

REPUBLIC OF SOUTH AFRICA  
4444

## NATIONAL WATER ACT

**Act No 36 of 1998**

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*(English text signed by the President)  
(Assented to 20 August 1998)*

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### ACT

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**To provide for fundamental reform of the law relating to water resources; to repeal certain laws; and to provide for matters connected therewith.**

#### PREAMBLE

Recognising that water is a scarce and unevenly distributed national resource which occurs in many different forms which are all part of a unitary, interdependent cycle;

Recognising that while water is a natural resource that belongs to all people, the discriminatory laws and practices of the past have prevented equal access to water, and use of water resources;

Acknowledging the National Government's overall responsibility for and authority over the nation's water resources and their use, including the equitable allocation of water for beneficial use, the redistribution of water, and international water matters;

Recognising that the ultimate aim of water resource management is to achieve the sustainable use of water for the benefit of all users;

Recognising that the protection of the quality of water resources is necessary to ensure sustainability of the nation's water resources in the interests of all water users; and

Recognising the need for the integrated management of all aspects of water resources and, where appropriate, the delegation of management functions to a regional or catchment level so as to enable everyone to participate;

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -

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## CHAPTER 1

### INTERPRETATION AND FUNDAMENTAL PRINCIPLES

*This Chapter sets out the fundamental principles of the Act. Sustainability and equity are identified as central guiding principles in the protection, use, development, conservation, management and control of water resources. These guiding principles recognise the basic human needs of present and future generations, the need to protect water resources, the need to share some water resources with other countries, the need to promote social and economic development through the use of water and the need to establish suitable institutions in order to achieve the purpose of the Act. National Government, acting through the Minister, is responsible for the achievement of these fundamental principles in accordance with the Constitutional mandate for water reform. Being empowered to act on behalf of the nation, the Minister has the ultimate responsibility to fulfil certain obligations relating to the use, allocation and protection of and access to water resources.*

*This Chapter also contains definitions explaining the meaning of certain words used in the Act as well as provisions regarding the interpretation of the Act.*

#### Definitions and interpretation

- 1.(1) In this Act, unless the context shows that another meaning is intended -
- (i) "aquifer" means a geological formation which has structures or textures that hold water or permit appreciable water movement through them;
  - (ii) "borehole" includes a well, excavation or any artificially constructed or improved underground cavity which can be used for the purpose of -
    - (a) intercepting, collecting or storing water in or removing water from an aquifer;
    - (b) observing and collecting data and information on water in an aquifer; or
    - (c) recharging an aquifer;
  - (iii) "catchment", in relation to a watercourse or watercourses or part of a watercourse, means the area from which any rainfall will drain into the watercourse or watercourses or part of a watercourse, through surface flow to a common point or common points;
  - (iv) "charge" includes a fee, price or tariff imposed under this Act;
  - (v) "conservation" in relation to a water resource means the efficient use and saving of water, achieved through measures such as water saving devices, water-efficient processes, water demand management and water rationing;
  - (vi) "Department" means the Department of Water Affairs and Forestry;
  - (vii) "Director-General" means the Director-General of the Department;
  - (viii) "entitlement" means a right to use water in terms of any provision of this Act or in terms of an instrument issued under this Act;
  - (ix) "estuary" means a partially or fully enclosed body of water -
    - (a) which is open to the sea permanently or periodically; and
    - (b) within which the sea water can be diluted, to an extent that is measurable, with fresh water drained from land;
  - (x) "government waterwork" means a waterwork owned or controlled by the Minister and includes the land on which it is situated;
  - (xi) "instream habitat" includes the physical structure of a watercourse and the associated vegetation in relation to the bed of the watercourse;
  - (xii) "Minister" means the Minister of Water Affairs and Forestry;
  - (xiii) "organ of state" has the meaning set out in section 239 of the Constitution;
  - (xiv) "person" includes a natural person, a juristic person, an unincorporated body, an association, an organ of state and the Minister;
  - (xv) "pollution" means the direct or indirect alteration of the physical, chemical or biological properties of a water resource so as to make it -
    - (a) less fit for any beneficial purpose for which it may reasonably be expected to be used; or
    - (b) harmful or potentially harmful -
      - (aa) to the welfare, health or safety of human beings;
      - (bb) to any aquatic or non-aquatic organisms;

- (cc) to the resource quality; or
  - (dd) to property;
  - (xvi) "prescribe" means prescribe by regulation;
  - (xvii) "protection", in relation to a water resource, means -
    - (a) maintenance of the quality of the water resource to the extent that the water resource may be used in an ecologically sustainable way;
    - (b) prevention of the degradation of the water resource; and
    - (c) the rehabilitation of the water resource;
  - (xviii) "Reserve" means the quantity and quality of water required -
    - (a) to satisfy basic human needs by securing a basic water supply, as prescribed under the Water Services Act, 1997 (Act No. 108 of 1997), for people who are now or who will, in the reasonably near future, be -
      - (i) relying upon;
      - (ii) taking water from; or
      - (iii) being supplied from, the relevant water resource; and
    - (b) to protect aquatic ecosystems in order to secure ecologically sustainable development and use of the relevant water resource;
  - (xix) "resource quality" means the quality of all the aspects of a water resource including -
    - (a) the quantity, pattern, timing, water level and assurance of instream flow;
    - (b) the water quality, including the physical, chemical and biological characteristics of the water;
    - (c) the character and condition of the instream and riparian habitat; and
    - (d) the characteristics, condition and distribution of the aquatic biota;
  - (xx) "responsible authority", 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 so assigned, the Minister;
  - (xxi) "riparian habitat" includes the physical structure and associated vegetation of the areas associated with a watercourse which are commonly characterised by alluvial soils, and which are inundated or flooded to an extent and with a frequency sufficient to support vegetation of species with a composition and physical structure distinct from those of adjacent land areas;
  - (xxii) "this Act" includes any regulations made under this Act;
  - (xxiii) "waste" includes any solid material or material that is suspended, dissolved or transported in water (including sediment) and which is spilled or deposited on land or into a water resource in such volume, composition or manner as to cause, or to be reasonably likely to cause, the water resource to be polluted;
  - (xxiv) "watercourse" means -
    - (a) a river or spring;
    - (b) a natural channel in which water flows regularly or intermittently;
    - (c) a wetland, lake or dam into which, or from which, water flows; and
    - (d) any collection of water which the Minister may, by notice in the *Gazette*, declare to be a watercourse, and a reference to a watercourse includes, where relevant, its bed and banks;
  - (xxv) "water management area" is an area established as a management unit in the national water resource strategy within which a catchment management agency will conduct the protection, use, development, conservation, management and control of water resources;
  - (xxvi) "water management institution" means a catchment management agency, 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 this Act;
  - (xxvii) "water resource" includes a watercourse, surface water, estuary, or aquifer;
  - (xxviii) "waterwork" includes any borehole, structure, earthwork or equipment installed or used for or in connection with water use;
  - (xxix) "wetland" means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.
- (2) In this Act, where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have, unless the contrary intention appears from the relevant provisions, corresponding meanings.
- (3) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the purpose of this Act as stated in section 2, must be preferred over any alternative interpretation which is inconsistent with that purpose.

(4) Explanatory notes, printed in bold italics, at the commencement of Chapters and Parts must not be used in the interpretation of any provision of this Act.

(5) Any directive or notice given in terms of this Act must be in writing, unless otherwise specified in this Act.

### **Purpose of Act**

2. The purpose of this Act is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors -

- (a) meeting the basic human needs of present and future generations;
- (b) promoting equitable access to water;
- (c) redressing the results of past racial and gender discrimination;
- (d) promoting the efficient, sustainable and beneficial use of water in the public interest;
- (e) facilitating social and economic development;
- (f) providing for growing demand for water use;
- (g) protecting aquatic and associated ecosystems and their biological diversity;
- (h) reducing and preventing pollution and degradation of water resources;
- (i) meeting international obligations;
- (j) promoting dam safety;
- (k) managing floods and droughts,

and for achieving this purpose, to establish suitable institutions and to ensure that they have appropriate community, racial and gender representation.

### **Public trusteeship of nation's water resources**

3. (1) As the public trustee of the nation's water resources the National Government, acting through the Minister, must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate.

(2) Without limiting subsection (1), the Minister is ultimately responsible to ensure that water is allocated equitably and used beneficially in the public interest, while promoting environmental values.

(3) The National Government, acting through the Minister, has the power to regulate the use, flow and control of all water in the Republic.

### **Entitlement to water use**

4. (1) A person may use water in or from a water resource for purposes such as reasonable domestic use, domestic gardening, animal watering, fire fighting and recreational use, as set out in Schedule 1.

(2) A person may continue with an existing lawful water use in accordance with section 34.

(3) A person may use water in terms of a general authorisation or licence under this Act.

(4) Any entitlement granted to a person by or under this Act replaces any right to use water which that person might otherwise have been able to enjoy or enforce under any other law -

- (a) to take or use water;
- (b) to obstruct or divert a flow of water;
- (c) to affect the quality of any water;
- (d) to receive any particular flow of water;
- (e) to receive a flow of water of any particular quality; or
- (f) to construct, operate or maintain any waterwork.

## CHAPTER 2

### WATER MANAGEMENT STRATEGIES

*This Chapter deals with the development of strategies to facilitate the proper management of water resources.*

#### *Part 1 : National water resource strategy*

*Part 1 requires the progressive development, by the Minister, after consultation with society at large, of a national water resource strategy. The national water resource strategy provides the framework for the protection, use, development, conservation, management and control of water resources for the country as a whole. It also provides the framework within which water will be managed at regional or catchment level, in defined water management areas. The national water resource strategy, which must be formally reviewed from time to time, is binding on all authorities and institutions exercising powers or performing duties under this Act.*

#### **Establishment of national water resource strategy**

5. (1) Subject to subsection (4), the Minister must, as soon as reasonably practicable, by notice in the *Gazette*, establish a national water resource strategy.

(2) The notice must state the address where the strategy may be inspected.

(3) The water resources of the Republic must be protected, used, developed, conserved, managed and controlled in accordance with the national water resource strategy.

(4) A national water resource strategy -

(a) may be established in a phased and progressive manner and in separate components over time; and

(b) must be reviewed at intervals of not more than five years.

(5) Before establishing a national water resource strategy or any component of that strategy in terms of subsection (1), the Minister must -

(a) publish a notice in the *Gazette* -

(i) setting out a summary of the proposed strategy or the component in question;

(ii) stating the address where the proposed strategy or the component in question is available for inspection; and

(iii) inviting written comments to be submitted on the proposed strategy or the component in question, specifying an address to which and a date before which comments must be submitted, which date may not be earlier than 90 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 Minister considers to be appropriate; and

(c) consider all comments received on or before the date specified in paragraph (a)(iii).

#### **Contents of national water resource strategy**

6. (1) The national water resource strategy must, subject to section 5(4)(a) -

(a) set out the strategies, objectives, plans, guidelines and procedures of the Minister and institutional arrangements relating to the protection, use, development, conservation, management and control of water

resources within the framework of existing relevant government policy in order to achieve -

(i) the purpose of this Act; and

(ii) any compulsory national standards prescribed under section 9(1) of the Water Services Act, 1997 (Act No. 108 of 1997);

(b) provide for at least -

(i) the requirements of the Reserve and identify, where appropriate, water resources from which particular requirements must be met;

(ii) international rights and obligations;

(iii) actions to be taken to meet projected future water needs; and

(iv) water use of strategic importance;

(c) establish water management areas and determine their boundaries;

(d) contain estimates of present and future water requirements;

- (e) state the total quantity of water available within each water management area;
  - (f) state water management area surpluses or deficits;
  - (g) provide for inter-catchment water transfers between surplus water management areas and deficit water management areas;
  - (h) set out principles relating to water conservation and water demand management;
  - (i) state the objectives in respect of water quality to be achieved through the classification system for water resources provided for in this Act;
  - (j) contain objectives for the establishment of institutions to undertake water resource management;
  - (k) determine the inter-relationship between institutions involved in water resource management; and
  - (l) promote the management of catchments within a water management area in a holistic and integrated manner.
- (2) In determining a water management area in terms of subsection (1)(c), the Minister must take into account -
- (a) watercourse catchment boundaries;
  - (b) social and economic development patterns;
  - (c) efficiency considerations; and
  - (d) communal interests within the area in question.

### **Giving effect to national water resource strategy**

7. The Minister, the Director-General, an organ of state and a water management institution must give effect to the national water resource strategy when exercising any power or performing any duty in terms of this Act.

### ***Part 2: Catchment management strategies***

***Part 2 requires every catchment management agency to progressively develop a catchment management strategy for the water resources within its water management area. Catchment management strategies must be in harmony with the national water resource strategy. In the process of developing this strategy, a catchment management agency must seek co-operation and agreement on water-related matters from the various stakeholders and interested persons. The catchment management strategy, which must be reviewed from time to time, will include a water allocation plan. A catchment management strategy must set principles for allocating water to existing and prospective users, taking into account all matters relevant to the protection, use, development, conservation, management and control of water resources.***

### **Establishment of catchment management strategies**

8. (1) A catchment management agency contemplated in Chapter 7 must, by notice in the *Gazette*, establish a catchment management strategy for the protection, use, development, conservation, management and control of water resources within its water management area.
- (2) The notice must state the address where the strategy may be inspected.
- (3) A catchment management strategy -
- (a) may be established in a phased and progressive manner and in separate components over time; and
  - (b) must be reviewed at intervals of not more than five years.
- (4) A catchment management strategy or any component of that strategy may only be established with the written consent of the Minister.
- (5) Before establishing a catchment management strategy or any component of that strategy in terms of subsection (1), a catchment management agency must -
- (a) publish a notice in the *Gazette* -
    - (i) setting out a summary of the proposed catchment management strategy or the component in question;
    - (ii) stating the address where the proposed strategy or the component in question is available for inspection; and
    - (iii) inviting written comments to be submitted on the proposed strategy or the component in question, specifying an address to which and a date before which comments must be submitted, which date may not be earlier than 90 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; and
  - (c) consider all comments received on or before the date specified in paragraph (a)(iii).

### **Contents of catchment management strategy**

**9.** A catchment management strategy must -

- (a) take into account the class of water resources and resource quality objectives contemplated in Chapter 3, the requirements of the Reserve and, where applicable, international obligations;
- (b) not be in conflict with the national water resource strategy;
- (c) set out the strategies, objectives, plans, guidelines and procedures of the catchment management agency for the protection, use, development, conservation, management and control of water resources within its water management area;
- (d) take into account the geology, demography, land use, climate, vegetation and waterworks within its water management area;
- (e) contain water allocation plans which are subject to section 23, and which must set out principles for allocating water, taking into account the factors mentioned in section 27(1);
- (f) take account of any relevant national or regional plans prepared in terms of any other law, including any development plan adopted in terms of the Water Services Act, 1997 (Act No. 108 of 1997);
- (g) enable the public to participate in managing the water resources within its water management area;
- (h) take into account the needs and expectations of existing and potential water users; and
- (i) set out the institutions to be established.

#### **Guidelines for and consultation on catchment management strategies**

**10.** (1) The Minister may establish guidelines for the preparation of catchment management strategies.

(2) In developing a catchment management strategy, a catchment management agency must consult with -

- (a) the Minister;
- (b) any organ of state which has an interest in the content, effect or implementation of the catchment management strategy; and
- (c) any persons, or their representative organisations -
  - (i) whose activities affect or might affect water resources within its water management area; and
  - (ii) who have an interest in the content, effect or implementation of the catchment management strategy.

(3) A catchment management agency must, before the publication of a notice in terms of section 8(5)(a), refer to the Minister for consideration and determination, any proposed component of a catchment management strategy which in the opinion of the catchment management agency -

- (a) raises a material question of policy; or
- (b) raises a question concerning -
  - (i) the relationship between the Department and other organs of state; or
  - (ii) the relationship between organs of state and their respective roles in developing or implementing a catchment management strategy.

#### **Giving effect to catchment management strategies**

11. The Minister and the catchment management agency concerned must give effect to any catchment management strategy established under this Part when exercising any power or performing any duty in terms of this Act.

## CHAPTER 3

### PROTECTION OF WATER RESOURCES

*The protection of water resources is fundamentally related to their use, development, conservation, management and control. Parts 1, 2 and 3 of this Chapter lay down a series of measures which are together intended to ensure the comprehensive protection of all water resources. These measures are to be developed progressively within the contexts of the national water resource strategy and the catchment management strategies provided for in Chapter 2. Parts 4 and 5 deal with measures to prevent the pollution of water resources and measures to remedy the effects of pollution of water resources.*

#### *Part 1: Classification system for water resources*

*Part 1 provides for the first stage in the protection process, which is the development by the Minister of a system to classify the nation's water resources. The system provides guidelines and procedures for determining different classes of water resources.*

#### **Prescription of classification system**

12. (1) As soon as is reasonably practicable, the Minister must prescribe a system for classifying water resources.
- (2) The system for classifying water resources may -
- (a) establish guidelines and procedures for determining different classes of water resources;
  - (b) in respect of each class of water resource -
    - (i) establish procedures for determining the Reserve;
    - (ii) establish procedures which are designed to satisfy the water quality requirements of water users as far as is reasonably possible, without significantly altering the natural water quality characteristics of the resource;
    - (iii) set out water uses for instream or land-based activities which activities must be regulated or prohibited in order to protect the water resource; and
  - (c) provide for such other matters relating to the protection, use, development, conservation, management and control of water resources, as the Minister considers necessary.

#### *Part 2: Classification of water resources and resource quality objectives*

*Under Part 2 the Minister is required to use the classification system established in Part 1 to determine the class and resource quality objectives of all or part of water resources considered to be significant. The purpose of the resource quality objectives is to establish clear goals relating to the quality of the relevant water resources. In determining resource quality objectives a balance must be sought between the need to protect and sustain water resources on the one hand, and the need to develop and use them on the other. Provision is made for preliminary determinations of the class and resource quality objectives of water resources before the formal classification system is established. Once the class of a water resource and the resource quality objectives have been determined they are binding on all authorities and institutions when exercising any power or performing any duty under this Act.*

#### **Determination of class of water resources and resource quality objectives**

13. (1) As soon as reasonably practicable after the Minister has prescribed a system for classifying water resources the Minister must, subject to subsection (4), by notice in the *Gazette*, determine for all or part of every significant water resource -
- (a) a class in accordance with the prescribed classification system; and
  - (b) resource quality objectives based on the class determined in terms of paragraph (a).
- (2) A notice in terms of subsection (1) must state the geographical area in respect of which the resource quality objectives will apply, the requirements for achieving the objectives, and the dates from which the objectives will apply.
- (3) The objectives determined in terms of subsection (1) may relate to -
- (a) the Reserve;
  - (b) the instream flow;

(c) the water level;  
(d) the presence and concentration of particular substances in the water;  
(e) the characteristics and quality of the water resource and the instream and riparian habitat;  
(f) the characteristics and distribution of aquatic biota;  
(g) the regulation or prohibition of instream or land-based activities which may affect the quantity of water in or quality of the water resource; and  
(h) any other characteristic,  
of the water resource in question.

(4) Before determining a class or the resource quality objectives in terms of subsection (1), the Minister must in respect of each water resource -

- (a) publish a notice in the *Gazette* -
- (i) setting out -
- (aa) the proposed class;  
(bb) the proposed resource quality objectives;  
(cc) the geographical area in respect of which the objectives will apply;  
(dd) the dates from which specific objectives will apply; and  
(ee) the requirements for complying with the objectives; and
- (ii) inviting written comments to be submitted on the proposed class or proposed resource quality objectives (as the case may be), 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 Minister considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a)(ii).

#### **Preliminary determination of class or resource quality objectives**

14. (1) Until -

- (a) a system for classifying water resources has been prescribed; or  
(b) a class of a water resource or resource quality objectives has been determined, the Minister may, for all or part

of a water resource make a preliminary determination of the class or resource quality objectives.

(2) A determination in terms of section 13 supersedes a preliminary determination.

#### **Giving effect to determination of class of water resource and resource quality objectives**

15. *The Minister, the Director-General, an organ of state and a water management institution, when exercising any power or performing any duty in terms of this Act, must give effect to any determination of a class of a water resource and the resource quality objectives as determined in terms of this Part and any requirements for complying with the resource quality objectives.*

#### **Part 3: The Reserve**

*Part 3 deals with the Reserve, which consists of two parts - the basic human needs reserve and the ecological reserve. The basic human needs reserve provides for the essential needs of individuals served by the water resource in question and includes water for drinking, for food preparation and for personal hygiene. The ecological reserve relates to the water required to protect the aquatic ecosystems of the water resource. The Reserve refers to both the quantity and quality of the water in the resource, and will vary depending on the class of the resource. The Minister is required to determine the Reserve for all or part of any significant water resource. If a resource has not yet been classified, a preliminary determination of the Reserve may be made and later superseded by a new one. Once the Reserve is determined for a water resource it is binding in the same way as the class and the resource quality objectives.*

## Determination of Reserve

16. (1) As soon as reasonably practicable after the class of all or part of a water resource has been determined, the Minister must, by notice in the *Gazette*, determine the Reserve for all or part of that water resource.

(2) A determination of the Reserve must -

- (a) be in accordance with the class of the water resource as determined in terms of section 13; and
- (b) ensure that adequate allowance is made for each component of the Reserve.

(3) Before determining the Reserve in terms of subsection (1), the Minister must -

(a) publish a notice in the *Gazette* -

(i) setting out the proposed Reserve; and  
(ii) inviting written comments to be submitted on the proposed Reserve, specifying an address to which and a date before which 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 Minister considers to be appropriate; and

(c) consider all comments received on or before the date specified in paragraph (a)(ii).

