, and personal accountability when remedial deadlines are missed. When law and practice move together at these seams, the probability of capture falls and the odds of reliable service rise.

Chapter 4: Reform Proposals and Comparative Insights

4.1 Design principles that make rules enforceable

Reform must convert duty into a predictable consequence, and it must do so with clarity about who is responsible at each step in the governance chain. The practical test is simple. When a breach occurs, a time-bound sequence should follow: identification, remedial action, recovery, and, where appropriate, personal accountability. In South Africa, this means tightening the front end, appointments and role clarity, and closing the back end, procurement remedies and consequence management, so that the system raises the cost of non-compliance quickly and visibly. The aim is not more rules, it is better-designed levers that move behaviour.

4.2 Appointments and removals, a transparent and skills-based regime

Appointments are the hinge that connects standards to results. A binding appointments code for state-owned entities should require public adverts, published skills matrices for each board, independent shortlisting panels, and disclosure of shortlists with reasons. Removals should be based on objective, published grounds after a fair process. These safeguards align with section 195 of the Constitution on accountable and transparent public administration, with section 49 and section 50 of the Public Finance Management Act on the fiduciary posture of accounting authorities, and with section 66 and section 76 of the Companies Act, which make the board the seat of management and codify the standard of directors' conduct. The result is a merit-based board that is independent enough to exercise judgment and stable enough to oversee risk and strategy.

According to a report by the Daily Maverick, the appointment of 22-year-old Lesedi Mabiletja as Chief of Staff in the Department of Social Development, despite limited experience and qualifications, have become a touchstone for why a skills-based regime matters for public performance: when senior offices are filled without transparent, competence-aligned criteria, the signal that reaches state-owned entities is corrosive, it weakens board independence, emboldens procurement shortcuts, and makes consequence management harder by normalising favour and speed over merit and process. According to investigative coverage, the appointment was later rescinded after public scrutiny, while the minister has publicly disputed claims of

irregularity, yet the episode still illustrates how departures from merit at the centre of government can cascade into the wider governance ecosystem and, over time, erode the very practices that keep SOEs honest and effective.[44]

Two legal tools make this implementable. First, the National Treasury can issue uniform regulations for appointments and removals under section 76 of the Public Finance Management Act. Second, the Companies Act already supplies removal and accountability mechanisms, removal with reasons under section 71, the use of committees under section 72 to strengthen oversight, and delinquency applications under section 162 in egregious cases. Where boards fail to close audit findings or tolerate procurement manipulation, these powers should be used as a matter of course, not as a last resort.

4.3 Close the procurement loop, from review to recovery

Section 217 of the Constitution requires procurement that is fair, equitable, transparent, competitive, and cost-effective. The new consolidated procurement statute can make oversight more coherent, provided its Tribunal is fast, its reasons are published in a searchable database, and its debarment list is binding across the state. Two integrations close the loop. First, every set-aside of an unlawful award should automatically be referred to the Auditor-General for a quantified loss assessment and remedial timetable under the material-irregularity regime in the Public Audit Act. Second, organs of state should routinely pursue civil recovery and, where appropriate, criminal referral, guided by the Constitutional Court's direction in *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* that legality in tender processes must be matched by structured remedies that preserve good administration.[45] The same Court confirmed in *Gijima* that organs of state may set aside their own unlawful procurement under the principle of legality,[46] subject to delay and prejudice analysis, and refined that delay analysis in *Buffalo City Metropolitan Municipality v Asla Construction (Pty)*

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[44] Davis "Social Development quietly removes inexperienced 22-year-old Chief of Staff" https://www.dailymaverick.co.za/article/2025-09-24-social-development-quietly-removes-inexperienced-22-year-old-chief-of-staff/ (accessed 25 October 2025).

[45] *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* 2014 (1) SA 604 (CC)

[46] *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* 2017 (2) SA 63 (SCA).

Limited.[47] These lines of authority support a Tribunal model that restores legality and value rather than simply restarting a tender

4.4 Use the directors' toolkit, delinquency, liability, and derivative action

Personal accountability deters misconduct when used predictably. Where breaches of duty cause loss, section 77 of the Companies Act supplies liability rules, and section 162 allows delinquency declarations for sustained or egregious governance failures.[48] Boards should adopt a standard litigation pack for these cases, drawing on audit findings, material-irregularity directives, investigation dockets, and minutes. Our courts have not hesitated to enforce these remedies in the private sphere, for example, in *Lewis Group Ltd v Woollam*,[49] and there is no principled reason for a softer standard in public corporations.

A feasible path starts with instruments already available. Issue uniform appointment and removal regulations under section 76 of the Public Finance Management Act, publish a standard shareholder-compact template with reasons and publication clauses, and operationalise a material irregularity escalation protocol with quarterly board certifications. Establish a fast Tribunal with strict timelines and a binding national debarment register, integrate Tribunal set-asides with material-irregularity loss assessments, and publish case-level progress until closure. Train audit committees and company secretaries to use the Companies Act toolkit, including delinquency and recovery where warranted, and align executive performance contracts to closure of audit findings and procurement integrity. When these pieces move together, the system reduces discretion where it matters and raises the cost of non-compliance quickly enough to change behaviour. Courts have already provided the remedial logic to support this journey, particularly in the *AllPay, Gijima*, and *Buffalo City* lines of authority.

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47 *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Limited* 2019 (4) SA 331 (CC).

48 *Companies Act*:sec. 162.

49 *Lewis Group Limited v Woollam and Others* 2017 (2) SA 547 (WCC).