## Preliminary determinations of Reserve

17. (1) Until a system for classifying water resources has been prescribed or a class of a water resource has been determined, the Minister -

(a) may, for all or part of a water resource; and

(b) must, before authorising the use of water under section 22(5), make a preliminary determination of the Reserve.

(2) A determination in terms of section 16(1) supersedes a preliminary determination.

## Giving effect to Reserve

18. The Minister, the Director-General, an organ of state and a water management institution, must give effect to the Reserve as determined in terms of this Part when exercising any power or performing any duty in terms of this Act.

## *Part 4: Pollution prevention*

*Part 4 deals with pollution prevention, and in particular the situation where pollution of a water resource occurs or might occur as a result of activities on land. The person who owns, controls, occupies or uses the land in question is responsible for taking measures to prevent pollution of water resources. If these measures are not taken, the catchment management agency concerned may itself do whatever is necessary to prevent the pollution or to remedy its effects, and to recover all reasonable costs from the persons responsible for the pollution.*

## Prevention and remedying effects of pollution

19. (1) An owner of land, a person in control of land or a person who occupies or uses the land on which -

(a) any activity or process is or was performed or undertaken; or

(b) any other situation exists, which causes, has caused or is likely to cause pollution of a water resource,

must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.

(2) The measures referred to in subsection (1) may include measures to -

(a) cease, modify or control any act or process causing the pollution;

(b) comply with any prescribed waste standard or management practice;

(c) contain or prevent the movement of pollutants;

(d) eliminate any source of the pollution;

(e) remedy the effects of the pollution; and

(f) remedy the effects of any disturbance to the bed and banks of a watercourse.

(3) A catchment management agency may direct any person who fails to take the measures required under subsection (1) to -

(a) commence taking specific measures before a given date;

(b) diligently continue with those measures; and

(c) complete them before a given date.

(4) Should a person fail to comply, or comply inadequately with a directive given under subsection (3), the catchment management agency may take the measures it considers necessary to remedy the situation.

(5) Subject to subsection (6), a catchment management agency may recover all costs incurred as a result of it acting under subsection (4) jointly and severally from the following persons:

(a) Any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or the potential pollution;

(b) the owner of the land at the time when the pollution or the potential for pollution occurred, or that owner's successor-in-title;

(c) the person in control of the land or any person who has a right to use the land at the time when -

(i) the activity or the process is or was performed or undertaken; or

(ii) the situation came about; or

(d) any person who negligently failed to prevent -

(i) the activity or the process being performed or undertaken; or

(ii) the situation from coming about.

(6) The catchment management agency may in respect of the recovery of costs under subsection (5), claim from any other person who, in the opinion of the catchment management agency, benefitted from the measures undertaken under subsection (4), to the extent of such benefit.

(7) The costs claimed under subsection (5) must be reasonable and may include, without being limited to, labour, administrative and overhead costs.

(8) If more than one person is liable in terms of subsection (5), the catchment management agency must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

#### ***Part 5: Emergency incidents***

***Part 5 deals with pollution of water resources following an emergency incident, such as an accident involving the spilling of a harmful substance that finds or may find its way into a water resource. The responsibility for remedying the situation rests with the person responsible for the incident or the substance involved. If there is a failure to act, the relevant catchment management agency may take the necessary steps and recover the costs from every responsible person.***

#### **Control of emergency incidents**

20. (1) In this section "incident" includes any incident or accident in which a substance -

(a) pollutes or has the potential to pollute a water resource; or

(b) has, or is likely to have, a detrimental effect on a water resource.

(2) In this section, "responsible person" includes any person who -

(a) is responsible for the incident;

(b) owns the substance involved in the incident; or

(c) was in control of the substance involved in the incident at the time of the incident.

(3) The responsible person, any other person involved in the incident or any other person with knowledge of the incident must, as soon as reasonably practicable after obtaining knowledge of the incident, report to -

(a) the Department;

(b) the South African Police Service or the relevant fire department; or

(c) the relevant catchment management agency.

(4) A responsible person must -

(a) take all reasonable measures to contain and minimise the effects of the incident;

(b) undertake clean-up procedures;

(c) remedy the effects of the incident; and

(d) take such measures as the catchment management agency may either verbally or in writing direct within the time specified by such institution.

(5) A verbal directive must be confirmed in writing within 14 days, failing which it will be deemed to have been withdrawn.

(6) Should -

(a) the responsible person fail to comply, or inadequately comply with a directive; or

(b) it not be possible to give the directive to the responsible person timeously,

the catchment management agency may take the measures it considers necessary to -

- (i) contain and minimise the effects of the incident;
- (ii) undertake clean-up procedures; and
- (iii) remedy the effects of the incident.

(7) The catchment management agency may recover all reasonable costs incurred by it from every responsible person jointly and severally.

(8) The costs claimed under subsection (7) may include, without being limited to, labour, administration and overhead costs.

(9) If more than one person is liable in terms of subsection (7), the catchment management agency must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

## CHAPTER 4

### USE OF WATER

*As this Act is founded on the principle that National Government has overall responsibility for and authority over water resource management, including the equitable allocation and beneficial use of water in the public interest, a person can only be entitled to use water if the use is permissible under the Act. This Chapter is therefore of central significance to the Act, as it lays the basis for regulating water use. The various types of licensed and unlicensed entitlements to use water are dealt with in detail.*

#### *Part 1: General Principles*

*This Part sets out general principles for regulating water use. Water use is defined broadly, and includes taking and storing water, activities which reduce stream flow, waste discharges and disposals, controlled activities (activities which impact detrimentally on a water resource), altering a watercourse, removing water found underground for certain purposes, and recreation. In general a water use must be licensed unless it is listed in Schedule I, is an existing lawful use, is permissible under a general authorisation, or if a responsible authority waives the need for a licence. The Minister may limit the amount of water which a responsible authority may allocate. In making regulations the Minister may differentiate between different water resources, classes of water resources and geographical areas.*

#### **Water use**

21. For the purposes of this Act, water use includes -

- (a) taking water from a water resource;
- (b) storing water;
- (c) impeding or diverting the flow of water in a watercourse;
- (d) engaging in a stream flow reduction activity contemplated in section 36;
- (e) engaging in a controlled activity identified as such in section 37(1) or declared under section 38(1);
- (f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- (g) disposing of waste in a manner which may detrimentally impact on a water resource;
- (h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process;
- (i) altering the bed, banks, course or characteristics of a watercourse;
- (j) removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; and
- (k) using water for recreational purposes.

#### **Permissible water use**

22. (1) A person may only use water -

- (a) without a licence -
  - (i) if that water use is permissible under Schedule 1;

- (ii) if that water use is permissible as a continuation of an existing lawful use; or
  - (iii) if that water use is permissible in terms of a general authorisation issued under section 39;
  - (b) if the water use is authorised by a licence under this Act; or
  - (c) if the responsible authority has dispensed with a licence requirement under subsection (3).
- (2) A person who uses water as contemplated in subsection (1) -
- (a) must use the water subject to any condition of the relevant authorisation for that use;
  - (b) is subject to any limitation, restriction or prohibition in terms of this Act or any other applicable law;
  - (c) in the case of the discharge or disposal of waste or water containing waste contemplated in section 21(f),
  - (g), (h) or (j), must comply with any applicable waste standards or management practices prescribed under section 26(1)(h) and (i), unless the conditions of the relevant authorisation provide otherwise;
  - (d) may not waste that water; and
  - (e) must return any seepage, run-off or water containing waste which emanates from that use, to the water resource from which the water was taken, unless the responsible authority directs otherwise or the relevant authorisation provides otherwise.
- (3) A responsible authority may dispense with the requirement for a licence for water use if it is satisfied that the purpose of this Act will be met by the grant of a licence, permit or other authorisation under any other law.
- (4) In the interests of co-operative governance, a responsible authority may promote arrangements with other organs of state to combine their respective licence requirements into a single licence requirement.
- (5) A responsible authority may, subject to section 17, authorise the use of water before -
- (a) a national water resource strategy has been established;
  - (b) a catchment management strategy in respect of the water resource in question has been established;
  - (c) a classification system for water resources has been established;
  - (d) the class and resource quality objectives for the water resource in question have been determined; or
  - (e) the Reserve for the water resource in question has been finally determined.
- (6) Any person who has applied for a licence in terms of section 43 in respect of an existing lawful water use as contemplated in section 32, and whose application has been refused or who has been granted a licence for a lesser use than the existing lawful water use, resulting in severe prejudice to the economic viability of an undertaking in respect of which the water was beneficially used, may, subject to subsections (7) and (8), claim compensation for any financial loss suffered in consequence.
- (7) The amount of any compensation payable must be determined -
- (a) in accordance with section 25(3) of the Constitution; and
  - (b) by disregarding any reduction in the existing lawful water use made in order to -
    - (i) provide for the Reserve;
    - (ii) rectify an over-allocation of water use from the resource in question; or
    - (iii) rectify an unfair or disproportionate water use.
- (8) A claim for compensation must be lodged with the Water Tribunal within six months of the relevant decision of the responsible authority.
- (9) The Water Tribunal has jurisdiction to determine liability for compensation and the amount of compensation payable in terms of this section.
- (10) After the Water Tribunal has decided that compensation is payable and determined the amount of compensation, the responsible authority may enter into negotiations with the claimant and, within 30 days after the decision of the Water Tribunal, offer an allocation of water instead of compensation.

### **Determination of quantity of water which may be allocated by responsible authority**

**23.** (1) Subject to the national water resource strategy the Minister may determine the quantity of water in respect of which a responsible authority may issue a general authorisation and a licence from water resources in its water management area.

(2) Until a national water resource strategy has been established, the Minister may make a preliminary determination of the quantity of water in respect of which a responsible authority may issue a general authorisation and licence.

(3) A preliminary determination must be replaced by a determination under subsection (1) once the national water resource strategy has been established.

(4) A responsible authority must comply with any determination made under subsection (1) or (2).

(5) In making a determination under subsections (1) and (2) the Minister must take account of the water available in the resource.

### **Licences for use of water found underground on property of another person**

24. A licence may be granted to use water found underground on land not owned by the applicant if the owner of the land consents or if there is good reason to do so.

### **Transfer of water use authorisations**

25. (1) A water management institution may, at the request of a person authorised to use water for irrigation under this Act, 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.

(2) A person holding an entitlement to use water from a water resource in respect of any land may surrender that entitlement or part of that entitlement -

(a) in order to facilitate a particular licence application under section 41 for the use of water from the same resource in respect of other land; and

(b) on condition that the surrender only becomes effective if and when such application is granted.

(3) The annual report of a water management institution or a responsible authority, as the case may be, must, in addition to any other information required under this Act, contain details in respect of every permission granted under subsection (1) or every application granted under subsection (2).

### **Regulations on use of water**

26. (1) Subject to subsection (4), the Minister may make regulations -

(a) limiting or restricting the purpose, manner or extent of water use;

(b) requiring that the use of water from a water resource be monitored, measured and recorded;

(c) requiring that any water use be registered with the responsible authority;

(d) prescribing the outcome or effect which must be achieved by the installation and operation of any waterwork;

(e) regulating the design, construction, installation, operation and maintenance of any waterwork, where it is necessary or desirable to monitor any water use or to protect a water resource;

(f) requiring qualifications for and registration of persons authorised to design, construct, install, operate and maintain any waterwork, in order to protect the public and to safeguard human life and property;

(g) regulating or prohibiting any activity in order to protect a water resource or instream or riparian habitat;

(h) prescribing waste standards which specify the quantity, quality and temperature of waste which may be discharged or deposited into or allowed to enter a water resource;

(i) prescribing the outcome or effect which must be achieved through management practices for the treatment of waste, or any class of waste, before it is discharged or deposited into or allowed to enter a water resource;

(j) requiring that waste discharged or deposited into or allowed to enter a water resource be monitored and analysed, and prescribing methods for such monitoring and analysis;

(k) prescribing procedural requirements for licence applications;

(l) relating to transactions in respect of authorisations to use water, including but not limited to -

(i) the circumstances under which a transaction may be permitted;

(ii) the conditions subject to which a transaction may take place; and

(iii) the procedure to deal with a transaction;

(m) prescribing methods for making a volumetric determination of water to be ascribed to a stream flow reduction activity for purposes of water use allocation and the imposition of charges;

(n) prescribing procedures for the allocation of water by means of public tender or auction; and

(o) prescribing -

(i) procedures for obtaining; and

(ii) the required contents of, assessments of the likely effect which any proposed licence may have on the quality of the water resource in question.

(2) Regulations made under subsection (1) may -

(a) differentiate between different water resources and different classes of water resources;

(b) differentiate between different geographical areas; and

(c) create offences and prescribe penalties.

- (3) Regulations made under subsection (1)(h), (i) and (j) may contain -
- (a) general provisions applicable to all waste; and
  - (b) specific provisions applicable to waste with specific characteristics.
- (4) When making regulations, the Minister must take into account all relevant considerations, including the need
- to -
- (a) promote the economic and sustainable use of water;
  - (b) conserve and protect water resources or, instream and riparian habitat;
  - (c) prevent wasteful water use;
  - (d) facilitate the management of water use and waterworks;
  - (e) facilitate the monitoring of water use and water resources; and
  - (f) facilitate the imposition and recovery of charges.

***Part 2: Considerations, conditions and essential requirements of general authorisations and licences***

***This Part deals with matters relevant to all general authorisations and licences issued under the Act. It guides responsible authorities in the exercise of their discretion to issue and to attach conditions to general authorisations and licences. It also sets out the essential features of licences, such as effective periods, purposes and places for which they may be issued, and the nature of conditions that may be attached to them. The granting of a licence does not imply any guarantee regarding the availability or quality of water which it covers.***

**Considerations for issue of general authorisations and licences**

27. (1) In issuing a general authorisation or licence a responsible authority must take into account all relevant factors, including -
- (a) existing lawful water uses;
  - (b) the need to redress the results of past racial and gender discrimination;
  - (c) efficient and beneficial use of water in the public interest;
  - (d) the socio-economic impact -
    - (i) of the water use or uses if authorised; or
    - (ii) of the failure to authorise the water use or uses;
  - (e) any catchment management strategy applicable to the relevant water resource;
  - (f) the likely effect of the water use to be authorised on the water resource and on other water users;
  - (g) the class and the resource quality objectives of the water resource;
  - (h) investments already made and to be made by the water user in respect of the water use in question;
  - (i) the strategic importance of the water use to be authorised;
  - (j) the quality of water in the water resource which may be required for the Reserve and for meeting international obligations; and
  - (k) the probable duration of any undertaking for which a water use is to be authorised.
- (2) A responsible authority may not issue a licence to itself without the written approval of the Minister.

## Essential requirements of licences

28. (1) A licence contemplated in this Chapter must specify -
- (a) the water use or uses for which it is issued;
  - (b) the property or area in respect of which it is issued;
  - (c) the person to whom it is issued;
  - (d) the conditions subject to which it is issued;
  - (e) the licence period, which may not exceed forty years; and
  - (f) the review periods during which the licence may be reviewed under section 49, which must be at intervals of not more than five years.
- (2) Subject to subsection (3), restriction, suspension or termination in terms of this Act and review under section 49, a licence remains in force until the end of the licence period, when it expires.
- (3) Subject to subsection (4) and notwithstanding section 49(2), a responsible authority may extend the licence period of a licence if this is done as part of a general review of licences carried out in terms of section 49.
- (4) An extension of a licence period contemplated in subsection (3) may only be made after the responsible authority has considered the factors specified in section 49(2) and all other relevant factors, including new applications for water use and has concluded that there are no substantial grounds not to grant an extension.
- (5) An extension of a licence period in terms of subsection (3) may only be given for a single review period at a time as stipulated in subsection (1)(f).
- (6) If the licence period of a licence is extended in terms of subsection (3), the licence may, in respect of the period for which it is extended, be issued subject to different conditions which may include a lesser permitted water use.

## Conditions for issue of general authorisations and licences

29. (1) A responsible authority may attach conditions to every general authorisation or licence -
- (a) relating to the protection of -
    - (i) the water resource in question;
    - (ii) the stream flow regime; and
    - (iii) other existing and potential water users;
  - (b) relating to water management by -
    - (i) specifying management practices and general requirements for any water use, including water conservation measures;
    - (ii) requiring the monitoring and analysis of and reporting on every water use and imposing a duty to measure and record aspects of water use, specifying measuring and recording devices to be used;
    - (iii) requiring the preparation and approval of and adherence to, a water management plan;
    - (iv) requiring the payment of charges for water use as provided for in Chapter 5;
    - (v) requiring the licensee to provide or make water available to a person specified in the licence; and
    - (vi) in the case of a general authorisation, requiring the registration of the water use with the responsible authority and the payment of a registration fee as a pre-condition of that use;
  - (c) relating to return flow and discharge or disposal of waste, by -
    - (i) specifying a water resource to which it must be returned or other manner in which it must be disposed of;
    - (ii) specifying permissible levels for some or all of its chemical and physical components;
    - (iii) specifying treatment to which it must be subjected, before it is discharged; and
    - (iv) specifying the volume which may be returned;
  - (d) in the case of a controlled activity -
    - (i) specifying the waste treatment, pollution control and monitoring equipment to be installed, maintained and operated; and
    - (ii) specifying the management practices to be followed to prevent the pollution of any water resource;
  - (e) in the case of taking or storage of water -
    - (i) setting out the specific quantity of water or percentage of flow which may be taken;
    - (ii) setting out the rate of abstraction;
    - (iii) specifying the method of construction of a borehole and the method of abstraction from the borehole;
    - (iv) specifying the place from where water may be taken;
    - (v) specifying the times when water may be taken;
    - (vi) identifying or limiting the area of land on which any water taken from a resource may be used;

- (vii) limiting the quantity of water which may be stored;
  - (viii) specifying locations where water may be stored; and
  - (ix) requiring the licensee to become a member of a water user association before water may be taken;
- (f) in the case of a stream flow reduction activity -
- (i) specifying practices to be followed to limit stream flow reduction and other detrimental impacts on the water resource; and
  - (ii) setting or prescribing a method for determining the extent of the stream flow reduction caused by the authorised activity;
- (g) which are necessary or desirable to achieve the purpose for which the licence was issued;
- (h) which are necessary or desirable to ensure compliance with the provisions of this Act; and
- (i) in the case of a licence -
- (i) specifying times when water may or may not be used;
  - (ii) containing provisions for its termination if an authorised use of water is not implemented or not fully implemented;
  - (iii) designating water for future or contingent use; or
  - (iv) which have been agreed to by the licensee.
- (2) If a licensee has agreed to pay compensation to another person in terms of any arrangement to use water, the responsible authority may make the obligation to pay compensation a condition of the licence.

### **Security by applicant**

- 30.** (1) A responsible authority may, if it is necessary for the protection of the water resource or property, require the applicant to give security in respect of any obligation or potential obligation arising from a licence to be issued under this Act.
- (2) The security referred to in subsection (1) may include any of the following:
- (i) A letter of credit from a bank;
  - (ii) a surety or a bank guarantee;
  - (iii) a bond;
  - (iv) an insurance policy; or
  - (v) any other appropriate form of security.
- (3) The responsible authority must determine the type, extent and duration of any security required.
- (4) The duration of the security may extend beyond the time period specified in the licence in question.
- (5) If the responsible authority requires security in the form of an insurance policy, it may require that it be jointly insured under or be a beneficiary of the insurance policy and where appropriate, the responsible authority must be regarded as having an insurable interest in the subject matter of the insurance policy.
- (6) A person may apply in writing to the responsible authority to have any security given by that person in terms of this section amended or discharged at any time, which application may not be unreasonably refused.

### **Issue of licence no guarantee of supply**

- 31.** The issue of a licence to use water does not imply a guarantee relating to -
- (a) the statistical probability of supply;
  - (b) the availability of water; or
  - (c) the quality of water.

### ***Part 3: Existing lawful water uses***

***This Part permits the continuation under certain conditions of an existing water use derived from a law repealed by this Act. An existing lawful water use, with any conditions attached, is recognised but may continue only to the extent that it is not limited, prohibited or terminated by this Act. No licence is required to continue with an existing lawful water use until a responsible authority requires a person claiming such an entitlement to apply for a licence. If a licence is issued it becomes the source of authority for the water use. If a licence is not granted the use is no longer permissible.***

### **Definition of existing lawful water use**

- 32.** (1) An existing lawful water use means a water use -
- (a) which has taken place at any time during a period of two years immediately before the date of commencement of this Act; or
  - (b) which has been declared an existing lawful water use under section 33,

and which -

- (i) was authorised by or under any law which was in force immediately before the date of commencement of this Act;
  - (ii) is identified as a stream flow reduction activity in section 36(1); or
  - (iii) is identified as a controlled activity in section 37(1).
- (2) In the case of -
- (a) a stream flow reduction activity declared under section 36(1); or
  - (b) a controlled activity declared under section 38, existing lawful water use means a water use which has taken place at any time during a period of two years immediately before the date of the declaration.

#### **Declaration of water use as existing lawful water use**

**33.** (1) A person may apply to a responsible authority to have a water use which is not one contemplated in section 32(1)(b)(i), (ii) or (iii), declared to be an existing lawful water use.

(2) A responsible authority may, on its own initiative, declare a water use which is not one contemplated in section 32(1)(b)(i), (ii) or (iii), to be an existing lawful water use.

(3) A responsible authority may only make a declaration under subsections (1) and (2) if it is satisfied that the water use -

(a) took place more than two years before the date of commencement of this Act and was discontinued for good reason; or

(b) had not yet taken place at any time before the date of commencement of this Act but -

(i) would have been lawful had it so taken place; and

(ii) steps towards effecting the use had been taken in good faith before the date of commencement of

this Act.

(4) Section 41 applies to an application in terms of this section as if the application had been made in terms of that section.

#### **Authority to continue with existing lawful water use**

**34.** (1) A person, or that person's successor-in-title, may continue with an existing lawful water use, subject to -

(a) any existing conditions or obligations attaching to that use;

(b) its replacement by a licence in terms of this Act; or

(c) any other limitation or prohibition by or under this Act.

(2) A responsible authority may, subject to any regulation made under section 26(1)(c), require the registration of an existing lawful water use.

#### **Verification of existing water uses**

**35.** (1) The responsible authority may, in order to verify the lawfulness or extent of an existing water use, by written notice require any person claiming an entitlement to that water use to apply for a verification of that use.

(2) A notice under subsection (1) must -

(a) have a suitable application form annexed to it;

(b) specify a date before which the application must be submitted;

(c) inform the person concerned that any entitlement to continue with the water use may lapse if an application is not made on or before the specified date; and

(d) be delivered personally or sent by registered mail to the person concerned.

(3) A responsible authority -

(a) may require the applicant, at the applicant's expense, to obtain and provide it with other information, in addition to the information contained in the application;

(b) may conduct its own investigation into the veracity and the lawfulness of the water use in question;

(c) may invite written comments from any person who has an interest in the matter; and

(d) must afford the applicant an opportunity to make representations on any aspect of the application.

(4) A responsible authority may determine the extent and lawfulness of a water use pursuant to an application under this section, and such determination limits the extent of any existing lawful water use contemplated in section 32(1).

(5) No person who has been required to apply for verification under subsection (1) in respect of an existing lawful water use may exercise that water use -

(a) after the closing date specified in the notice, if that person has not applied for verification; or

- (b) after the verification application has been refused, if that person applied for verification.
- (6) A responsible authority may, for good reason, condone a late application and charge a reasonable additional fee for processing the late application.

#### ***Part 4: Stream flow reduction activities***

***This Part allows the Minister, after public consultation, to regulate land-based activities which reduce stream flow, by declaring such activities to be stream flow reduction activities. Whether or not an activity is declared to be a stream flow reduction activity depends on various factors, such as the extent of stream flow reduction, its duration, and its impact on any relevant water resource and on other water users. The control of forestry for its impact on water resources, currently exercised in terms of the Forest Act, is now exercised under this Part.***

#### **Declaration of stream flow reduction activities**

- 36.** (1) The following are stream flow reduction activities:
- (a) the use of land for afforestation which has been or is being established for commercial purposes; and
  - (b) an activity which has been declared as such under subsection (2).
- (2) The Minister may, by notice in the *Gazette*, in relation to a particular area specified in that notice, declare any activity (including the cultivation of any particular crop or other vegetation) to be a stream flow reduction activity if that activity is likely to reduce the availability of water in a watercourse to the Reserve, to meet international obligations, or to other water users significantly.
- (3) In making a declaration under subsection (2), the Minister must consider -
- (a) the extent to which the activity significantly reduces the water availability in the watercourse;
  - (b) the effect of the stream flow reduction on the water resource in terms of its class and the Reserve;
  - (c) the probable duration of the activity;
  - (d) any national water resource strategy established under section 5; and
  - (e) any catchment management strategy established under section 8.
- (4) Before making a declaration under subsection (2), the Minister must -
- (a) publish a notice in the *Gazette* -
    - (i) setting out the activity proposed to be declared a stream flow reduction activity; and
    - (ii) inviting written comments to be submitted on the proposed declaration, specifying an address to which and a date before which 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 Minister considers to be appropriate; and
  - (c) consider all comments received on or before the date specified in paragraph (a)(ii).
- (5) Every notice published in terms of subsection (4)(a) must contain a schedule in which must be listed all stream flow reduction activities set out in subsection (1) and those which have, up to the date of the notice, been declared to be stream flow reduction activities under subsection (2).

## ***Part 5: Controlled activities***

*This Part allows the Minister to regulate activities having a detrimental impact on water resources by declaring them to be controlled activities. Four such activities - irrigation using waste or water containing waste from certain sources, modification of atmospheric precipitation, altering the flow regime of a water resource as a result of power generation, and aquifer recharge using waste or water containing waste - are identified in the Act as controlled activities. Provision is made for the Minister to declare other controlled activities as the need arises, but in these cases public consultation is required. Following the identification or declaration of a controlled activity an authorisation for that particular category of activity is required under this Act.*

### **Controlled activity**

37. (1) The following are controlled activities:

- (a) irrigation of any land with waste or water containing waste generated through any industrial activity or by a waterwork;
- (b) an activity aimed at the modification of atmospheric precipitation;
- (c) a power generation activity which alters the flow regime of a water resource;
- (d) intentional recharging of an aquifer with any waste or water containing waste; and
- (e) an activity which has been declared as such under section 38.

(2) No person may undertake a controlled activity unless such person is authorised to do so by or under this Act.

### **Declaration of certain activities as controlled activities**

38. (1) The Minister may, by notice in the *Gazette*, in general or specifically, declare an activity to be a controlled activity.

(2) Before declaring an activity to be a controlled activity the Minister must be satisfied that the activity in question is likely to impact detrimentally on a water resource.

(3) Before making a declaration under subsection (1) the Minister -

- (a) must publish a notice in the *Gazette* -
  - (i) setting out the activity or category of activities proposed to be declared; and
  - (ii) inviting written comments to be submitted on the proposed declaration, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice; and
- (b) may, in the case of a specific activity on a specific site, make the notice known by delivering or sending a copy to the owner or the person in control of the site in question, and to every organ of state which, and every person who, has an interest in the matter;
- (c) must 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 Minister considers to be appropriate; and
- (d) must consider all comments received on or before the date specified in paragraph(a)(ii).

(4) Every notice published in terms of subsection (1) must contain a schedule on which must be listed all controlled activities set out in section 37(1)(a) to (d) and those which have, up to the date of the notice, been declared to be controlled activities under subsection (1).

## ***Part 6: General authorisations***

*This Part establishes a procedure to enable a responsible authority, after public consultation, to permit the use of water by publishing general authorisations in the *Gazette*. A general authorisation may be restricted to a particular water resource, a particular category of persons, a defined geographical area or a period of time, and requires conformity with other relevant laws. The use of water under a general authorisation does not require a licence until the general authorisation is revoked, in which case licensing will be necessary. A general authorisation does not replace or limit an entitlement to use water, such as an existing lawful water use or a licence, which a person may otherwise have under this Act.*

### **General authorisations to use water**

39. (1) A responsible authority may, subject to Schedule 1, by notice in the *Gazette* -

- (a) generally;
- (b) in relation to a specific water resource; or
- (c) within an area specified in the notice,

authorise all or any category of persons to use water, subject to any regulation made under section 26 and any conditions imposed under section 29.

(2) The notice must state the geographical area in respect of which the general authorisation will apply, and the date upon which the general authorisation will come into force, and may state the date on which the general authorisation will lapse.

(3) A water use may be authorised under subsection (1) on condition that the user obtains any permission or authority required by any other specified law.

(4) Before issuing a general authorisation, the responsible authority must -

(a) publish a notice in the *Gazette* -

(i) setting out the proposed general authorisation; and

(ii) inviting written comments to be submitted on the proposed general authorisation, specifying an address to which and a date before which 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 responsible authority considers to be appropriate; and

(c) consider all comments received on or before the date specified in paragraph (a)(ii).

(5) An authorisation to use water under this section does not replace or limit any entitlement to use water which a person may otherwise have under this Act.

### ***Part 7: Individual applications for licences***

***This Part sets out the procedures which apply in all cases where a licence is required to use water, but where no general invitation to apply for licences has been issued under Part 8. Water users who are not required to license their use, but who wish to convert the use to licensed use, may also use the procedure set out in this Part, but the responsible authority may decline to grant a licence when the applicant is entitled to the use of water under an existing lawful use or by a general authorisation. In considering an application a responsible authority may require additional information from the applicant, and may also require the applicant to undertake an environmental or other assessment, which assessments may be subject to independent review.***

#### **Application for licence**

**40.** (1) A person who is required or wishes to obtain a licence to use water must apply to the relevant responsible authority for a licence.

(2) Where a person has made an application for an authorisation to use water under another Act, and that application has not been finalised when this Act takes effect, the application must be regarded as being an application for a water use under this Act.

(3) A responsible authority may charge a reasonable fee for processing a licence application, which may be waived in deserving cases.

(4) A responsible authority may decline to consider a licence application for the use of water to which the applicant is already entitled by way of an existing lawful water use or under a general authorisation.

#### **Procedure for licence applications**

**41.** (1) An application for a licence for water use must -

(a) be made in the form;

(b) contain the information; and

(c) be accompanied by the processing fee,

determined by the responsible authority.

- (2) A responsible authority -
- (a) may, to the extent that it is reasonable to do so, require the applicant, at the applicant's expense, to obtain and provide it by a given date with -
    - (i) other information, in addition to the information contained in the application;
    - (ii) an assessment by a competent person of the likely effect of the proposed licence on the resource quality; and
    - (iii) an independent review of the assessment furnished in terms of subparagraph (ii), by a person acceptable to the responsible authority;
  - (b) may conduct its own investigation on the likely effect of the proposed licence on the protection, use, development, conservation, management and control of the water resource;
  - (c) may invite written comments from any organ of state which or person who has an interest in the matter; and
  - (d) must afford the applicant an opportunity to make representations on any aspect of the licence application.
- (3) A responsible authority may direct that any assessment under subsection (2)(a)(ii) must comply with the requirements contained in regulations made under section 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989).
- (4) A responsible authority may, at any stage of the application process, require the applicant -
- (a) to give suitable notice in newspapers and other media -
    - (i) describing the licence applied for;
    - (ii) stating that written objections may be lodged against the application before a specified date, which must be not less than 60 days after the last publication of the notice;
    - (iii) giving an address where written objections must be lodged; and
    - (iv) containing such other particulars as the responsible authority may require;
  - (b) to take such other steps as it may direct to bring the application to the attention of relevant organs of state, interested persons and the general public; and
  - (c) to satisfy the responsible authority that the interests of any other person having an interest in the land will not be adversely affected.

## **Reasons for decisions**

42. After a responsible authority has reached a decision on a licence application, it must promptly -
- (a) notify the applicant and any person who has objected to the application; and
  - (b) at the request of any person contemplated in paragraph (a), give written reasons for its decision.

### ***Part 8: Compulsory licences for water use in respect of specific resource***

*This Part establishes a procedure for a responsible authority to undertake compulsory licensing of any aspect of water use in respect of one or more water resources within a specific geographic area. It includes requirements for a responsible authority to prepare schedules for allocating quantities of water to existing and new users. The procedure is intended to be used in areas which are, or are soon likely to be, under "water stress" (for example, where the demands for water are approaching or exceed the available supply, where water quality problems are imminent or already exist, or where the water resource quality is under threat), or where it is necessary to review prevailing water use to achieve equity of access to water.*

*In such cases the responsible authority must publish a notice in the Gazette and other appropriate media, requiring people to apply for licences in the designated area. Applicants may be required to submit additional information, and may also be required to undertake an environmental or other assessment, which assessment may be subject to independent review.*

*In determining the quantities of water to be allocated to users, the responsible authority must consider all applications received, and draw up a schedule detailing how the available water will be allocated among the applicants. In drawing up an allocation schedule the responsible authority must comply with the plans, strategies and criteria set out elsewhere in the Act and must give special consideration to certain categories of applicants. A responsible authority need not allocate all the available water in a water resource, and may reserve some of the water for future needs. Provision is also made for any water still available after the requirements of the Reserve, international obligations and corrective action have been met to be allocated on the basis of public auction or tender. A system of objections and appeals in relation to proposed and preliminary allocation schedules ensures that licences may be issued only after the allocation schedule has been finalised.*

*Licences issued under this Part replace previous entitlements to any existing lawful water use by the applicant.*

### **Compulsory licence applications**

43. (1) If it is desirable that water use in respect of one or more water resources within a specific geographic area be licensed -

- (a) to achieve a fair allocation of water from a water resource in accordance with section 45 -
  - (i) which is under water stress; or
  - (ii) when it is necessary to review prevailing water use to achieve equity in allocations;
- (b) to promote beneficial use of water in the public interest;
- (c) to facilitate efficient management of the water resource; or
- (d) to protect water resource quality,

the responsible authority may issue a notice requiring persons to apply for licences for one or more types of water use contemplated in section 21.

(2) A notice in terms of subsection (1) must -

- (a) identify the water resource and the water use in question;
- (b) state where licence application forms may be obtained;
- (c) state the address to which licence applications must be submitted;
- (d) state the closing date for licence applications;
- (e) state the application fee; and
- (f) contain such other information as the responsible authority considers appropriate.

(3) A notice in terms of subsection (1) must be made known by publishing the notice in the *Gazette* at least 60 days before the closing date, giving suitable notice in newspapers and other media and taking other steps to bring the notice to the attention of interested persons.

(4) Section 41 applies to an application in terms of this section as if the application had been made in terms of that section.

### **Late applications**

44. A responsible authority may, for good reason, condone a late application and charge a reasonable additional fee for processing the late application.

### **Proposed allocation schedules**

45. (1) A responsible authority must, after considering -

- (a) all applications received in response to the publication of a notice in terms of section 43(1);
- (b) any further information or assessment obtained; and
- (c) the factors contemplated in section 27, prepare a proposed allocation schedule specifying how water from the water resource in question will be allocated.

(2) A proposed allocation schedule must, subject to subsection (3), reflect the quantity of water to be -

- (a) assigned to the Reserve and any relevant international obligations;
- (b) assigned to meet the requirements of existing licences;
- (c) allocated to each of the applicants to whom licences ought to be issued in order to redress the results of past racial and gender discrimination in accordance with the constitutional mandate for water reform;
- (d) allocated to each of the applicants exercising existing lawful water uses to whom the licensing authority determines that licences should be issued;
- (e) allocated to each of the applicants, taking into account the factors set out in section 27; and
- (f) allocated to every other applicant by public tender or auction, subject to any regulation made under

section 26(1)(n).

(3) A responsible authority is under no obligation to allocate all available water.

(4) After completing a proposed allocation schedule the responsible authority must publish a notice in the *Gazette* -

- (a) containing a copy of the proposed schedule, or stating the address where it may be inspected;
- (b) inviting written objections to be submitted on the proposed schedule, specifying an address to which the objections are to be submitted and specifying a date before which the objections are to be submitted, which date must be not less than 60 days after the date of publication of the notice; and
- (c) must 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 responsible authority considers to be appropriate.

### **Preliminary allocation schedules**

46. (1) After considering all objections received on the proposed allocation schedule on or before the date specified in the notice contemplated in section 45(4), the responsible authority must prepare a preliminary allocation schedule and publish a notice in the *Gazette* -

- (a) containing a copy of the preliminary allocation schedule, or stating the address where it may be inspected; and
- (b) stating that an appeal in respect of any unsuccessful objection to the preliminary allocation schedule may be made in accordance with Chapter 15.

(2) If an appeal under subsection (1)(b) succeeds, the responsible authority must amend the preliminary allocation schedule as directed by the Water Tribunal.

### **Final allocation schedule**

47. (1) A preliminary allocation schedule becomes a final allocation schedule -

- (a) (i) if no appeal is lodged within the time limit;
- (ii) if it has been amended following every successful appeal; or
- (iii) if every appeal lodged is dismissed; and
- (b) on publication by the responsible authority of a notice in the *Gazette* -
  - (i) stating that a preliminary allocation schedule has become final; and
  - (ii) containing a copy of the final allocation schedule, or stating the address where it may be inspected.

(2) A responsible authority must, as soon as reasonably practicable after a preliminary allocation schedule becomes final, issue licences according to the allocations provided for in it.

### **Licences replace previous entitlements**

48. (1) Any licence issued pursuant to an application contemplated in section 43(1) replaces any existing lawful water use entitlement of that person in respect of the water use in question.

(2) Notwithstanding the provisions of section 4, no person to whom a general notice to apply for a licence has been directed in terms of section 43 in respect of an existing lawful water use may exercise that water use -

- (a) after the closing date stated in the notice if that person did not apply for a licence; or
- (b) after the licence application has been finally disposed of, if that person did apply for a licence.

## ***Part 9: Review and renewal of licences, and amendment and substitution of conditions of licences***

*This Part deals with the review and renewal of licences, and the amendment and substitution of their conditions. Review of a licence is by the relevant responsible authority, at periods stipulated in the licence as part of a general review process.*

*A review of a licence may lead to the amendment or substitution of its conditions, but only if certain requirements are satisfied. If the amendment or substitution of conditions severely prejudices the economic viability of any undertaking in respect of which the licence was issued there is a claim for compensation. Minor amendments to licences (for instance, to correct clerical mistakes, or changes in format), and those agreed to by the licensee may be made outside of the review process. In addition, a licensee may apply to the responsible authority for the renewal or amendment of a licence before it expires. In considering such applications the responsible authority must again consider the matters dealt with in the initial application, and there are limitations to the new conditions to which the licence may be subjected.*

### **Review and amendment of licences**

49. (1) A responsible authority may review a licence only at the time periods stipulated for that purpose in the licence.

(2) On reviewing a licence, a responsible authority may amend any condition of the licence, other than the period thereof, if -

- (a) it is necessary or desirable to prevent deterioration or further deterioration of the quality of the water resource;
- (b) there is insufficient water in the water resource to accommodate all authorised water uses after allowing for the Reserve and international obligations; or
- (c) it is necessary or desirable to accommodate demands brought about by changes in socio-economic circumstances, and it is in the public interest to meet those demands.

(3) An amendment contemplated in subsection (2) may only be made if the conditions of other licences for similar

water use from the same water resource in the same vicinity, all as determined by the responsible authority,

have also been amended in an equitable manner through a general review process.

(4) If an amendment of a licence condition on review severely prejudices the economic viability of any undertaking in respect of which the licence was issued, the provisions of section 22(6) to (10) apply.

(5) A responsible authority must afford the licensee an opportunity to be heard before amending any licence condition on review.

### **Formal amendment of licences**

50. (1) A responsible authority may amend or substitute a licence condition -

- (a) if the licensee or successor-in-title has consented to or requested the amendment or substitution;
- (b) to reflect one or more successors-in-title as new licensees; and
- (c) to change the description of the property to which the licence applies, if the property described in the licence has been subdivided or consolidated with other property.

(2) The responsible authority may require the licensee -

- (a) to obtain the written consent of any affected person before amending or substituting the licence; or
- (b) to make a formal application for the amendment or substitution in terms of section 52;

(3) A responsible authority may only amend or substitute a licence condition under this section if it is satisfied that

- (a) the amendment or substitution will not have a significant detrimental impact on the water resource; and
- (b) the interests of any other person are not adversely affected, unless that person has consented thereto.

## **Successors-in-title**

**51.** (1) A responsible authority may, after giving all parties an opportunity to be heard, adjudicate upon conflicting claims between a licensee and a successor-in-title, or between different successors-in-title, in respect of claims for the amendment or substitution of licence conditions.

(2) A successor-in-title of any person to whom a licence to use water has been issued -  
(a) may, subject to the conditions of the relevant licence and paragraph (b), continue with the water use; and  
(b) must promptly inform the responsible authority of the succession, for the substitution of the name of the licensee, for the remainder of the term.

## **Procedure for earlier renewal or amendment of licences**

**52.** (1) A licensee may, before the expiry date of a licence, apply to the responsible authority for the renewal or amendment of the licence.

(2) Unless an application for the renewal or amendment of a licence is made in terms of section 50, it must -  
(a) be made in such form, contain such information and be accompanied by such processing fee as may be determined by the responsible authority; and  
(b) be dealt with according to the procedure as set out in section 41.

(3) In considering an application to amend or renew a licence, the responsible authority must have regard to the same matters which it was required to consider when deciding the initial application for that licence.

(4) A responsible authority may amend any condition of a licence by agreement with the licensee.

### ***Part 10: Contravention of or failure to comply with authorisations***

***This Part deals with the consequences of contraventions of licence conditions. These range from the responsible authority requiring the licensee to take remedial action, failing which it may take the necessary action and recover reasonable costs from that person, to the suspension or withdrawal of a licence. Where a licensee offers to surrender a licence the responsible authority is obliged to accept the surrender and cancel the licence unless there is good reason for refusal.***

## **Rectification of contraventions**

**53.** (1) A responsible authority may, by notice in writing to a person who contravenes -  
(a) any provision of this Chapter;  
(b) a requirement set or directive given by the responsible authority under this Chapter; or  
(c) a condition which applies to any authority to use water,

direct that person, or the owner of the property in relation to which the contravention occurs, to take any action specified in the notice to rectify the contravention, within the time (being not less than two working days) specified in the notice or any other longer time allowed by the responsible authority.

(2) If the action is not taken within the time specified in the notice, or any longer time allowed, the responsible authority may -

(a) carry out any works and take any other action necessary to rectify the contravention and recover its reasonable costs from the person on whom the notice was served; or  
(b) apply to a competent court for appropriate relief.

## **Suspension or withdrawal of entitlements to use water**

**54.** (1) Subject to subsections (3) and (4), a responsible authority may by notice to any person entitled to use water under this Act suspend or withdraw the entitlement if the person fails -

(a) to comply with any condition of the entitlement;  
(b) to comply with this Act; or  
(c) to pay a charge which is payable in terms of Chapter 5.

- (2) An entitlement may be suspended under subsection (1) -  
    (a) for the period specified in the notice of suspension; or  
    (b) until the responsible authority is satisfied that the person concerned has rectified the failure which led to the suspension.
- (3) A responsible authority may only suspend or withdraw an entitlement under subsection (1) if the responsible authority has directed the person concerned to take specified steps to rectify the failure within a specified period, and the person concerned has failed to do so to the satisfaction of the responsible authority.
- (4) The person concerned must be given an opportunity to make representations, within a reasonable period, on any proposed suspension or withdrawal of an entitlement to use water.
- (5) A responsible authority may, for good reason, reinstate an entitlement withdrawn under subsection (1).