Chapter 5: Conclusion

5.1 What I asked, and what the evidence showed

This report set out to answer a simple but demanding question. Is South Africa's current governance architecture for state-owned entities, taken as a whole, adequate to secure accountable, efficient, and ethical performance in practice, or do we need targeted reforms to make duty translate into predictable, timely consequences for real people? After mapping the law, testing the pressure points, and reading the practice through case studies and oversight records, my answer is measured. On paper, the framework is broadly adequate. In effect, it is uneven because the system is weakest at the seams where appointments, procurement remedies, and consequence management meet. That is where design choices and habits of enforcement either make the rules bite or let them be worked around.

Three findings stood out across the chapters. First, appointments are the hinge. When the route onto boards is opaque or skills-lite, every later control is harder to enforce. Second, procurement discipline is improving under the new statute, but deterrence still depends on speed, public reasons, and consistent debarment. Third, the material-irregularity regime is the closest thing we have to an accountability engine, yet it only changes behaviour when deadlines are enforced, referrals are tracked to closure, and personal accountability follows missed directives.

5.2 Direct answers to the research questions

Main question. The framework is sound in principle but not yet reliable in effect. Without targeted, practical reforms at the seams, the public cannot count on duty becoming everyday accountability.

Supporting question 1: The framework in practice. The Constitution sets values. The PFMA and Treasury Regulations turn those values into duties and artefacts. The Companies Act personalises responsibility and liability. King IV gives outcomes language and reporting expectations. The Public Audit Act links audit to consequence. The new procurement statute aims to consolidate rules and remedies. These instruments are complementary, but they must be coordinated in use, not just cited in reports.

Supporting question 2, the gaps. Appointment integrity, role clarity between shareholder and board, procurement speed and deterrence, and the weak follow-through on material-irregularity directives.

Supporting question 3, the reforms that are most likely to work. Reforms that standardise how people get onto boards, publish what the shareholder expects, make remedies fast and visible, and escalate automatically when deadlines are missed. Each of these is legally feasible, administratively simple, and cheap compared to the cost of failure.

5.3 Principles for practical reform

Two principles guided my recommendations. First, design for visibility. When expectations, timelines, and outcomes are public, evasion is harder, and course correction is faster. Second, escalation design. When a step is missed, the next step should trigger by rule, not by hope. These principles keep the law close to the incentives that shape behaviour.

5.4 My legal and institutional recommendations

(i) Appointments and removals, make merit the default

1. Issue uniform regulations under existing PFMA powers that require public adverts, published skills matrices for each board, independent shortlisting panels, and reasoned appointment decisions.
2. Publish shortlists and interview summaries. Fix terms, with removal for cause and reasons. Align this with King IV’s language on competence and independence.
3. Standardise a conflict-of-interest declaration at appointment and annually. Publish it with the annual report.

(ii) Shareholder–board role clarity, keep accountability legible

1. Insert a “reasons and publication” clause into every shareholder compact. Any binding direction to an SOE must be recorded, reasoned, and disclosed with the board’s response.

2. Table an annual ownership report in Parliament that sets portfolio objectives, risks, and progress. Treat it as the shareholder's side of transparency, with clear links to each SOE's report.

(iii) Procurement remedies, close the loop from review to recovery

1. Give the Tribunal strict statutory timelines, a searchable decisions database, and a single national debarment list that binds all organs of state.
2. Require automatic referral of every set-aside to the Auditor-General for quantified loss assessment and a remedial timetable. Show status to the public until closure.
3. Direct organs of state to pursue civil recovery as the default outcome after unlawful awards. Reserve re-tendering for when it serves value and fairness, not convenience.

(iv) Consequence management, make deadlines real

1. Adopt an MI escalation protocol. If a remedial deadline is missed, escalation to certificates of debt and referrals should follow unless good cause is recorded in writing.
2. Require quarterly board certifications on the status of MI directives, recoveries, and disciplinary steps. File them with the executive authority and publish a short dashboard.
3. Give audit committees in state-owned companies an explicit duty to monitor MI implementation alongside their existing functions, and to report publicly on non-closure.

(v) Directors' accountability: use the tools you already have

1. Issue guidance for when to seek delinquency declarations and civil recovery. Provide model pleadings that draw on audit findings, MI directives, and investigation dockets.
2. Make closure of repeat audit findings, and integrity of the procurement pipeline, explicit performance conditions for boards and executives. Tie this to remuneration only after outcomes improve.

(vi) Reporting that ordinary people can read

1. Require a short, plain-language section in each annual report that explains, in one place, what went wrong, what was done, what money was recovered, and what is still outstanding. I noticed, whilst reading the Zondo Commission report, that most of the details are behind hundreds of pages and explained in a language that a layperson may not understand clearly, and that should change.
2. Publish shareholder compacts and mid-year updates. Show three or four headline indicators, for example, clean audit progress, debarment use, MI closures, and service reliability proxies.

(vii) Whistle-blowing that is safe and useful

1. Standardise anonymous reporting channels across SOEs. A single intake makes it easier to protect people and to spot patterns.
2. Link relevant disclosures to the Tribunal and MI processes. Publish aggregate statistics on retaliation cases and outcomes to prove that protection is real.
3. Babita Deokaran, a whistleblower within the Department of Health in Gauteng, was recently assassinated for voicing irregular payments being made to certain individuals for government-issued tenders.[50] This is a prime example of why there needs to be a safe environment for whistleblowers and to also encourage others to come forward with information about any irregularities.

5.5 Closing reflection

Corporate governance is not an abstract virtue. It is a set of choices that either shows up in people's lives or it does not. The law already gives South Africa workable tools, appointments that favour skill over favour, procurement reviews that fix what is unlawful, and an audit system that can force recovery and sanction. If we line up those tools and insist on visibility and escalation, the system becomes more predictable, and

[50] News24 "Silenced" https://specialprojects.news24.com/silenced/index.html (accessed 26 October 2025)

service improves. That is the standard a public company should meet. It is also the standard the public deserves.

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