### **Surrender of licence**

55. (1) A licensee may offer to surrender any licence issued to that licensee under this Chapter, whereupon, unless there is good reason not to do so, the responsible authority must accept the surrender and cancel the licence.
- (2) A responsible authority may refund to a licensee any charge or part of any charge paid in respect of a licence surrendered under subsection (1).

## **CHAPTER 5**

### **FINANCIAL PROVISIONS**

*This Chapter deals with the measures to finance the provision of water resource management services as well as financial and economic measures to support the implementation of strategies aimed at water resource protection, conservation of water and the beneficial use of water.*

#### *Part 1 : Water use charges*

*In terms of Part 1 the Minister may from time to time, after public consultation, establish a pricing strategy which may differentiate among geographical areas, categories of water users or individual water users. The achievement of social equity is one of the considerations in setting differentiated charges. Water use charges are to be used to fund the direct and related costs of water resource management, development and use, and may also be used to achieve an equitable and efficient allocation of water. In addition, they may also be used to ensure compliance with prescribed standards and water management practices according to the user pays and polluter pays principles. Water use charges will be used as a means of encouraging reduction in waste, and provision is made for incentives for effective and efficient water use. Non-payment of water use charges will attract penalties, including the possible restriction or suspension of water supply from a waterwork or of an authorisation to use water.*

#### **Pricing strategy for water use charges**

56. (1) The Minister may, with the concurrence of the Ministry of Finance, from time to time by notice in the *Gazette*, establish a pricing strategy for charges for any water use within the framework of existing relevant government policy.
- (2) The pricing strategy may contain a strategy for setting water use charges -
- (a) for funding water resource management, including the related costs of -
    - (i) gathering information;
    - (ii) monitoring water resources and their use;
    - (iii) controlling water resources;
    - (iv) water resource protection, including the discharge of waste and the protection of the Reserve; and
    - (v) water conservation;
  - (b) for funding water resource development and use of waterworks, including -
    - (i) the costs of investigation and planning;
    - (ii) the costs of design and construction;
    - (iii) pre-financing of development;
    - (iv) the costs of operation and maintenance of waterworks;
    - (v) a return on assets; and
    - (vi) the costs of water distribution; and

- (c) for achieving the equitable and efficient allocation of water.
- (3) The pricing strategy may -
- (a) differentiate on an equitable basis between -
    - (i) different types of geographic areas;
    - (ii) different categories of water use; and
    - (iii) different water users;
  - (b) provide for charges to be paid by either -
    - (i) an appropriate water management institution; or
    - (ii) consumers directly;
  - (c) provide for the basis of establishing charges;
  - (d) provide for a rebate for water returned to a water resource; and
  - (e) provide on an equitable basis for some elements of the charges to be waived in respect of specific users for a specified period of time.
- (4) The pricing strategy may differentiate under subsection (3)(a) -
- (a) in respect of different geographic areas, on the basis of -
    - (i) socio-economic aspects within the area in question;
    - (ii) the physical attributes of each area; and
    - (iii) the demographic attributes of each area;
  - (b) in respect of different types of water uses, on the basis of -
    - (i) the manner in which the water is taken, supplied, discharged or disposed of;
    - (ii) whether the use is consumptive or non-consumptive;
    - (iii) the assurance and reliability of supply and water quality;
    - (iv) the effect of return flows on a water resource;
    - (v) the extent of the benefit to be derived from the development of a new water resource;
    - (vi) the class and resource quality objectives of the water resource in question; and
    - (vii) the required quality of the water to be used; and
  - (c) in respect of different water users, on the basis of -
    - (i) the extent of their water use;
    - (ii) the quantity of water returned by them to a water resource;
    - (iii) their economic circumstances; and
    - (iv) the statistical probability of the supply of water to them.
- (5) The pricing strategy may provide for a differential rate for waste discharges, taking into account -
- (a) the characteristics of the waste discharged;
  - (b) the amount and quality of the waste discharged;
  - (c) the nature and extent of the impact on a water resource caused by the waste discharged;
  - (d) the extent of permitted deviation from prescribed waste standards or management practices; and
  - (e) the required extent and nature of monitoring the water use.
- (6) In setting a pricing strategy for water use charges, the Minister -
- (a) must consider the class and resource quality objectives for different water resources;
  - (b) may consider incentives and disincentives -
    - (i) to promote the efficient use and beneficial use of water;
    - (ii) to reduce detrimental impacts on water resources; and
    - (iii) to prevent the waste of water; and
  - (c) must consider measures necessary to support the establishment of tariffs by water services authorities in terms of section 10 of the Water Services Act, 1997 (Act No. 108 of 1997),
- and
- the use of lifeline tariffs and progressive block tariffs.

- (7) Before setting a pricing strategy for water use charges under subsection (1), the Minister must -
- (a) publish a notice in the *Gazette* -
    - (i) setting out the proposed pricing strategy; and
    - (ii) inviting written comments to be submitted on the proposed strategy, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 90 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 Minister considers to be appropriate; and
  - (c) consider all comments received on or before the date specified in the notice.

### **Application of pricing strategy**

- 57.** (1) Water use charges -
- (a) may be made -
    - (i) within a specific water management area; or
    - (ii) on a national or regional basis; and
  - (b) must be made in accordance with the pricing strategy for water use charges set by the Minister.
- (2) Charges made within a specific water management area may be made by and are payable to the relevant water management institution.
- (3) Charges made on a national or regional basis -
- (a) may be made by the Minister and are payable to the state; and
  - (b) may be apportioned between different water management areas according to the extent of the specific benefits which each water management area derives or will derive from the water uses for which the charges are made.
- (4) Any person liable to pay water charges to a water services institution as defined in the Water Services Act, 1997 (Act No. 108 of 1997), for water supply services or sanitation services may not be charged for those services in terms of this Act.
- (5) No charge made under this Act may be of such a nature as to constitute the imposition of a tax, levy or duty.

### **Recovery of water use charges**

- 58.** (1) The Minister may direct any water management institution to recover any charges for water use made by the Minister under section 57(1)(a) from water users within its water management area or area of operation, as the case may be.
- (2) A water management institution which has been directed to recover any such charges may retain such portion of all charges recovered in order to recompense it for expenses and losses, as the Minister may allow.
- (3) A water management institution which has been directed to recover any such charges -
- (a) is jointly and severally liable to the state with the water users concerned; and
  - (b) may recover any amounts paid by it in terms of paragraph (a) from the water users concerned.

### **Liability for water use charges**

- 59.** (1) Water use charges contemplated in this Chapter -
- (a) may only be made in respect of a water use to which a person is voluntarily committed; and
  - (b) must bear a direct relationship to the water use in question.
- (2) Any person registered in terms of a regulation under section 26 or holding a licence to use water must pay all charges imposed under section 57 in respect of that water use.
- (3) If a water use charge is not paid -
- (a) interest is payable during the period of default at a rate determined from time to time by the Minister, with the concurrence of the Minister of Finance, by notice in the *Gazette*; and
  - (b) the supply of water to the water user from a waterwork or the authorisation to use water may be restricted or suspended until the charges, together with interest, have been paid.
- (4) A person must be given an opportunity to make representations within a reasonable period on any proposed restriction or suspension before the restriction or suspension is imposed.
- (5) Where there is a fixed charge, a restriction or suspension does not relieve a person of the obligation to pay the charges due for the period of the restriction or suspension.

(6) A person whose water use is restricted or suspended for any lawful reason may not later claim the water to which that person would otherwise have been entitled during the period of restriction or suspension.

### **Water use charges are charges on land**

**60.** (1) A charge made in terms of section 57(1), including any interest, is a charge on the land to which the water use relates and is recoverable from the current owner of the land without releasing any other person who may be liable for the charge.

(2) The Minister or relevant water management institution must -

(a) on written application by any person; and

(b) within 30 days of the application, issue a certificate stating the amount of any unpaid water charges and any interest due in respect of any land.

(3) If a certificate is not issued within the period of 30 days, the provisions of subsection (1) cease to apply to that property, notwithstanding section 66.

### ***Part 2: Financial assistance***

***Part 2 deals with financial assistance, which may be granted once certain considerations are taken into account.***

### **Financial assistance by Minister**

**61.** (1) The Minister may, subject to a regulation made under section 62, give financial assistance to any person for the purposes of this Act, including assistance for making licence applications, in the form of grants, loans or subsidies, which may be made subject to such conditions as the Minister may determine.

(2) The financial assistance must be from funds -

(a) appropriated by Parliament; or

(b) which may under this Act or otherwise lawfully be used for the purposes in question.

(3) Before giving any financial assistance, the Minister must take into account all relevant considerations, including -

(a) the need for equity;

(b) the need for transparency;

(c) the need for redressing the results of past racial and gender discrimination;

(d) the purpose of the financial assistance;

(e) the financial position of the recipient; and

(f) the need for water resource protection.

(4) A person who wilfully fails to comply with any obligations imposed by this Act is not eligible for financial assistance under this Act.

### **Regulations on financial assistance**

**62.** The Minister may make regulations concerning -

(a) the eligibility for financial assistance;

(b) the manner in which financial assistance must be applied for; and

(c) terms and conditions applicable to any financial assistance granted.

## CHAPTER 6

### GENERAL POWERS AND DUTIES OF MINISTER AND DIRECTOR-GENERAL

#### *Part 1: Delegations, directives, expropriation, condonation and additional powers*

*Part 1 of this Chapter sets out various powers and duties of the Minister which are of a general nature, such as the powers of delegation and expropriation, and intervention in litigation. More specific powers and duties are dealt with elsewhere in the Act.*

#### *Delegation of powers and duties by Minister*

63. (1) The Minister may, in writing and subject to conditions, delegate a power and duty vested in the Minister in terms of this Act to -

- (a) an official of the Department by name;
- (b) the holder of an office in the Department;
- (c) a water management institution;
- (d) an advisory committee established under section 99; or
- (e) a water board as defined in section 1 of the Water Services Act, 1997 (Act No 108 of 1997).

(2) The Minister may not delegate the power -

- (a) to make a regulation;
- (b) to authorise a water management institution to expropriate under section 64(1);
- (c) to appoint a member of the governing board of a catchment management agency; or
- (d) to appoint a member of the Water Tribunal.

(3) The Minister may, in writing and subject to conditions, permit a person to whom a power or duty has been delegated to delegate that function to another person.

(4) The Minister may give a directive to the Director-General in relation to the exercise of any of the Director-General's powers or performance of any of the Director-General's duties, including any power delegated to the Director-General.

(5) The Director-General must give effect to a directive in terms of subsection (4).

#### **Expropriation of property**

64. (1) The Minister, or a water management institution authorised by the Minister in writing, may expropriate any property for any purpose contemplated in this Act, if that purpose is a public purpose or is in the public interest.

(2) Subject to this Act, the Expropriation Act, 1975 (Act No. 63 of 1975), applies to all expropriations in terms of this Act.

(3) Where the Minister expropriates any property under this Act, any reference to "Minister" in the Expropriation Act, 1975, must be construed as being a reference to the Minister.

(4) Where any water management institution expropriates property under this Act, any reference to "Minister" and "State" in the Expropriation Act, 1975, must be regarded as being a reference to that water management institution.

#### **Expropriation for rehabilitation and other remedial work**

65. (1) If a person who is required under this Act to undertake rehabilitation or other remedial work on the land of another, reasonably requires access to that land in order to effect the rehabilitation or remedial work, but is unable to acquire access on reasonable terms, the Minister may -

- (a) expropriate the necessary rights in respect of that land for the benefit of the person undertaking the rehabilitation or remedial work, who will then be vested with the expropriated rights; and
- (b) recover all costs incurred in connection with the expropriation, including any compensation payable, from the person for whose benefit the expropriation was effected.

(2) Where a servitude of abutment, aqueduct or submersion is expropriated under this section, the Minister or water management institution responsible for the expropriation has the same rights as those vesting in the holder of a servitude under section 128.

### **Condonation of failure to comply with time period**

66. The Minister may, in exceptional circumstances and for a good reason, extend a time period or condone a failure to comply with a time period.

### **Dispensing with certain requirements of Act**

67. (1) In an emergency situation, or in cases of extreme urgency involving the safety of humans or property or the protection of a water resource or the environment, the Minister may -

(a) dispense with the requirements of this Act relating to prior publication or to obtaining and considering public comment before any instrument contemplated in section 158(1) is made or issued;

(b) dispense with notice periods or time limits required by or under this Act;

(c) authorise a water management institution to dispense with -

(i) the requirements of this Act relating to prior publication or to obtaining and considering public comment before any instrument is made or issued; and

(ii) notice periods or time limits required by or under this Act.

(2) Anything done under subsection (1) -

(a) must be withdrawn or repealed within a maximum period of two years after the emergency situation or the urgency ceases to exist; and

(b) must be mentioned in the Minister's annual report to Parliament.

### **Intervention in litigation**

68. The Minister may intervene in litigation before a court or in a hearing before the Water Tribunal with regard to any matter contemplated in this Act.

### ***Part 2: General provisions regarding regulations***

***Part 2 requires the Minister to consult with the public when making regulations under this Act, and also to submit regulations for scrutiny by the National Assembly and by the National Council of Provinces. If the National Assembly rejects a regulation it must be repealed or amended.***

### **Making of regulations**

69. (1) The Minister must, before making any regulations under this Act -

(a) publish a notice in the *Gazette* -

(i) setting out the draft regulations; and

(ii) inviting written comments to be submitted on the proposed regulations, specifying an address to which and a date before which the comments must 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 Minister considers to be appropriate; and

(c) consider all comments received on or before the date specified in paragraph (a)(ii); and

(d) on request by the National Assembly or the National Council of Provinces or a committee of the National Assembly or the National Council of Provinces report the extent to which a specific comment has been taken into account, or if a comment was not taken into account, provide the reason why it was not taken into account.

(2) Any regulation made under this Act may provide that a contravention of or failure to comply with a regulation is an offence and that any person found guilty of the offence is liable to a fine or to imprisonment for a period not exceeding 5 years.

### **Consideration of regulations**

70. (1) The Minister must, within 30 days after making any regulations under this Act, table the regulations in the National Assembly and the National Council of Provinces for consideration.

(2) In considering regulations -

(a) tabled in the National Assembly, a committee of the National Assembly must consider and report to the National Assembly; and

(b) tabled in the National Council of Provinces, a committee of the National Council of

Provinces must consider and report to the National Council of Provinces, whether the regulations -

- (i) are consistent with the purposes of this Act;
- (ii) are within the powers conferred by this Act;
- (iii) are consistent with the Constitution; and
- (iv) require clarification.

(3) The National Council of Provinces may reject regulations tabled before the National Council of Provinces in terms of subsection (1) within 14 days after the date on which the regulations were so tabled, and should the National Council of Provinces reject any regulation, the rejection must be referred to the National Assembly for consideration.

(4) The National Assembly may, not later than the twentieth sitting day of the National Assembly after the date on which the regulations were tabled and after considering any rejection of a regulation by the National Council of Provinces, reject those regulations.

(5) If the National Assembly or the National Council of Provinces rejects any regulations, it must state its reasons.

### **Rejected regulations**

**71.** (1) The Minister must, within 30 days after being informed in writing that the National Assembly has rejected any regulations, repeal or amend those regulations so as to address the matters raised by the National Assembly.

(2) Any regulations rejected by the National Assembly remain in force until repealed or amended.

### ***Part 3: Powers relating to catchment management agencies***

***The Minister has the responsibility to manage and authorise the use of the nation's water resources. This means that the Minister fulfils the functions of a catchment management agency in a water management area for which no catchment management agency is established, or where such an agency has been established but is not functional. The Minister may dispense with certain requirements of this Act for as long as is necessary to deal with an urgent situation or an emergency.***

### **Powers and duties of catchment management agencies vest in Minister in certain circumstances**

**72.** (1) In areas for which a catchment management agency is not established or, if established, is not functional, all powers and duties of a catchment management agency, including those powers and duties described in sections 79 and 80 and in Schedule 3, vest in the Minister.

(2) In areas for which a catchment management agency is established, those powers and duties described in Schedule 3 which have not been assigned by the Minister to the catchment management agency, vest in the Minister.

### **Assignment of powers and duties to catchment management agencies**

**73.** (1) The Minister may, after consultation with the catchment management agency concerned, by notice in the *Gazette*, assign to that catchment management agency -

- (a) a power or duty of a responsible authority; and
- (b) any power or duty listed in Schedule 3.

(2) In assigning any power or duty under subsection (1), the Minister may -

- (a) limit the area within which an assigned power may be exercised or duty may be performed; and
- (b) attach conditions to that assignment.

(3) Before assigning a power or duty to a catchment management agency under subsection (1), the Minister must consider -

- (a) the capacity of the catchment management agency to exercise the power or perform the duty; and
- (b) the desirability of assigning that power or duty.

(4) The Minister must promote the management of water resources at the catchment management level by assigning powers and duties to catchment management agencies when it is desirable to do so.

### **Directives to water management institutions**

74. (1) The Minister may give a directive to a water management institution in relation to the exercise of any of the institution's powers or the performance of any of the institution's duties, including any power or duty assigned or delegated to that institution.

(2) The Minister must give a water management institution not less than 14 days' notice of the Minister's intention to give a directive under subsection (1) if it relates to any assigned power or duty, and must allow the institution an opportunity to comment.

(3) Every directive, or a summary thereof, given to a water management institution by the Minister and which relates to an assigned power or duty -

(a) must be published by the Minister in the *Gazette*; and

(b) must be included in the annual report of the institution.

(4) A failure to comply with subsection (3) does not affect the validity of the directive.

(5) A water management institution must give effect to a directive given to it by the Minister under subsection (1).

#### ***Part 4: Powers of Director-General***

##### **Delegation of powers by Director-General**

75. The Director-General may, for the purposes of this Act, in writing and subject to conditions, delegate a power, including a power granted or delegated to the Director-General under this Act, to -

(a) an official of the Department by name;

(b) the holder of an office in the Department; or

(c) a water management institution.

##### **Appointment of persons on contract**

76. (1) The Director-General may, when necessary, appoint employees on contract outside the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(2) Appointments made under subsection (1) must be limited to persons to perform duties at sites where the Department -

(a) is engaged in actual construction or investigatory work; or

(b) is associated with specific projects relating to actual construction or investigatory work.

(3) The Director-General must, from time to time, and after consultation with the Department of Public Service and Administration, determine the conditions of employment of such employees.

(4) Such employees shall be remunerated from money appropriated for that purpose by Parliament.

## **CHAPTER 7**

### **CATCHMENT MANAGEMENT AGENCIES**

*This Chapter provides for the progressive establishment by the Minister of catchment management agencies. The purpose of establishing these agencies is to delegate water resource management to the regional or catchment level and to involve local communities, within the framework of the national water resource strategy established in terms of Chapter 2. Whilst the ultimate aim is to establish catchment management agencies for all water management areas, the Minister acts as the catchment management agency where one has not been established. Where the necessary capacity does not exist to establish a catchment management agency, an advisory committee may be appointed under Chapter 9 to develop the necessary capacity as a first step towards establishing an agency.*

#### ***Part 1: Establishment and powers of catchment management agencies***

*Under Part 1 a catchment management agency may be established for a specific water management area, after public consultation, on the initiative of the community and stakeholders concerned. In the absence of such a proposal the Minister may establish a catchment management agency on the Minister's own initiative. The provisions of Schedule 4, on institutional and management planning, apply to a catchment management agency.*

##### **Proposal for establishment of catchment management agency**

77. (1) A proposal to establish a catchment management agency must contain at least -

- (a) a proposed name and a description of the proposed water management area of the agency;
  - (b) a description of the significant water resources in the proposed water management area, and information about the existing protection, use, development, conservation, management and control of those resources;
  - (c) the proposed functions of the catchment management agency, including functions to be assigned and delegated to it;
  - (d) how the proposed catchment management agency will be funded;
  - (e) the feasibility of the proposed catchment management agency in respect of technical, financial and administrative matters; and
  - (f) an indication whether there has been consultation in developing the proposal and the results of the consultation.
- (2) The Director-General may assist a person to develop such a proposal.

### **Procedure for establishment of catchment management agencies**

**78.** (1) The Minister may, subject to section 6(1)(c), on his or her own initiative or after receiving a proposal containing the information required in terms of section 77(1), by notice in the *Gazette* -

- (a) establish a catchment management agency, give it a name and identify and determine its water management area; or
- (b) amend the name or water management area of an established catchment management agency.

(2) The Minister may -

- (a) require a person who has submitted a proposal contemplated in subsection (1), to provide the Minister with information additional to that required by section 77(1); and
- (b) instruct the Director-General to conduct an investigation regarding -
  - (i) the establishment of a catchment management agency; or
  - (ii) a proposal submitted in terms of subsection (1).

(3) Before the establishment of a catchment management agency the Minister must -

- (a) publish a notice in the *Gazette* -
  - (i) setting out the proposed establishment of the catchment management agency, the proposed name and the proposed water management area; and
  - (ii) inviting written comments to be submitted on the proposal 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 Minister considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a)(ii).

(4) If the Minister wants to amend the name of a catchment management agency or the water management area of a catchment management agency, the procedure set out in subsection (3) must be followed with any necessary changes: Provided that where an amendment does not affect the rights of any person the procedure set out in subsection (3) need not be followed.

## **General powers and duties of catchment management agencies**

79. (1) 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 this Act.
- (2) Schedule 4 applies to a catchment management agency, its governing board and committees and the members of the board and committees.
- (3) A catchment management agency may perform -
- (a) any of its functions; or
  - (b) any function which is reasonably incidental to any of its functions, outside its water management area, if this does not -
    - (i) limit its capacity to perform its functions in its water management area; or
    - (ii) detrimentally affect another water management institution.
- (4) 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.

## **Initial functions of catchment management agencies**

80. Subject to Chapter 2 and section 79, upon the establishment of a catchment management agency, the initial functions of a catchment management agency are -
- (a) to investigate and advise interested persons on the protection, use, development, conservation, management and control of the water resources in its water management area;
  - (b) to develop a catchment management strategy;
  - (c) to co-ordinate the related activities of water users and of the water management institutions within its water management area;
  - (d) to promote the co-ordination of its implementation with the implementation of any applicable development plan established in terms of the Water Services Act, 1997 (Act No. 108 of 1997); and
  - (e) to promote community participation in the protection, use, development, conservation, management and control of the water resources in its water management area.

### ***Part 2: Governing board of catchment management agencies***

***Part 2 describes the appointment of members of the governing board of a catchment management agency. The board of a catchment management agency will be constituted in such a way that interests of the various stakeholders are represented or reflected in a balanced manner, and the necessary expertise to operate effectively is provided. Members of the governing board can be elected or nominated by the different water user groups for appointment by the Minister, and the Minister may of his or her own accord appoint further members. The Minister may also remove board members for good reason.***

## **Appointment of governing board of catchment management agency**

81. (1) The members of a governing board of a catchment management agency must be appointed by the Minister who, in making such appointment, must do so with the object of achieving a balance among the interests of water users, potential water users, local and provincial government and environmental interest groups.
- (2) Notwithstanding subsections (3) to (9) the Minister must, from time to time, determine the extent to which relevant local governments should be represented on the governing board of each catchment management agency.
- (3) Before appointing members to the governing board, the Minister must establish an advisory committee contemplated in Chapter 9, to recommend to the Minister -
- (a) which organs of state and bodies representing different sectors and other interests within the water management area of the catchment management agency should be represented or reflected on the

governing board; and

(b) the number of persons which each of them should be invited to nominate.

(4) The committee must consult with the relevant organs of state and interest groups before making its recommendations.

(5) After receiving the committee's recommendations, the Minister must decide which organs of state and bodies will be invited to nominate representatives for appointment to the governing board, and the number of representatives each may nominate.

(6) The Minister's decision must be communicated to the organs of state and bodies concerned and the Minister must take the necessary steps to obtain nominations from them by a date specified by the Minister.

(7) The Minister must appoint the persons nominated by the organs of state and the bodies concerned in accordance with the invitation, unless -

(a) any such person is not a fit and proper person to serve on the governing board; or

(b) any such organ of state or body has not followed its own internal procedures in making the nomination.

(8) If the Minister does not appoint a nominee, the Minister must -

(a) inform the organ of state or body concerned and state the reasons for not appointing that nominee; and

(b) invite a further nomination from that organ of state or body.

(9) If one or more nominations are still outstanding on the date specified under subsection (6), the Minister may appoint members of the board and fill any vacancy later.

(10) After appointing members to the board the Minister may appoint additional members selected by the Minister in order to -

(a) represent or reflect the interests identified by the advisory committee;

(b) achieve sufficient gender representation;

(c) achieve sufficient demographic representation;

(d) achieve representation of the Department;

(e) achieve representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to water; and

(f) obtain the expertise necessary for the efficient exercise of the board's, powers and performance of its duties.

(11) A member must be appointed for a specified term of office.

(12) The Minister may extend the term of office of a member.

(13) If the term of office of a member expires before the first meeting of a new board takes place, the existing member remains in office until that first meeting takes place.

(14) A member nominated for appointment to the board by an organ of state or body is accountable to that organ of state or body.

### **Chairperson, deputy chairperson, chief executive officer and committees of catchment management agency**

**82.** (1) The Minister must convene the first meeting of the governing board of a catchment management agency, which must be chaired by an official of the Department or a member of the committee.

(2) At the first meeting of the governing board, the members may recommend one of them for appointment as chairperson and another as deputy chairperson.

(3) The Minister must -

(a) with due regard to any recommendation made by the governing board at its first meeting, appoint one of the members as chairperson; and

(b) appoint any other member as deputy chairperson.

(4) The chief executive officer provided for in Schedule 4 may be a member of the governing board, but may not be its chairperson or deputy chairperson.

(5) 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, and must determine how they must function.

### **Removal of members from governing board**

**83.** (1) The Minister may remove a member from a governing board, or remove the chairperson or deputy chairperson from office, if -

(a) there is good reason for doing so;

(b) the person concerned has had an opportunity of making representations to the Minister; and

- (c) the Minister has consulted with the governing board.
- (2) The Minister must remove a member nominated by an organ of state or body from a governing board if that organ of state or body requests the Minister to do so.
- (3) If a person ceases for any reason to be a member of a governing board before that person's term of office expires, the Minister may, for the remainder of the term of office -
  - (a) if that person was nominated by any organ of state or body, appoint another person nominated by that organ or body; or
  - (b) if that person was selected by the Minister, appoint another person.

### ***Part 3: Operation of catchment management agencies***

*Part 3 deals with the functions and operation of catchment management agencies. Initial functions, dealt with in Part 2, include the investigation of and advice on water resources, the co-ordination of the related activities of other water management institutions within its water management area, the development of a catchment management strategy and the promotion of community participation in water resource management within its water management area. Additional powers and duties described in Schedule 3 may be assigned or delegated to agencies such as to establish water use rules and management systems, to direct users to terminate illegal uses of water, and to temporarily limit the use of water during periods of shortage.*

*A catchment management agency may be financed by the state from water use charges made in its water management area or from any other source.*

#### **Funding of catchment management agencies**

- 84.** (1) 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.
- (2) A catchment management agency must be funded by -
- (a) money appropriated by Parliament;
  - (b) water use charges; and
  - (c) money obtained from any other lawful source for the purpose of exercising its powers and carrying out its duties in terms of this Act.

#### **Documents relating to litigation**

**85.** A catchment management agency must provide the Director-General with copies of all pleadings, affidavits and other documents in the possession of the catchment management agency relating to any proceedings instituted against that catchment management agency.

#### **Delegation of powers by catchment management agency**

- 86.** (1) Subject to subsections (2) and (3), a catchment management agency may delegate any power to -
- (a) a member of its governing board;
  - (b) an employee of any water management institution (including itself), by name, or to the holder of an office in that institution; or
  - (c) any committee established by the catchment management agency which consists only of members of the governing board or employees of the catchment management agency; and
  - (d) any other person or body only with the written consent of the Minister.
- (2) A catchment management agency may not delegate -
- (a) the power of delegation; or
  - (b) any power to make water use charges.
- (3) A catchment management agency may only delegate a power to authorise the use of water, if this power is delegated to a committee consisting of three or more members of its governing board.

### ***Part 4: Intervention, disestablishment or change of water management areas of catchment management agencies***

*Part 4 enables the Minister to disestablish a catchment management agency or make changes to its water management area, for reasons which include the need to reorganise water management institutions for*

*more effective water resource management. An agency may also be disestablished if it does not operate effectively.*

### **Intervention by Minister**

87. (1) If a catchment management agency -
- (a) is in financial difficulties or is being otherwise mismanaged;
  - (b) has acted unfairly or in a discriminatory or inequitable way towards any person within its water management area;
  - (c) has failed to comply with any directive given by the Minister under this Act;
  - (d) has obstructed the Minister or any other water management institution in exercising a power or performing a duty in terms of this Act;
  - (e) is unable to exercise its powers or perform its duties effectively due to dissension among the members of the board or water users within its water management area;
  - (f) has failed to comply with this Act; or
  - (g) has become redundant or ineffective, the Minister may -
- (i) direct the catchment management agency to take any action specified by the Minister; and
  - (ii) withhold any financial assistance which might otherwise be available to the catchment management agency, until the catchment management agency has complied with such directive.
- (2) A directive contemplated in subsection (1)(i) must state -
- (a) the nature of the deficiency;
  - (b) the steps which must be taken to remedy the situation; and
  - (c) a reasonable period within which those steps must be taken.
- (3) If the catchment management agency fails to remedy the situation within the given period, the Minister may -
- (a) after having given that catchment management agency a reasonable opportunity to be heard; and
  - (b) after having afforded the catchment management agency a hearing on any submissions received, take over the relevant power or duty of the catchment management agency.
- (4) If the Minister takes over a power or duty of a catchment management agency -
- (a) the Minister may do anything which the catchment management agency might otherwise be empowered or required to do by or under this Act, to the exclusion of the catchment management agency;
  - (b) the board of the catchment management agency may not, while the Minister is responsible for that power or duty, exercise any of its powers or perform any of its duties relating to that power or duty;
  - (c) an employee or a contractor of the catchment management agency must comply with a directive given by the Minister;
  - (d) as soon as the Minister is satisfied that the catchment management agency is once more able to exercise its powers or perform its duties effectively, the Minister must cease exercising any such powers and performing any such duties; and
  - (e) the Minister may recover from the catchment management agency all reasonable costs incurred, including any losses suffered as a result of lawful and reasonable action taken under this section, except to the extent that the loss is caused or contributed to by the negligence of the Minister, or any person under the control of the Minister.

### **Disestablishment of catchment management agency**

**88.** (1) The Minister may, by notice in the *Gazette*, disestablish a catchment management agency if it is desirable -

- (a) for purposes of re-organising water management institutions in that area in the interests of effective water resource management;
  - (b) because the catchment management agency cannot or does not operate effectively; or
  - (c) because there is no longer a need for the catchment management agency.
- (2) Before disestablishing a catchment management agency the Minister must -
- (a) publish a notice in the *Gazette* -
    - (i) stating the intention to disestablish the catchment management agency and the reasons therefor; and
    - (ii) inviting written comments on the proposed disestablishment and giving a specified 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 Minister considers to be appropriate; and
  - (c) consider all comments received on or before the specified date.

### **Transfer of assets and liabilities after change of water management area or disestablishment**

**89.** (1) If the Minister changes the water management area of a catchment management agency under section 78 or disestablishes a catchment management agency under section 88, the Minister may direct the catchment management agency to transfer some or all of its assets and liabilities to another water management institution.

(2) A catchment management agency must do everything in its power to give effect to a directive under subsection (1).

(3) In issuing a directive under subsection (1) the Minister must consider -

- (a) the interests of creditors and users of water; and
- (b) any financial contributions directly or indirectly made by the users of water resources towards the infrastructure of the catchment management agency.

(4) Where a catchment management agency is disestablished and its assets and liabilities are not transferred to another water management institution its assets and liabilities vest in the Minister and the Minister must wind up its affairs and assume the powers and duties of the catchment management agency for the period of winding up.

(5) No transfer duty, other tax or duty is payable in respect of the transfer of any assets in terms of this section.

### **Regulations on catchment management agencies**

**90.** (1) Subject to subsection (2), the Minister may make regulations -

- (a) prescribing a maximum and a minimum number of members of a governing board;
- (b) requiring the establishment of consultative forums and determining their composition and functions;
- (c) determining, in consultation with the Minister of Finance, the basis and extent of remuneration and payment of expenses of members of governing boards and committees; and
- (d) on any other matter which is necessary or desirable for the efficient functioning of catchment management agencies and their governing boards and committees.

(2) In making regulations, the Minister must take into account all relevant considerations, including the need to -

- (a) achieve adequate representation of and consultation with organs of state, bodies representing different sectors and other interests within the areas of jurisdiction of catchment management agencies; and
- (b) secure the efficient and cost effective functioning of catchment management agencies and their management structures.

## CHAPTER 8

### WATER USER ASSOCIATIONS

*This Chapter deals with the establishment, powers and disestablishment of water user associations. Although water user associations are water management institutions their primary purpose, unlike catchment management agencies, is not water management. They operate at a restricted localised level, and are in effect co-operative associations of individual water users who wish to undertake water-related activities for their mutual benefit. A water user association may exercise management powers and duties only if and to the extent these have been assigned or delegated to it. The Minister establishes and disestablishes water user associations according to procedures set out in the Chapter. A water user association for a particular purpose would usually be established following a proposal to the Minister by an interested person, but such an association may also be established on the Minister's initiative. The functions of a water user association depend on its approved constitution, which can be expected to conform to a large extent to the model constitution in Schedule 5. This Schedule also makes detailed provisions for the management and operation of water user associations. Although water user associations must operate within the framework of national policy and standards, particularly the national water resource strategy, the Minister may exercise control over them by giving them directives or by temporarily taking over their functions under particular circumstances.*

*Existing irrigation boards, subterranean water control boards and water boards established for stock watering purposes will continue in operation until they are restructured as water user associations.*

#### **Proposal for establishment of water user association**

91. (1) A proposal to establish a water user association must contain at least -

- (a) the reasons for making the proposal;
- (b) a proposed name and area of operation for the association;
- (c) the proposed activities of the association;
- (d) a description of any existing or proposed waterwork within the proposed area of operation which is relevant to the proposed activities of the association;
- (e) a description of the water use licences or any other authorisations which the proposed members hold

or

- intend applying for;
- (f) the proposed constitution of the association, together with an explanation for any provisions which differ from those of the model constitution contained in Schedule 5;
- (g) a list of the proposed members or categories of members of the association; and
- (h) an indication whether there has been consultation in developing the proposal and the results of the consultation.

(2) The Director-General may assist a person to develop such a proposal.

#### **Procedure for establishment of water user association**

92. (1) The Minister may on his or her own initiative or after receiving a proposal containing the information required in terms of section 91(1), by notice in the *Gazette* -

- (a) establish a water user association, give it a name, determine its area of operation and approve its constitution subject to section 93(2); or
- (b) amend the name, area of operation or approve an amendment to the constitution of an established water user association.

(2) The Minister may -

- (a) require a person who has submitted a proposal in terms of subsection (1) to provide the Minister with additional information to that required by section 91(1); and
- (b) instruct the Director-General to conduct an investigation regarding -
  - (i) the establishment of a water user association; or
  - (ii) a proposal submitted in terms of subsection (1).

- (3) Before the establishment of a water user association the Minister must -
- (a) publish a notice in the *Gazette* -
    - (i) setting out the proposed establishment of the water user association, the proposed name and the proposed area of operation; and
    - (ii) inviting written comments to be submitted on the proposals, 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 Minister considers to be appropriate; and
  - (c) consider any comments received on or before the date specified in paragraph (a)(ii).
- (4) The Minister need not fulfil all the requirements of subsection (3), if there has been sufficient consultation on a proposal submitted in terms of section 91.
- (5) The Minister may -
- (a) recover the cost of complying with subsection (3) from the water user association once it has been established; or
  - (b) require the person proposing the establishment of the water user association to pay the costs in advance.

### **Constitution of water user association**

- 93.** (1) Schedule 5 contains a model constitution which may be used as a basis for drawing up and proposing a constitution for a proposed water user association.
- (2) The constitution of a water user association must contain at least -
- (a) details of the principal and ancillary functions of the association;
  - (b) the procedures and requirements for admitting new members to the association;
  - (c) the voting powers of members;
  - (d) procedures for terminating membership;
  - (e) procedures for electing the management committee of the association;
  - (f) procedural requirements for appointment of employees of the association;
  - (g) procedural requirements for obtaining loans; and
  - (h) the financial obligations of members towards the association.
- (3) A constitution must also incorporate such other provisions as the Minister may reasonably require and must be adopted by the members of the association and approved by the Minister before it can exercise any powers or perform any duties.
- (4) A constitution adopted by a water user association is binding on all its members.

### **Powers of water user association**

- 94.** (1) A water user association 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 this Act.
- (2) Schedule 4 (excluding item 4(3) of Part 1 of that Schedule) applies to a water user association as if -
- (a) the water user association were an institution; and
  - (b) a member of the management committee were a director,
- within the meaning of that Schedule, except to the extent that the Minister may otherwise direct.

### **Directives to water user association**

- 95.** (1) The Minister may, after consulting with a water user association, direct that a person be admitted as a member of the association on such conditions as are fair and equitable.
- (2) A water user association must comply with a directive given under subsection (1).
- (3) If a water user association -
- (a) is in financial difficulties or is being otherwise mismanaged;
  - (b) has acted unfairly or in a discriminatory or inequitable way towards any member of the association;
  - (c) has failed to admit persons to membership unfairly or on discriminatory grounds;
  - (d) has failed to comply with any directive given by the Minister under this Act;
  - (e) has obstructed the Minister or any other water management institution in exercising a power or

performing a duty in terms of this Act;

(f) is unable to exercise its powers or perform its duties effectively due to dissension among the management committee or its members;

(g) has failed to comply with its constitution or this Act; or

(h) has become redundant or ineffective, the Minister may -

(i) direct the association to take any action specified by the Minister;

(ii) withhold any financial assistance which might otherwise be available to the water user association until the association has complied with such directive; or

(iii) by notice addressed to the association and the member concerned, terminate the office of that member of the management committee and arrange for the resulting vacancy on the management committee to be filled.

(4) A directive contemplated in subsection (3)(i) must state -

(a) the nature of the deficiency;

(b) the steps which must be taken to remedy the situation; and

(c) a reasonable period within which those steps must be taken.

(5) If the water user association fails to remedy the situation within the given period, the Minister may -

(a) after having given that association a reasonable opportunity to be heard; and

(b) after having afforded the association a hearing on any submissions received, take over the relevant function of the association, or appoint a suitable person to take over the power or duty.

(6) If the Minister, or a person appointed by the Minister, takes over a power or duty of a water user association -

(a) the Minister or the appointee may do anything which the association might otherwise be empowered or required to do in terms of its constitution or by or under this Act, to the exclusion of the association;

(b) the management committee of the association may not, while the Minister or the appointee is responsible for that power or duty, exercise any of its powers or perform any of its duties relating to that power or duty;

(c) an employee or a contractor of the association must comply with a directive given by the Minister or the appointee;

(d) as soon as the Minister is satisfied that the association is once more able to exercise its powers and perform its duties effectively, the Minister or the appointee, as the case may be, must cease exercising such powers and performing such duties; and

(e) the Minister may recover from the association all reasonable costs incurred by the Minister or the appointee, including -

(i) the reasonable fees or disbursements of the appointee; and

(ii) any losses suffered as a result of lawful and reasonable action taken under this section, except to the extent that the loss is caused or contributed to by the negligence of the Minister or the appointee or any person under their control.

#### **Disestablishment of water user association**

96. (1) The Minister may, by notice in the *Gazette*, disestablish an association -
- (a) in circumstances provided for in the constitution of the association;
- (b) if the functions of the association are, by agreement with another water management institution, to be combined with, or taken over by that water management institution;
- (c) if it is in the best interests of the association or its members;
- (d) if an investigation of its affairs or financial position reveals that disestablishment is appropriate;
- (e) if the Minister has taken over a power or duty of the association as a result of dissensions among the management committee or its members; or
- (f) if the association is no longer active or effective.

- (2) Before disestablishing a water user association the Minister must -
- (a) publish a notice in the *Gazette* -
    - (i) stating the intention to disestablish the water user association;
    - (ii) setting out the reasons for disestablishing the water user association; and
    - (iii) inviting written comments on the proposal, 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 Minister considers to be appropriate; and
  - (c) consider all comments received on or before the specified date.

### **Winding up affairs of disestablished water user association**

97. (1) When a water user association is disestablished, its affairs must be wound up -
- (a) as provided for in its constitution; or
  - (b) by a person appointed by the Minister in accordance with directives given by the Minister if the constitution does not provide for winding up.
- (2) The costs of winding up a water user association are a cost against the estate of the association.
- (3) Creditors of a water user association must be paid according to the order of preference established by the Insolvency Act, 1936 (Act No. 24 of 1936).
- (4) If the affairs of a water user association are wound up, the Minister may direct that an amount equivalent to any financial contributions with interest made to the association from public funds be reimbursed, before assets are distributed among the members of the association.
- (5) No transfer duty, other tax or duty is payable in respect of the transfer of any assets under subsection (4).

### **Transitional provisions for certain existing organisations**

98. (1) This section applies to -
- (a) any irrigation board or subterranean water control board established by or deemed to be an irrigation board in terms of any law in force immediately before the commencement of this Act;
  - (b) the Kalahari West Water Board, established by Government Notice No. 143 of 13 August 1982;
  - (c) the Karos-Geelkoppan Water Board, established by Government Notice No. 145 of 7 October 1983; and
  - (d) the Kalahari East Water Board, established by Government Notice No. 2233 of 4 November 1988. each of which is a board for the purposes of this section.
- (2) A board continues to exist until it is declared to be a water user association in terms of subsection (6) or until it is disestablished in terms of the law by or under which it was established, which law must, for the purpose of such disestablishment, be regarded as not having been repealed by this Act.
- (3) Subject to subsection (4) -
- (a) the name, area of operation, management, property, rights, liabilities, obligations, powers and duties of a board remain the same as immediately before the commencement of this Act;
  - (b) this section does not affect the continuity, status, operation or effect of any act or omission of a board, or of any by-law made by a board, before the commencement of this Act;
  - (c) any person holding office with a board when this Act commences continues in office for the term of that person's appointment; and
  - (d) if a position becomes vacant prior to the declaration of the board as a water user association, the board may fill the vacancy according to the procedures laid down by or under the law which applied to that board immediately before the commencement of this Act.
- (4) Within six months of the commencement of this Act, a board must prepare and submit to the Minister a proposal, prepared according to section 91, to transform the board into a water user association.
- (5) The Minister may accept the proposal contemplated in subsection (4), with or without amendments, or reject it.

- (6) If the Minister accepts the proposal, the Minister must by notice in the *Gazette* -
- (a) declare the board to be a water user association;
  - (b) give it a name;
  - (c) determine its area of operation; and
  - (d) approve its constitution.

(7) Upon the publication of a notice under subsection (6), every property, right and liability of the board becomes a property, right and liability of the relevant water user association.

## CHAPTER 9

### ADVISORY COMMITTEES

*This Chapter empowers the Minister to establish advisory committees. Each advisory committee will be established for a particular purpose, and it is therefore possible for a variety of advisory committees to be established with different purposes and functions. Although primarily advisory in nature, such committees may exercise powers which are delegated to them. The Minister may amend the functions of an advisory committee, or disestablish it. Certain existing advisory committees will continue to function as though they were advisory committees established under this Act.*

#### Establishment of advisory committees

99. (1) The Minister may -

- (a) establish an advisory committee;
- (b) give it a name or change its name;
- (c) determine its purpose and functions or effect amendments thereto;
- (d) make appointments to the committee, including the chairperson and deputy chairperson;
- (e) remove persons from the committee; and
- (f) disestablish an advisory committee.

(2) Officials of the Department may be members of an advisory committee.

(3) A member of a committee may be remunerated as directed by the Minister, with the concurrence of the Minister of Finance.

(4) An act performed in good faith by a committee is valid, despite any failure to comply with a formal procedural requirement.

(5) The Department may supply administrative support services to a committee.

(6) An official of the Department who is not a member of the committee, if so directed by the Director-General,

may attend a meeting of a committee, but may not vote at the meeting.

(7) The Minister in appointing a member of a committee, must consider -

- (a) the powers and duties of the committee;
- (b) the need for the committee to represent various relevant interests; and
- (c) the expertise necessary for the committee to exercise its powers and perform its duties effectively.

#### Regulations regarding advisory committees

100. The Minister may by regulation establish terms of reference and any other rules concerning the membership, powers and duties and operation of a committee.

#### Transitional provisions relating to advisory committees

101. (1) The National Water Advisory Council established by section 3A of the Water Act, 1956 (Act No. 54 of 1956), the Advisory Committee on Safety of Dams established by section 9C(5)(a)(i) of the Water Act, 1956, and any advisory committee established under section 68(1) of the Water Act, 1956, must be regarded as being an advisory committee contemplated in this Act.

(2) Subject to the Minister's powers under section 99 -

- (a) the name, powers and duties of a committee or body referred to in subsection (1) remain the same as they were immediately before the commencement of this Act;
- (b) any provision of the Water Act, 1956, or a regulation or notice issued under that Act regulating any matter contemplated in section 99, continues to apply as if it were a

- regulation made under section 100; and
- (c) any person holding office in a committee or body referred to in subsection (1) immediately before the commencement of this Act continues in office until the expiration of that person's term of appointment or until the committee or body is disestablished, whichever happens sooner.

## CHAPTER 10

### INTERNATIONAL WATER MANAGEMENT

*Under this Chapter the Minister may establish bodies to implement international agreements in respect of the management and development of water resources shared with neighbouring countries, and on regional co-operation over water resources. The governance, powers and duties of these bodies are determined by the Minister in accordance with the relevant international agreement, but they may also be given additional functions, and they may perform their functions outside the Republic. Certain existing international bodies are deemed to be bodies established under this Act.*

#### **Establishment of bodies to implement international agreements**

**102.** The Minister may, in consultation with the Cabinet, by notice in the *Gazette*, establish a body to implement any international agreement entered into by the South African Government and a foreign government relating to -

- (a) investigating, managing, monitoring and protecting water resources;
- (b) regional co-operation on water resources;
- (c) acquiring, constructing, altering, operating or maintaining a waterwork; or
- (d) the allocation, use and supply of water.

#### **Governance and functions of bodies**

**103.** (1) A notice contemplated in section 102 must, with due regard to the relevant international agreement, give details of -

- (a) the governance of the body;
- (b) the functions of the body;
- (c) the financing of the body;
- (d) mechanisms for controlling and supervising the affairs of the body;
- (e) which items of Schedule 4, if any, apply to the body;
- (f) the disestablishment of the body and the winding-up of the body's affairs; and
- (g) any other matter necessary to give effect to the agreement.

(2) If the Minister is satisfied that it will not prejudice the capacity of a body to perform the functions for which it was established, the Minister may direct a body established under section 102 to perform additional functions which may include, but are not limited to, providing water management institutions with -

- (a) management services;
- (b) financial services;
- (c) training; and
- (d) other support services.

(3) The body may perform its functions outside the Republic.

#### **Powers of bodies**

**104.** A body established under section 102 is a body corporate and has the powers of a natural person of full capacity, except those powers which -

- (a) by their nature can attach only to natural persons; or
- (b) are excluded by or are inconsistent with this Act or the relevant international agreement.

#### **Bodies must manage different functions as separate units**

**105.** (1) If given additional functions under section 103(2), a body must manage each of its functions separately, and must account for them separately.

(2) A body must apply accounting practices consistent with generally accepted accounting practices.

### **Reports on performance of functions**

**106.** (1) Unless the international agreement provides otherwise, a body must report on the performance of its functions within three months after the end of its financial year.

(2) The report must -

- (a) be accompanied by the body's audited financial statements for that financial year; and
- (b) be submitted to the Minister and such other party as may be required by the international agreement.

(3) The report must contain sufficient information to allow the Minister to assess the performance of the body in respect of all its functions against the objectives set out in the relevant agreement.

(4) The Director-General must send a copy of the report to the Secretary to Parliament.

### **Investigation of affairs or financial position of bodies**

**107.** (1) The Minister may, with the consent of the other parties to the agreement, or if the agreement so provides, appoint a person to investigate the affairs or financial position of a body and that person may for this purpose attend any meeting of the body.

(2) A body must, subject to subsection (1), on request, provide the Minister's appointee with such -

- (a) information on the affairs and financial position of the body;
- (b) access to all books, accounts, documents and assets of the body; and
- (c) information and data on water resources,

as may be required by the Minister or the Minister's appointee.

(3) The Minister may recover from the body concerned the reasonable fees and disbursements of any person appointed under subsection (1).

### **Transitional provisions relating to existing bodies**

**108.** The Trans-Caledon Tunnel Authority established by Government Notice No. 2631 of 12 December 1986, the Komati Basin Water Authority established by an agreement dated 13 March 1992 with the Kingdom of Swaziland and the Vioolsdrift Noordoewer Joint Irrigation Authority established by an agreement dated 14 September 1992 with the Government of Namibia, must be regarded as being bodies contemplated in this Chapter until disestablished by the Minister by notice in the *Gazette*.

## **CHAPTER 11**

### **GOVERNMENT WATERWORKS**

*This Chapter gives the Minister the power to establish and operate government waterworks in the public interest out of funds allocated by Parliament or from other sources. Examples of such waterworks include water storage dams, water transfer schemes and flood attenuation works. The Minister must satisfy certain procedural requirements before constructing a government waterwork, including a duty to obtain an environmental impact assessment and invite public comment, except for emergency, temporary or insignificant waterworks. Water from a government waterwork may be made available for allocation to water users and charges fixed for this water. Water in a government waterwork may also be made available for recreational purposes, subject to controls determined by the Minister and regulations made by the Minister. Existing government waterworks are subject to this Chapter.*

## **Acquisition, construction, alteration, repair, operation and control of government waterworks**

**109.** The Minister may acquire, construct, alter, repair, operate or control government waterworks in order to protect, use, develop, conserve, manage and control the nation's water resources in the public interest.

## **Consultation and environmental impact assessment**

- 110.** (1) Before constructing a waterwork, the Minister must -
- (a) prepare an environmental impact assessment relating to the proposed waterwork which must, where the Minister considers it appropriate, comply with the requirements contained in regulations made under section 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989);
  - (b) publish a notice in the *Gazette* -
    - (i) setting out the proposal to construct the waterwork;
    - (ii) containing a summary of the environmental impact assessment; and
    - (iii) inviting written comments to be submitted, 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;
  - (c) 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 Minister considers to be appropriate; and
  - (d) consider -
    - (i) all comments received on or before the date specified in paragraph(b)(iii); and
    - (ii) the environmental impact assessment.
- (2) Subsection (1) does not apply -
- (a) to a waterwork which is constructed in emergency circumstances;
  - (b) to a temporary waterwork in operation for a period of less than five years; or
  - (c) if the waterwork is a minor one.
- (3) Within two years after the completion of any waterwork contemplated in subsection (2)(a), the Minister must decide either -
- (a) to demolish the waterwork; or
  - (b) after complying with subsection (1) to the appropriate extent, to retain the waterwork.

## **Financing of government waterworks**

**111.** The Minister may finance the acquisition, construction, alteration, repair, operation and control of government waterworks from funds appropriated by Parliament or obtained from any other source.

## **Water from government waterworks**

- 112.** (1) The Minister may make water from a government waterwork available for allocation in accordance with Chapter 4.
- (2) The Minister may in accordance with Chapter 5 fix a charge for water allocated from a government waterwork.

## **Access to and use of government waterworks for recreational purposes**

- 113.** (1) The water of a government waterwork and the surrounding state-owned land may be made available for recreational purposes, either generally or for a specific purpose, on the conditions and to the persons determined by the Minister.
- (2) The Minister may -
- (a) control or prohibit access to any government waterwork; and
  - (b) subject to this Act, make reasonable charges for -
    - (i) the use of;
    - (ii) entry into; and
    - (iii) the use of any water surface or land associated with, any government waterwork for recreational purposes.
- (3) Nothing done under this section exempts any person from complying with other provisions of this Act and with any other applicable law.

## **Government waterworks constructed before commencement of Act**

114. This Act also applies to government waterworks constructed before the commencement of this Act.

## **Disposal of government waterworks**

115. (1) The Minister may transfer, sell or otherwise dispose of any government waterworks to any person.

(2) No government waterwork referred to in subsection (1) may be transferred, sold or disposed of without the approval of the national executive, if its value exceeds an amount specified from time to time by the Minister in concurrence with the Minister of Finance.

(3) Where a government waterwork is disposed of or transferred to a water management institution, the Minister of Finance may direct that no transfer duty, other tax or duty is payable.

## **Regulations regarding government waterworks**

116. (1) The Minister may, with regard to a government waterwork, make regulations providing for -

- (a) the management of and control over government waterworks and surrounding state-owned land;
- (b) the use of the water of a government waterwork and the surrounding state-owned land; and
- (c) charges for -
  - (i) entrance to;
  - (ii) use of facilities at; and
  - (iii) the private development of, a government waterwork.

(2) In making the regulations, the Minister must take into account all relevant considerations, including -

- (a) the safety and protection of government waterworks;
- (b) the need for control of the use of government waterworks;
- (c) the safety and security of persons using government waterworks for recreational purposes; and
- (d) the cost of protecting and controlling government waterworks and the recovery of these costs.

## **CHAPTER 12**

### **SAFETY OF DAMS**

*This Chapter contains measures aimed at improving the safety of new and existing dams with a safety risk so as to reduce the potential for harm to the public, damage to property or to resource quality. To reduce the risk of a dam failure, control measures require an owner to comply with certain directives and regulations, such as to submit a report on the safety of a dam, to repair or alter a dam, or to appoint an approved professional person to undertake these tasks. These measures are in addition to the owners' common law responsibility to ensure the safety of their dams. An approved professional person has a statutory duty of care towards the State and the general public and must fulfil, amongst other things, defined responsibilities when acting under this Chapter. Not all dams are subject to regulation under this Chapter, and the Minister may exempt certain persons from its requirements. Only dams of a defined size, dams which have been declared to be dams with a safety risk, or dams falling into a prescribed category are affected. All dams with a safety risk must be registered. Compliance with any directive or regulation under this Chapter does not exempt an owner from complying with any other provision of this Act, such as the requirement for a licence or other authorisation for water use in respect of the dam.*

## Definitions

117. In this Chapter -

- (a) "approved professional person" means a person registered in terms of the Engineering Profession of South Africa Act, 1990 (Act No. 114 of 1990), and approved by the Minister after consultation with the Engineering Council of South Africa (established by section 2 of that Act);
- (b) "dam" includes any existing or proposed structure which is capable of containing, storing or impounding water (including temporary impoundment or storage), whether that water contains any substance or not;
- (c) "dam with a safety risk" means any dam -
- (i) which can contain, store or dam more than 50 000 cubic metres of water, whether that water contains any substance or not, and which has a wall of a vertical height of more than five metres, measured as the vertical difference between the lowest downstream ground elevation on the outside of the dam wall and the non-overspill crest level or the general top level of the dam wall;
- (ii) belonging to a category of dams declared under section 118(2) to be dams with a safety risk; or
- (iii) declared under section 118(3)(a) to be a dam with a safety risk;
- (d) "owner of a dam" or "owner of a dam with a safety risk" includes the person in control of that dam; and
- (e) "task" includes a task relating to designing, constructing, altering, repairing, impounding water in, operating, evaluating the safety of, maintaining, monitoring or abandoning a dam with a safety risk.

## Control measures for dam with safety risk

118. (1) The owner of a dam must -

- (a) within the period specified, provide the Minister with any information, drawings, specifications, design assumptions, calculations, documents and test results requested by the Minister; or
- (b) give any person authorised by the Minister access to that dam, to enable the Minister to determine whether -
- (i) that dam is a dam with a safety risk;
- (ii) that dam should be declared to be a dam with a safety risk;
- (iii) a directive should be issued for specific repairs or alterations to that dam; or
- (iv) the owner has complied with any provisions of this Act applicable to that dam.
- (2) The Minister may by notice in the *Gazette* declare a category of dams to be dams with a safety risk.
- (3) The Minister may -
- (a) by written notice to the owner of a dam, declare that dam to be a dam with a safety risk;
- (b) direct the owner of a dam with a safety risk to submit, at the owner's cost, and within a period specified by the Minister, a report by an approved professional person regarding the safety of that dam; or
- (c) direct the owner of a dam with a safety risk to undertake, at the owner's cost, and within a period specified by the Minister, any specific repairs or alterations to that dam which are necessary to protect the public, property or the resource quality from a risk of failure of the dam.
- (4) If the owner of the dam fails to comply with the directive contemplated in subsection (3)(c) within the period specified, the Minister may undertake the repairs or alterations and recover the costs from the owner.
- (5) Before issuing a directive, the Minister must -
- (a) be satisfied that the repairs or alterations directed are necessary, adequate, effective and appropriate to reduce the risk to an acceptable level; and
- (b) consider the impact on public safety, property, the resource quality and socio-economic aspects if the dam fails.

### **Responsibilities of approved professional persons**

**119.** (1) When carrying out a task in terms of this Chapter, an approved professional person also has a duty of care towards the State and the general public.

- (2) An approved professional person appointed to carry out a task on a dam must -
- (a) ensure that the task is carried out according to acceptable dam engineering practices;
  - (b) keep the prescribed records;
  - (c) compile the prescribed reports; and
  - (d) where the task includes constructing, altering or repairing a dam, issue a completion certificate to the owner of the dam to the effect that the task on that dam has been carried out according to the applicable design, drawings and specifications.
- (3) An approved professional person appointed to carry out a dam safety evaluation must -
- (a) consider whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam satisfy acceptable dam engineering practices; and
  - (b) compile a report on the matters contemplated in paragraph (a) according to the prescribed requirements and submit the signed and dated report to the owner of the dam within the prescribed period.

### **Registration of dam with safety risk**

**120.** (1) The owner of a dam with a safety risk must register that dam.

- (2) An application for registration must be made within 120 days -
- (a) after the date on which the dam with a safety risk becomes capable of containing, storing or impounding water;
  - (b) after the date on which an already completed dam is declared to be a dam with a safety risk; or
  - (c) after publication of a notice declaring a category of dams to be dams with a safety risk, as the case may be.
- (3) A successor-in-title to an owner of a dam with a safety risk must promptly inform the Director-General of the succession, for the substitution of the name of the owner.

### **Factors to be considered in declaring dam or category of dams with safety risk**

**121.** In declaring a category of dams or a dam to be a category of dams or a dam with a safety risk, the Minister must consider -

- the
- (a) the need to protect the public, property and the resource quality against the potential hazard posed by the dam or category of dams;
  - (b) the extent of potential loss or harm involved;
  - (c) the cost of any prescribed measures and whether they are reasonably achievable;
  - (d) the socio-economic impact if such a dam fails; and
  - (e) in the case of a particular dam, also -
    - (i) the manner in which that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned;
    - (ii) the person by whom that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned; and
    - (iii) the manner in which the water is contained, stored or impounded in that dam.

### **Exemptions**

**122.** (1) The Minister may exempt owners of dams belonging to certain categories, by notice in the *Gazette*, from compliance with any provision of this Chapter or any regulation made under this Chapter, on conditions determined by the Minister.

(2) The Minister may in writing exempt an owner of a dam belonging to a certain category from compliance with any provision of this Chapter on conditions determined by the Minister.

(3) The Minister may withdraw the exemption or impose further or new conditions in respect of the exemption.

- (4) Before deciding on an exemption, the Minister must consider -
- (a) the degree of risk or potential risk posed by the dam or category of dams to public safety, property and the resource quality;
  - (b) the manner of design, construction, alteration, repair, impoundment of water in, operation or abandonment of the dam or category of dams;
  - (c) the supervision involved in the dam or category of dams;
  - (d) alternative measures proposed for regulating the design, construction, alteration, repair, operation, maintenance, impoundment of water in, inspection or abandonment of the dam or category of dams and the effectiveness of these measures;
  - (e) the knowledge and expertise of the persons involved in any task relating to the dam or category of dams;
  - (f) the costs relating to the dam or category of dams;
  - (g) any security provided or intended to be provided for any damage which could be caused by the dam or category of dams; and
  - (h) whether the dam or category of dams are permitted in terms of a licence or any other authorisation issued by or under any other Act.

### **Regulations regarding dam safety**

- 123.** (1) The Minister may make regulations -
- (a) for the establishment of a register of approved professional persons for dealing with dams with a safety risk -
    - (i) providing for -
      - (aa) different classes of approved professional persons;
      - (bb) the tasks or category of tasks which each class of approved professional persons may perform; and
      - (cc) the conditions under which each class of approved professional persons may perform any task or category of tasks;
    - (ii) concerning the requirements for admission to each class;
    - (iii).setting out, in respect of each class, the procedure for -
      - (aa) approval;
      - (bb) withdrawal of an approval; and
      - (cc) suspension of an approval; and
    - (iv).providing for a processing fee for an approval;
  - (b) regulating the approval of a person as an approved professional person for a specific task -
    - (i) setting out the procedure for approval;
    - (ii) setting out the procedure for cancelling an approval;
    - (iii).requiring that the approved person be assisted in the task by another person or a group of persons with specific experience and qualifications; and
    - (iv).providing for a processing fee for an approval;
  - (c) in respect of dams with a safety risk -
    - (i) classifying such dams into categories;
    - (ii) requiring the owner of a dam of a specific category to appoint an approved professional person to -
      - (aa) design that dam or any repair, alteration or abandonment of the dam;
      - (bb) ensure that a task is carried out according to the applicable design, drawings and specifications; and
      - (cc) carry out dam safety evaluations on the dam;
    - (iii) requiring that licences be issued by the Minister before any task relating to a specific category of dams may commence, and the conditions, requirements and procedure to obtain any specific licence;
    - (iv) laying down licence conditions and requirements that must be met when carrying out a task on a specific category of dams;
    - (v) requiring an approved professional person, appointed for a dam of a specific category, to keep records of information and drawings, and to compile reports;

- (vi).requiring -
  - (aa) an owner of a dam belonging to a specific category of dams; and
  - (bb) an approved professional person appointed for a specific task for a specific dam, to submit information, drawings, reports and manuals;
- (vii) determining the duties of -
  - (aa) an owner of a dam belonging to a specific category of dams; and
  - (bb) an approved professional person appointed for a specific task for a specific dam;
- (d) requiring the owner of a dam with a safety risk to accomplish regular monitoring of the dam, to the extent and manner prescribed;
- (e) requiring the registration of a specific dam with a safety risk, and setting out the procedure and the processing fee payable for registration; and
- (f) specifying time periods that must be complied with.
- (2) In making regulations under subsection (1)(a), the Minister must consider -
  - (a) the expertise required for the effective design, construction, alteration, repair, operation, maintenance and abandonment of a dam in the category concerned; and
  - (b) the qualifications and experience needed to provide the expertise for a particular category of tasks.
- (3) Before making regulations under subsection (1), the Minister must consult the Engineering Council of South Africa, established by section 2 of the Engineering Profession of South Africa Act, 1990 (Act No. 114 of 1990), and any other appropriate statutory professional bodies.

## CHAPTER 13

### ACCESS TO AND RIGHTS OVER LAND

#### *Part 1: Entry and inspection*

*Part 1 of this Chapter allows authorised persons to enter and inspect property for a number of purposes associated with implementing this Act. The rights of property owners are protected in that only authorised persons may enter and inspect property; authorised persons must carry a certificate of authorisation and must produce that certificate on request; in certain circumstances notice of entry must be given and the consent of the person owning or occupying the property must be obtained before entry; and in certain circumstances a warrant must be obtained prior to entry.*

#### **Appointment of authorised persons**

**124.** (1) 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).

(2) An authorised person must be provided with a certificate of appointment signed by or on behalf of the Minister or a water management institution in which the nature of the authorised person's functions is described.

#### **Powers and duties of authorised persons**

**125.** (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.

(4).A warrant referred to in subsection (3) must be issued by a judge or a magistrate who has jurisdiction in the area where the property in question is situated, and must only be issued if it appears from information obtained on oath that -

(a) there are reasonable grounds for believing that this Act, any condition attached to any authorised water use by or under this Act or any notice or directive, is being contravened;

(b) there are reasonable grounds for believing that any information supplied in connection with the use of water is inaccurate; or

(c) it is necessary to carry out an activity mentioned in subsection (2) and access to that property has been denied.

(5) If a warrant is likely to be issued if applied for but the delay involved in obtaining a warrant is likely to defeat the object of an inspection in terms of subsection (3)(a) or (b), an authorised person may enter a property without a warrant.

(6) An authorised person entering property in terms of this section must, at the request of any person on that property, identify himself or herself and present a certificate of appointment contemplated in section 124(2).

(7) Notwithstanding any provision of this section an authorised person may not, under any circumstances, enter a dwelling without the consent of the occupier or without a warrant authorising entry.

## ***Part 2: Servitudes***

***Part 2 deals with servitudes. A servitude is a right that a person has over property belonging to another person. This Part allows a person who is authorised to use water under the Act to claim a servitude over another person's land where this is necessary to make that water use effective. For example it might be necessary to lead water over another person's land to take it from the source to the authorised water user's land, and a servitude would be necessary to do this. A servitude cannot be claimed unless the claimant is authorised to use water, and if the authorisation is withdrawn or otherwise terminated, the servitude will lapse. Servitudes are acquired by agreement between the authorised water user and the relevant land owner, either according to existing procedures laid down in the Deeds Registries Act or by way of an agreement which is made an order of court. Procedural details regarding the acquisition of servitudes and their registration are not set out in this Part but are contained in Schedule 2.***

### **Definitions**

126. In this Chapter -

(a) "servitude of abutment" means the right to occupy, by means of a waterwork, the bed or banks of a stream or adjacent land belonging to another;

(b) "servitude of aqueduct" means the right to occupy land belonging to another by means of a waterwork

for abstracting or leading water; and

(c) "servitude of submersion" means the right to occupy land belonging to another by submerging it under

water.

## Acquisition of servitudes

127. (1) A person who is authorised under this Act to use water may -
- (a) claim a servitude of -
    - (i) abutment;
    - (ii) aqueduct; or
    - (iii) submersion; or
  - (b) obtain an amendment to any existing servitude of abutment, aqueduct or submersion, to the extent that this is necessary to give effect to that authorisation.
- (2) The servitude claimed under subsection (1)(a) may be -
- (a) a personal servitude in favour of the claimant; or
  - (b) a praedial servitude in favour of the claimant in the claimant's capacity as owner of property on which the claimant may use the water.
- (3) A servitude under this Chapter may also be claimed in respect of an existing waterwork.
- (4) A person who intends to claim a servitude under this section must follow the procedure set out in Schedule 2.

## Rights and duties of servitude holders and landowners

128. (1) A holder of a servitude contemplated in this Chapter has a reasonable right of access to the land which is subject to the servitude for the purpose of constructing, altering, replacing, inspecting, maintaining, repairing or operating the relevant waterwork, or for any other purpose necessary for the effective enjoyment of that servitude.

(2) The holder of a servitude contemplated in this Chapter may, in a reasonable manner and subject to any other applicable law -

- (a) take from the land subject to the servitude, any material or substance reasonably required for constructing, altering, replacing, maintaining or repairing any waterwork or part of a waterwork in respect of which the servitude has been acquired;
- (b) remove and use vegetation or any other obstacle which is on the land subject to the servitude and which is detrimental to the reasonable enjoyment of the servitude;
- (c) deposit on the land subject to the servitude any material or substance excavated or removed from the waterwork in the reasonable exercise of the servitude;
- (d) occupy, during the period of construction of the waterwork in respect of which the servitude has been acquired, as much of the land subject to the servitude as may reasonably be required for -
  - (i) constructing camps or roads;
  - (ii) constructing houses, reservoirs or other buildings or structures; or
  - (iii) installing machinery or equipment, necessary for the construction of the waterwork;
- (e) occupy, for the duration of the servitude, as much of the land subject to the servitude as is reasonably required for -
  - (i) accommodating people;
  - (ii) workshops; or
  - (iii) storage purposes, to the extent that this is necessary for the control, operation and maintenance of the relevant waterwork.

(3) A holder of a servitude contemplated in this Chapter must, when requested in writing by the owner of the land subject to the servitude, at the holder's cost -

- (a) maintain the servitude area;
- (b) repair and maintain waterworks relating to the servitude; and
- (c) repair and maintain access roads associated with the servitude.

(4) If the holder of a servitude fails to carry out the requested work, the owner of the land may arrange for the necessary work to be done and may recover any reasonable cost incurred from the servitude holder.

(5) On termination of a servitude, the holder of the servitude must rehabilitate the land subject to the servitude to the extent that this is reasonably possible.

### **Procedure for acquisition and amendment of servitudes**

**129.** (1) A servitude contemplated in this Chapter may be acquired or an amendment or cancellation of a servitude obtained by -

- (a) executing and registering an applicable deed in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937); or
- (b) by means of an order of a High Court.

(2) A person claiming a servitude or an amendment of a servitude under this Chapter may, on reasonable notice to the landowner -

- (a) enter;
- (b) make any investigation; and
- (c) undertake any operation, on the land which will be subject to the servitude, where this is reasonable in the circumstances and necessary for determining the nature and extent of the servitude and for complying with item 3 of Schedule 2.

(3) A person acting under subsection (2) must -

- (a) cause as little damage as possible to the land; and
- (b) where any damage is caused -
  - (i) repair the damage where possible; or
  - (ii) pay compensation to the landowner in an agreed amount or an amount determined by a competent court.

(4) An owner of the land against which a servitude contemplated in this Chapter is claimed, may claim to share in the use of any proposed waterwork relating to the servitude if -

- (a) the owner of the land is authorised to use water from a specific water resource;
- (b) the use of the waterwork is compatible with the authorised water use; and
- (c) the owner of the land agrees to be responsible for a proportionate share of the cost of constructing, repairing and maintaining the waterwork.

(5) A claim to share in the use of a waterwork under subsection (4) must be dealt with -

- (a) in the agreement between the parties; or
- (b) in a High Court order contemplated in section 130.

### **Powers of High Court in respect of claim for servitude**

**130.** On hearing a claim for a servitude or for an amendment to a servitude in terms of this Chapter, a High Court may -

- (a) award the claim with or without modifications, on such terms as it considers just;
- (b) award compensation or refuse to award compensation;
- (c) determine whether a proportionate amount of compensation should be paid to the holder of a right of lease, mortgage, usufruct or similar right over the property, and order that such compensation be paid; or
- (d) dismiss the claim.

### **Compensation payable for granting of servitudes**

**131.** (1) In determining just and equitable compensation a High Court must take into account all relevant factors including, in addition to the matters contemplated in section 25 of the Constitution -

- (a) the nature of the servitude or amendment, including the nature and function of the waterwork relating to the servitude or amendment;
- (b) whether any existing waterwork will be used to give effect to the servitude;
- (c) the probable duration of the servitude;
- (d) the extent of the deprivation of use of the land likely to be suffered as a result of the servitude or amendment;
- (e) the rental value of the land affected by the servitude or amendment;

- (f) the nature and extent of the actual inconvenience or loss likely to be suffered as a result of the exercise of the rights under the servitude or amendment;
  - (g) the extent to which the land can reasonably be rehabilitated on termination of the servitude;
  - (h) any advantage that the landowner, or other person with a compensatable interest in the land subject to the servitude, is likely to derive as a result of the servitude or amendment; and
  - (i) the public interest served by the waterwork relating to the servitude or amendment.
- (2) A High Court may determine the time and manner of payment of the compensation.

#### **Noting of servitude and amendment by endorsement against title deed**

**132.** (1) The acquisition, amendment or cancellation of a servitude by virtue of an order of the High Court takes effect when the order is noted in terms of the Deeds Registries Act, 1937, (Act No. 47 of 1937).

(2) Nothing in this section prevents a person from electing to register the acquisition, amendment or cancellation of a servitude in accordance with the Deeds Registries Act, 1937 (Act No. 47 of 1937).

#### **Cancellation of servitude**

- 133.** An owner of land subject to a servitude of abutment, aqueduct or submersion may -
- (a) if the relevant authorisation associated with the servitude is terminated;
  - (b) if the rights and obligations in respect of the servitude have not been exercised on the land subject to the servitude for a continuous period of three years; or
  - (c) for any other lawful reason, apply to a High Court for the cancellation of that servitude.

#### **Joint waterwork involving servitude**

- 134.** Subject to Chapter 4, two or more persons who are authorised to use water may agree to -
- (a) construct a joint waterwork; and
  - (b) create a servitude associated with that waterwork, to give effect to their authorised water use.

### ***Part 3: Waterworks and personal servitudes***

***Part 3 deals with ownership and restoration relating to waterworks placed on the land of another, and creates an exception to the general common law rule that personal servitudes are not transferable from the holder to another person. It allows transfers of personal servitudes that are held by the State and water management institutions.***

#### **Ownership of waterworks on land belonging to another**

- 135.** (1) A water management institution (including the State) -
- (a) retains ownership of a waterwork placed in good faith on land belonging to another;
  - (b) may remove such a waterwork from the land; and
  - (c) may transfer the rights held in respect of improvement on such land to another person or authority.
- (2) When a waterwork is removed under subsection (1)(b), the owner of the property -
- (a) may require the Minister or the water management institution concerned to restore, as far as possible, any physical damage to the land caused by the removal; and
  - (b) has no other claim against the Minister or the water management institution concerned.
- (3) The rights of the State or a water management institution in respect of improvements on property not owned by the State or the institution may be transferred to another person or authority.

## **Transfer of personal servitudes**

**136.** (1) Despite any law to the contrary, a personal servitude, whether registered or not, held by the Minister or a water management institution may be transferred -

- (a) from the Minister to a water management institution; or
- (b) from a water management institution to the Minister or to another water management institution.

(2) The relevant Registrar of Deeds must register a notarially executed deed of cession to transfer a registered personal servitude in terms of subsection (1).

## **CHAPTER 14**

### **MONITORING, ASSESSMENT AND INFORMATION**

*Monitoring, recording, assessing and disseminating information on water resources is critically important for achieving the objects of the Act. Part 1 of this Chapter places a duty on the Minister, as soon as it is practicable to do so, to establish national monitoring systems. The purpose of the systems will be to facilitate the continued and co-ordinated monitoring of various aspects of water resources by collecting relevant information and data, through established procedures and mechanisms, from a variety of sources including organs of state, water management institutions and water users.*

#### *Part 1: National monitoring systems*

### **Establishment of national monitoring systems**

**137.** (1) The Minister must establish national monitoring systems on water resources as soon as reasonably practicable.

(2) The systems must provide for the collection of appropriate data and information necessary to assess, among other matters -

- (a) the quantity of water in the various water resources;
- (b) the quality of water resources;
- (c) the use of water resources;
- (d) the rehabilitation of water resources;
- (e) compliance with resource quality objectives;
- (f) the health of aquatic ecosystems; and
- (g) atmospheric conditions which may influence water resources.

### **Establishment of mechanisms to co-ordinate monitoring of water resources**

**138.** The Minister must, after consultation with relevant -

- (a) organs of state;
- (b) water management institutions; and
- (c) existing and potential users of water, establish mechanisms and procedures to co-ordinate the monitoring of water resources.

#### *Part 2: National information systems on water resources*

*Part 2 requires the Minister, as soon as it is practicable to do so, to establish national information systems, each covering a different aspect of water resources, such as a national register of water use authorisations, or an information system on the quantity and quality of all water resources. The Minister may require any person to provide the Department with information prescribed by the Minister in regulations. In addition to its use by the Department and water management institutions, and subject to any limitations imposed by law, information in the national systems should be generally accessible for use by water users and the general public.*

### **Establishment of national information systems**

**139.** (1) The Minister must, as soon as reasonably practicable, establish national information systems regarding water resources.

- (2) The information systems may include, among others -
- (a) a hydrological information system;
  - (b) a water resource quality information system;
  - (c) a groundwater information system; and
  - (d) a register of water use authorisations.

### **Objectives of national information systems**

- 140.** The objectives of national information systems are -
- (a) to store and provide data and information for the protection, sustainable use and management of water resources;
  - (b) to provide information for the development and implementation of the national water resource strategy; and
  - (c) to provide information to water management institutions, water users and the public -
    - (i) for research and development;
    - (ii) for planning and environment impact assessments;
    - (iii) for public safety and disaster management; and
    - (iv) on the status of water resources.

### **Provision of information**

**141.** The Minister may require in writing that any person must, within a reasonable given time or on a regular basis, provide the Department with any data, information, documents, samples or materials reasonably required for -

- (a) the purposes of any national monitoring network or national information system; or
- (b) the management and protection of water resources.

### **Access to information**

**142.** Information contained in any national information system established in terms of this Chapter must be made available by the Minister, subject to any limitations imposed by law, and the payment of a reasonable charge determined by the Minister.

### **Regulations for monitoring, assessment and information**

- 143.** The Minister may make regulations prescribing -
- (a) guidelines, procedures, standards and methods for monitoring; and
  - (b) the nature, type, time period and format of data to be submitted in terms of this Chapter.

### ***Part 3: Information on floodlines, floods and droughts***

***Part 3 requires certain information relating to floods, droughts and potential risks to be made available to the public. Township layout plans must indicate a specific floodline. Water management institutions must use the most appropriate means to inform the public about anticipated floods, droughts or risks posed by water quality, the failure of any dam or any other waterworks or any other related matter. The Minister may establish early warning systems to anticipate such events.***

## **Floodlines on plans for establishment of townships**

**144.** For the purposes of ensuring that all persons who might be affected have access to information regarding potential flood hazards, no person may establish a township unless the layout plan shows, in a form acceptable to the local authority concerned, lines indicating the maximum level likely to be reached by floodwaters on average once in every 100 years.

## **Duty to make information available to public**

**145.** (1) A water management institution must, at its own expense, make information at its disposal available to the public in an appropriate manner, in respect of -

- (a) a flood which has occurred or which is likely to occur;
- (b) a drought which has occurred or which is likely to occur;
- (c) a waterwork which might fail or has failed, if the failure might endanger life or property;
- (d) any risk posed by any dam;
- (e) levels likely to be reached by floodwaters from time to time;
- (f) any risk posed by the quality of any water to life, health or property; and
- (g) any matter connected with water or water resources, which the public needs to know.

(2) The Minister may, where reasonably practicable, establish an early warning system in relation to the events contemplated in subsection (1).

## **CHAPTER 15**

### **APPEALS AND DISPUTE RESOLUTION**

*This Chapter establishes the Water Tribunal to hear appeals against certain decisions made by a responsible authority, catchment management agency or water management institution under this Act. The Tribunal is an independent body, whose members are appointed through an independent selection process, and which may conduct hearings throughout the Republic. A person may appeal to a High Court against a decision of the Tribunal on a question of law. This Chapter also provides for disputes to be resolved by mediation, if so directed by the Minister.*

## **Establishment of Water Tribunal**

**146.** (1) The Water Tribunal is hereby established.

(2) The Tribunal is an independent body which -

- (a) has jurisdiction in all the provinces of the Republic; and
- (b) may conduct hearings anywhere in the Republic.

(3) The Tribunal consists of a chairperson, a deputy chairperson and as many additional members as the Minister considers necessary.

(4) Members of the Tribunal must have knowledge in law, engineering, water resource management or related fields of knowledge.

(5) The chairperson, the deputy chairperson and the additional members of the Tribunal are appointed by the Minister on the recommendation of the Judicial Service Commission contemplated in section 178 of the Constitution.

(6) The chairperson and the deputy chairperson may be appointed in a full-time or part-time capacity while the additional members must be appointed in a part-time capacity.

(7) The Minister must determine the employment conditions and the remuneration of the chairperson, the deputy chairperson and all other members of the Tribunal in consultation with the Minister of Finance.

(8) The Minister may, after consultation with the Judicial Service Commission referred to in subsection (5), and after giving the member an opportunity to make representations and considering such representations, for good reason terminate the appointment of any member of the Tribunal.

## Operation of Water Tribunal

147. (1) Subject to section 146(4), after having considered the necessary field of knowledge for the purposes of hearing a particular matter, the chairperson may nominate one or more members of the Water Tribunal to hear a matter and a decision by such member or members constitutes a decision by the Tribunal.

(2) Administrative support for the Tribunal must be provided by officials of the Department designated by the Director-General, subject to the laws pertaining to the secondment of officers in the Public Service.

(3) The expenditure of the Tribunal must be defrayed out of money appropriated by Parliament for that purpose or from any other source.

(4) Neither the Tribunal, the chairperson, the deputy chairperson nor any other member is liable for an act or omission committed in good faith while performing a function in terms of this Act.

## Appeals to Water Tribunal

148. (1) There is an appeal to the Water Tribunal -

- (a) against a directive issued by a catchment management agency under section 19(3) or 20(4)(d), by the recipient thereof;
  - (b) against a claim by a catchment management agency for the recovery of costs under section 19(5) or 20(7) by the person affected thereby;
  - (c) against the apportionment by a catchment management agency of a liability for costs under section 19(8) or 20(9), by a person affected thereby;
  - (d) against a decision of a water management institution on the temporary transfer of a water use authorisation under section 25(1), by a person affected thereby;
  - (e) against a decision of a responsible authority on the verification of a water use under section 35 by a person affected thereby;
  - (f) against a decision of a responsible authority on an application for a licence under section 41, or on any other application to which section 41 applies, by the applicant or by any other person who has timeously lodged a written objection against the application;
  - (g) against a preliminary allocation schedule published by a responsible authority under section 46(1), by any interested person;
  - (h) against the amendment of a condition of a licence by a responsible authority on review under section 49(2), by any person affected thereby;
  - (i) against a decision of a responsible authority on an adjudication of claims made under section 51(1), by any person affected thereby;
  - (j) against a directive issued by a responsible authority under section 53(1), by the recipient thereof;
  - (k) against a claim by a water management institution for the recovery of costs under section 53(2)(a), by the person against whom the claim is made;
  - (l) against a decision by a responsible authority on the suspension, withdrawal or reinstatement of an entitlement under section 54, or on the surrender of a licence under section 55, by the person entitled to use water or by the licensee; and
  - (m) against a declaration made by, directive given by or costs claimed by the Minister in respect of a dam with a safety risk under section 118(3) or (4).
- (2) An appeal under subsection (1) -
- (a) does not suspend a directive given under section 19(3), 20(4)(d) or 53(1); and
  - (b) suspends any other relevant decision, direction, requirement, limitation, prohibition or allocation pending the disposal of the appeal, unless the Minister directs otherwise.
- (3) An appeal must be commenced within 30 days after -
- (a) publication of the decision in the *Gazette*;
  - (b) notice of the decision is sent to the appellant; or
  - (c) reasons for the decision are given, whichever occurs last.
- (4) The procedure for lodging, hearing and deciding -
- (a) an appeal under subsection (1); and
  - (b) an application for the determination of compensation under section 22, is contained in Part 2 of Schedule 6.

- (5) The chairperson may make rules which -
- (a) govern the procedure of the Tribunal, including the procedure for lodging and opposing an appeal or an application and the hearing thereof by the Tribunal;
  - (b) may provide for application or appeal fees payable by a claimant or appellant; and
  - (c) must be approved and published in the *Gazette* by the Minister.

### **Appeals from decisions of Water Tribunal**

- 149.** (1) A party to a matter in which the Water Tribunal -
- (a) has given a decision on appeal under section 148, may, on a question of law, appeal to a High Court against that decision; or
  - (b) has determined the liability for compensation or the amount of compensation under section 22(9), may, on a question of law, appeal to a High Court against that determination.
- (2) The appeal must be noted in writing within 21 days of the date of the decision of the Tribunal.
- (3) The notice of appeal must -
- (a) set out every question of law in respect of which the appeal is lodged;
  - (b) set out the grounds for the appeal;
  - (c) be lodged with the relevant High Court and with the Water Tribunal; and
  - (d) be served on every party to the matter.
- (4) The appeal must be prosecuted as if it were an appeal from a Magistrate's Court to a High Court.

### **Mediation**

- 150.** (1) The Minister may at any time and in respect of any dispute between any persons relating to any matter contemplated in this Act, at the request of a person involved or on the Minister's own initiative, direct that the persons concerned attempt to settle their dispute through a process of mediation and negotiation.
- (2) A directive under subsection (1) must specify the time when and the place where such process must start.
- (3) Unless the persons concerned have informed the Minister at least seven days before the date specified in terms of subsection (2) that they have appointed a mediator, the Minister must appoint a mediator.
- (4) Notwithstanding subsection (3), the parties may at any time during the course of mediation or negotiation proceedings, by agreement between them, appoint another person to act as mediator.
- (5) A person appointed by the Minister in terms of subsection (3) must either be an official of the Department or an independent mediator.
- (6) Where the Minister or the Department is a party to the dispute, the mediator may not be an official of the Department.
- (7) The contents of all discussions which took place and of all submissions made as part of a mediation process under this section are privileged in law, and may not be received in evidence by any court of law, unless the parties agree otherwise.
- (8) The fees and expenses of a mediator must be paid by -
- (a) the Department, if the Minister has appointed the mediator; or
  - (b) the parties, if they have appointed the mediator.

## **CHAPTER 16**

### **OFFENCES AND REMEDIES**

*In common with other Acts of Parliament which aim to make non-compliance a criminal offence, this Chapter lists the acts and omissions which are offences under this Act, with the associated penalties. It also gives the courts and water management institutions certain powers associated with prosecutions for these offences, such as the power to remove the cause of a stream flow reduction.*

## Offences

- 151.** (1) No person may -
- (a) use water otherwise than as permitted under this Act;
  - (b) fail to provide access to any books, accounts, documents or assets when required to do so under this Act;
  - (c) fail to comply with any condition attached to a permitted water use under this Act;
  - (d) fail to comply with a directive issued under section 19, 20, 53 or 118;
  - (e) unlawfully and intentionally or negligently tamper or interfere with any waterwork or any seal or measuring device attached to a waterwork;
  - (f) fail or refuse to give data or information, or give false or misleading data or information when required to give information under this Act;
  - (g) fail to register an existing lawful water use when required by a responsible authority to do so;
  - (h) intentionally refuse to perform a duty, or obstruct any other person in the exercise of any power or performance of any of that person's duties in terms of this Act;
  - (i) unlawfully and intentionally or negligently commit any act or omission which pollutes or is likely to pollute a water resource;
  - (j) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect a water resource;
  - (k) fail to register a dam with a safety risk;
  - (l) fail to comply with a temporary restriction on the use of water in terms of item 6 of Schedule 3; or
  - (m) commit contempt of the Water Tribunal.
- (2) Any person who contravenes any provision of subsection (1) is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

## Enquiry in respect of compensation for harm, loss or damage suffered

- 152.** Where any person is convicted of an offence under this Act and -
- (a) another person has suffered harm or loss as a result of the act or omission constituting the offence; or
  - (b) damage has been caused to a water resource,
- the Court may, in the same proceedings -
- (i) at the written request of the person who suffered the harm or loss; or
  - (ii) at the written request of the Minister in respect of the damage caused to a water resource; and
  - (iii) in the presence of the convicted person,
- enquire without pleadings into the harm, loss or damage and determine the extent thereof.

## Award of damages

- 153.** After making a determination in terms of section 152, the Court may -
- (a) award damages for the loss or harm suffered by the person referred to in section 152 against the accused;
  - (b) order the accused to pay for the cost of any remedial measures implemented or to be implemented; and
  - (c) order that the remedial measures to be implemented, be undertaken either by the accused or the relevant water management institution.

## Offences in relation to employer and employee relationships

- 154.** Whenever an act or omission by an employee or agent -
- (a) constitutes an offence in terms of this Act, and takes place with the express or implied permission of the employer or principal, as the case may be, the employer or principal, as the case may be, is, in addition to the employee or agent, liable to conviction for that offence; or
  - (b) would constitute an offence by the employer or principal, as the case may be, in terms of this Act, that employee or agent will in addition to that employer or principal be liable to conviction for that offence.

## **Interdict or other order by High Court**

**155.** A High Court may, on application by the Minister or the water management institution concerned, grant an interdict or any other appropriate order against any person who has contravened any provision of this Act, including an order to discontinue any activity constituting the contravention and to remedy the adverse effects of the contravention.

## **CHAPTER 17**

### **GENERAL AND TRANSITIONAL PROVISIONS**

*This Chapter contains a number of unrelated provisions which, being of general importance to the Act as a whole, are less suited to other Chapters. They relate, among other things, to the binding of all organs of state, to delegations, to the amendment and substitution of legal instruments, to the limitation of liability, and to the authorisation and service of documents. The Chapter refers to the list, in Schedule 7, of laws or parts of laws which are repealed by this Act and which will no longer have effect. However, any act performed under a repealed law remains valid if not inconsistent with this Act and until overridden by this Act. Regulations made under repealed laws also remain valid if not inconsistent with this Act and until repealed by the Minister. This Chapter also provides for overriding any provision in a prior law which exempts a person from payment of a charge or limiting payment to a fixed charge for water use.*

#### ***Part 1: Liability***

#### **State bound**

**156.** This Act binds all organs of state.

#### **Limitation of liability**

**157.** Neither the State nor any other person is liable for any damage or loss caused by -  
(a) the exercise of any power or the performance of any duty in terms of this Act; or  
(b) the failure to exercise any power, or perform any duty in terms of this Act, unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith.

#### **Amendment or substitution of instruments**

**158.** (1) For the purposes of this section, "instrument" includes any regulation, strategy, licence, directive or notice made, determined, issued or given in terms of this Act.

(2) If the proposed amendment or substitution of an instrument -  
(a) is not likely to alter the rights and obligations of any person materially;  
(b) corrects any clerical mistake, unintentional error or omission in an instrument;  
(c) corrects any figure miscalculated in an instrument; or  
(d) corrects any misdescription of any person, thing or property, the amendment or substitution may be made without following the procedure required for establishing or giving effect to the instrument.

## **Effect of delegation**

**159.** Where a power is conferred on a person to delegate the exercise of a power then, unless the contrary intention appears -

- (a) such a delegation does not prevent the exercise of that power, or the performance of that duty by the person who made the delegation;
- (b) such a delegation may be made subject to such conditions or limitations as the person making that delegation may specify; and
- (c) a power so delegated, when exercised or performed by the delegatee, must be regarded as having been exercised or performed by the person making the delegation.

## ***Part 2: Powers and authorisations***

### **Documents deemed to be properly authorised and issued**

**160.** (1) A notice, directive or other document issued in terms of this Act in good faith by any water management institution and purporting to have been signed by the chairperson, secretary or chief executive officer of the institution must be regarded as having been properly authorised and issued in terms of a valid decision, until evidence to the contrary is adduced.

(2) Any document issued in terms of this Act without authority may be ratified subsequently.

### **Documents and steps valid under certain circumstances**

**161.** (1) A notice, directive or other document issued in good faith in terms of this Act, but which does not comply with this Act, is valid if the non-compliance is not material and does not prejudice any person.

(2) The failure to take any steps required in terms of this Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure -

- (a) is not material;
- (b) has subsequently been rectified; and
- (c) does not prejudice any person.

(3) A failure in good faith to consult with or send notice to any relevant person or body as required by this Act does not invalidate any act of or process for which such consultation is a prerequisite.

### **Service of documents**

**162.** (1) Any notice, directive or other document in terms of this Act, must be served -

- (a) if it is to be served on a natural person -
  - (i) by hand delivery to that person;
  - (ii) by hand delivery to a responsible individual at that person's business or residential address;
  - (iii) by sending it by registered mail to that person's business or residential address; or
  - (iv) where that person's business and residential address is unknown, despite reasonable enquiry, by publishing it once in the *Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address; or
- (b) if it is intended for a juristic person -
  - (i) by hand delivery to a responsible individual at the registered address or principal place of business of that juristic person;
  - (ii) by sending it by facsimile to the registered address or principal place of business of that juristic person;
  - (iii) by sending it by registered mail to the registered address or principal place of business of that juristic person;
  - (iv) by conspicuously attaching it to the main entrance of the registered address or the principal place of business of that juristic person; or
  - (v) by hand delivery to any member of that juristic person's board of directors or governing body.

(2) Any notice, directive or other document served according to subsection (1) is considered to have come to the notice of the person, unless the contrary is proved.

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

**163.** (1) The laws set out in Schedule 7 are hereby repealed to the extent set out in the third column of that Schedule.

(2) This Act overrides any provision in a prior law exempting a person from payment of a charge, or limiting payment to a fixed charge for water use.

(3) Anything done under a law repealed by this Act remains valid -

(a) to the extent that it is not inconsistent with this Act; and

(b) until anything done under this Act overrides it.

(4) Any regulation made under a law repealed by this Act remains in force and is considered to have been made under this Act -

(a) to the extent that it is not inconsistent with this Act; and

(b) until it is repealed by the Minister under this Act.

### **Short title and commencement**

**164.** This is the National Water Act, 1998 , which takes effect on a date fixed by the President by proclamation in the *Gazette*.

## **Schedule 1**

### **PERMISSIBLE USE OF WATER**

#### **[Sections 4(1) and 22(1)(a)(i) and Item 2 of Schedule 3]**

(1) A person may, subject to this Act -

(a) take water for reasonable domestic use in that person's household, directly from any water resource to which that person has lawful access;

(b) take water for use on land owned or occupied by that person, for -

(i) reasonable domestic use;

(ii) small gardening not for commercial purposes; and

(iii) the watering of animals (excluding feedlots) which graze on that land within the

that grazing capacity of that land, from any water resource which is situated on or forms a boundary of  
other land, if the use is not excessive in relation to the capacity of the water resource and the needs of  
users;

(c) store and use run-off water from a roof;

(d) in emergency situations, take water from any water resource for human consumption or firefighting;

(e) for recreational purposes -

(i) use the water or the water surface of a water resource to which that person has lawful access; or

(ii) portage any boat or canoe on any land adjacent to a watercourse in order to continue boating on that watercourse; and

(f) discharge -

(i) waste or water containing waste; or

site, (ii) run-off water, including stormwater from any residential, recreational, commercial or industrial  
the into a canal, sea outfall or other conduit controlled by another person authorised to undertake the  
purification, treatment or disposal of waste or water containing waste, subject to the approval of

the person controlling the canal, sea outfall or other conduit.

(2) An entitlement under this Schedule does not override any other law, ordinance, bylaw or regulation, and is subject to any limitation or prohibition thereunder.

## Schedule 2

### PROCEDURAL MATTERS REGARDING SERVITUDES

#### [Sections 127(4) and 129(2)]

1. A person who intends to claim a servitude or an amendment of a servitude under the Act must give the owner of the land which will be subject to the servitude written notice of his or her claim.
2. Where a claimant is not the owner of the land in favour of which the servitude is claimed, the claimant must give the owner written notice of the claimant's claim.
3. The notice must include details of at least the following, where relevant:
  - (a) the entitlement of the claimant to the use of the water;
  - (b) a description of the land which will be subject to the servitude;
  - (c) whether the servitude claimed is a personal or a praedial servitude;
  - (d) in the case of a personal servitude, the name, identity number or registration number (if applicable) of the person in whose favour the servitude is claimed;
  - (e) in the case of a praedial servitude, a description of the land in favour of which the servitude is claimed;
  - (f) the likely impact of the servitude on the land or its use;
  - (g) in the case of a servitude of aqueduct, the route along which the water is to be led over the land which will be subject to the servitude and other affected land;
  - (h) in the case of a servitude of submersion, where the water will be stored and the area that will be submerged;
  - (i) the nature and locality of any proposed waterwork, including any road or other structure, which will reduce the loss and inconvenience to the owner or occupier of the land which will be subject to the servitude, as a result of the servitude;
  - (j) how and when maintenance of the proposed waterwork is likely to be carried out;
  - (k) the nature, quantity and situation of any materials required from the land which will be subject to the servitude for the purpose of constructing any proposed waterwork;
  - (l) the land reasonably required during the construction period for -
    - (i) construction camps;
    - (ii) accommodating people;
    - (iii) workshops; or
    - (iv) storage purposes;
  - (m) the extent and location of any land reasonably required for construction, operating and maintaining a proposed waterwork on the land which will be subject to the servitude; and
  - (n) the compensation offered.
4. A plan depicting the location of the proposed waterworks on the land which will be subject to the servitude must be attached to the notice.
5. When a person gives a notice of a claim for a servitude or for an amendment of a servitude, that person must also send, by registered post, a copy of the notice to -
  - (a) the lessee of the land;
  - (b) the national, provincial or local government authority responsible for controlling, maintaining or repairing a road across which the claimant intends constructing a waterwork in terms of the servitude or amendment; and
  - (c) every person who, from a perusal of -
    - (i) the title deeds of the land;
    - (ii) the records of the Registrar of Mining Titles; or
    - (iii) the records of any other government office which records prospecting or mining rights,appears to have any interest in the land which may be negatively affected by the servitude, if the whereabouts of the person can be readily ascertained.
6. A notice under item 1 or 2 may be amended as a result of -
  - (a) the claimant exercising his or her rights under section 128 of the Act; or
  - (b) objections to the notice by the owner of the land subject to the servitude or the owner of the land in favour of which the servitude is claimed.
7. An amended notice must be dealt with in the same way as the original notice.

8. A claimant may, not earlier than 14 days and not later than 90 days after the notices required in terms of this Schedule have been given, apply to the High Court for the award of a servitude claimed in terms of the procedure set out in this Schedule and the High Court may make such order as it deems fit.

### Schedule 3

#### POWERS WHICH MAY BE EXERCISED AND DUTIES TO BE PERFORMED BY CATCHMENT MANAGEMENT AGENCIES ON ASSIGNMENT OR DELEGATION

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

##### General

1. 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.

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

2. 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.

##### Catchment management agencies may make rules to regulate water use

3. (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.

#### **Catchment management agencies may require establishment of management systems**

4. (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.

#### **Catchment management agencies may require alterations to waterworks**

5. (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.

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

6. (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).

#### **Schedule 4**

### **MANAGEMENT AND PLANNING OF WATER MANAGEMENT INSTITUTIONS**

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

#### ***Part 1: Governing board***

##### **Governing board**

1. (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.

##### **Terms and conditions of appointment**

2. (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.

##### **Chief executive officer**

3. (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.

##### **Vacancies, resignations and removal from office**

4. (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.

### **Validity of decisions**

5. (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***

#### **Duties of board members**

6. (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.

## **Disclosure of interest**

7. (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.

## **Recovery of improper profits**

8. 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***

### **Convening meetings**

9. (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.

### **Notices of meeting**

10. (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.

## **Quorum**

- 11.** (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.

## **Adjournment**

- 12.** (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.

## **Person presiding at meetings**

- 13.** (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.

## **Voting**

- 14.** (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.

## **Minutes**

- 15.** (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.

## **Participation in meetings**

- 16.** (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.

## **Resolutions without meetings**

17. (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.

## **Execution of documents**

18. (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.

## **Appointment of committees**

19. (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.

## **Power to regulate proceedings**

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

### ***Part 4: Institutional planning***

## **Business plans**

21. (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.

## **General matters to be included in business plans**

22. 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.

## **Financial matters to be included in business plans**

23. 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.

#### **Matters to be considered in setting financial targets**

24. 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.

#### **Business plans to be given to Minister**

25. (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.

#### **Board to notify Minister of significant events**

26. 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.

#### **Institution must act in accordance with business plan**

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

#### **Minister may require information**

28. (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***

#### **Provision of information by an institution**

29. (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.

### **Taking possession of books, records and assets**

**30.** 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.

### **Offence**

**31.** 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***

### **Financial records and accountability**

- 32.** (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.

### **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; or  
(b) if it is a water user association, send a copy of its annual report to the Secretary to Parliament.

## Schedule 5

### MODEL CONSTITUTION OF WATER USER ASSOCIATION

[Sections 91(1)(f), 93(1) and 94(2)]

#### Name of Association

1. The name of the Association is [specify the name] (hereinafter referred to as "the Association").

#### Application of the National Water Act of 1998 to the constitution

2. This constitution is subject to Chapter 8 of the National Water Act of 1998 (hereafter referred to as the Act) and Schedule 4 to the Act.

#### Objects of the Association

3. The objects of the Association are - [briefly describe the objects]

#### Principal functions of the Association

4. The principal functions to be performed by the Association in its area of operation are -

[Note: The following are options. Others may be proposed. Choose and number your options.]

- \* To prevent water from any water resource being wasted.
- \* To protect water resources.
- \* To prevent any unlawful water use.
- \* To remove or arrange to remove any obstruction unlawfully placed in a watercourse.
- \* To prevent any unlawful act likely to reduce the quality of water in any water resource.
- \* To exercise general supervision over water resources.
- \* To regulate the flow of any watercourse by -
  - clearing its channel;
  - reducing the risk of damage to the land in the event of floods;
  - changing a watercourse back to its previous course where it has been altered through natural causes.
- \* To investigate and record -
  - the quantity of water at different levels of flow in a watercourse;
  - the times when; and
  - the places where water may be used by any person entitled to use water from a water resource.

- \* To construct, purchase or otherwise acquire, control, operate and maintain waterworks considered to be necessary for -
  - draining land; and
  - supplying water to land for irrigation or other purposes.
- \* To supervise and regulate the distribution and use of water from a water resource according to the relevant water use entitlements, by erecting and maintaining devices for -
  - measuring and dividing; or
  - controlling the diversion of the flow of water.

### **Ancillary functions of Associations**

5. (1) The Association may perform functions other than its principal functions only if it is not likely -  
(a) to limit the Association's capacity to perform its principal functions; and  
(b) to be to the financial prejudice of itself or its members.

- (2) Other functions of the Association may include -

**[Note: The following are options. Others may be proposed. Choose and number your options.]**

- \* Providing management services, training and other support services to -
  - (a) water services institutions; and
  - (b) rural communities.
- \* Providing catchment management services to or on behalf of responsible authorities.

### **Founding members**

6. (1) The founding members of the Association are the members whose names appear in Annexure 1 of this constitution and who have been authorised by the proposed participants to act on their behalf in establishing the Association.

(2) The founding members will, for purposes of arranging the first election of members of the Management Committee, be considered to be the Management Committee of the Association with powers and duties limited to arranging the election in accordance with this constitution.

### **Membership of the Association**

7. (1) The first members of the Association are the persons who, during the consultation process, indicated their willingness to become members of the Association and whose names appear in Annexure 2 of this constitution.

(2) Application for new membership of the Association must be addressed to the Management Committee which must, at a meeting of the Committee, consider an application and approve it unless there is good reason to refuse it.

(3) An association must allow a person to become a member of the Association if directed by the Minister to do so.

(4) A member may only resign as a member of the Association with the approval of the Management Committee, which may not unreasonably withhold its approval. **[Note: A reason for not accepting a resignation would be, for example, if the resignation would detrimentally affect the Association's ability to meet its financial commitments in respect of infrastructure provided to serve the member concerned.]**

### **Register of members**

8. All members must communicate their addresses from time to time to the person acting as secretary of the Association, who must keep a register of the names of members and of their addresses.

### **Rights of members**

9. (1) Membership of the Association does not give any member a right to any of the moneys, property or assets of the Association, but only gives members the privileges of membership, subject to such charges and reasonable restrictions as are imposed by the Management Committee from time to time.

(2) A member whose application for membership has been approved is bound by the constitution and rules of the Association which are then in force or as they are subsequently amended.

### **Liability of members**

10. The liability of members is limited to the amount of unpaid charges and interest thereon owing by them to the Association.

### **Qualification of candidates for membership of Management Committee**

11. Any member of the Association is, subject to disqualifications contemplated in Schedule 4 to the Act, eligible for election as a member of the Management Committee. If the Association's area of operation is divided into sub-areas, a member will only be eligible for election as a member of the Management Committee for the sub-area in which that member resides.

### **Nomination of and voting for members of Management Committee**

12. Any person whose name is on the voters list of the Association may nominate candidates for election as members of the Management Committee and may vote at an election of members of the Committee. A person whose name appears on a voters list prepared for a sub-area of the Association's area of operation, will be entitled to nominate candidates and to vote only in elections for that sub-area.

### **Membership of Management Committee**

**[Note: The following are options. Others may be proposed. Choose and number your options.]**

13. (1) **Option (a)** The Management Committee of the Association will consist of **[specify the number]** members.

**Option (b) [Note: This option is additional to option (a) and applies where the area of operation of the Association is divided into sub-areas.]** The area of operation of the Association will be divided into sub-areas as described in Annexure 3 to this constitution. Each area will be represented on the Management Committee on the basis set out in that Annexure.

(2) Membership of the Management Committee will be determined by an election process in which all members whose names are on the Association's voters list may participate.

(3) **Option (a)** Members will, subject to the disqualifications contemplated in Schedule 4, be elected for a fixed term of **[specify period]** years.

**Option (b) [Applies to election process only]** Members will, subject to the disqualifications contemplated in Schedule 4, be elected for a fixed term of **[specify period]** years. The first election will take place as follows -

- (i) one-third of the members elected who stand highest on the poll will hold office for a period of **[specify period]** years;
- (ii) one-third of the members elected who stand next highest on the poll will hold office for a period of **[specify period]** years; and
- (iii) the remaining members elected will hold office for a period of **[specify period]** years.

If, in any case -

(a) no poll is required because the nominations received were not greater than the number of members to be elected; or

(b) two or more candidates have received an equal number of votes, the respective periods of office of the members will be determined by lot under supervision of the returning officer.

(4) If a vacancy occurs on the Management Committee, the vacancy must be filled according to this item, provided that the member must be elected for a period equal to the remainder of the period for which the member who has vacated the office would otherwise have continued in office.

(5) At least 30 days' notice of an election must be given to all members of the Association.

### **Appointment of chairperson and deputy chairperson**

**[Note: The following are options. Others may be proposed. Choose and number your options.]**

14. (1) **Option (a)** After the election of the Management Committee the members of that Committee must elect a chairperson and deputy chairperson of the Association from amongst their members. The Management Committee may appoint any person to chair the proceedings for that purpose.

#### **Option (b)**

(1) After the election of the Management Committee the members of the Association must elect a chairperson and a deputy chairperson of the Association from amongst the elected members of the Management Committee. The members of the Association may appoint any person to chair the proceedings for that purpose.

(2) The chairperson and deputy chairperson hold office for a period of 12 months from the date of their election and may be re-elected.

(3) When the period of office of a chairperson or deputy chairperson expires, that person will, provided that he or she remains a member of the Association, remain in office until the next meeting of the Management Committee.

(4) A new chairperson and deputy chairperson of the Management Committee will be elected annually. Should any of these offices be vacated before the term expires, the office must be filled immediately according to the procedure set out in this item.

### **Voter's list**

**15.** (1) The founding members of the Association must select a person to prepare a voters list for the first election of members of the Management Committee. The voters' list must show -

(a) the names of all members included in Annexure 2 to this constitution and, where appropriate, the name of a member's accredited representative;

(b) particulars of each member's entitlement to water use; and

(c) the number of votes a member is entitled to.

(2) If the Association's area of operation is divided into sub-areas, the voters' list must also be divided into subareas and the particulars referred to in subitem (1) must be shown under the respective subareas.

(3) The number of votes will be determined on the following basis -

**[Note: The following are options. Others may be proposed. Choose and number your options.]**

#### **Option (a)**

One vote per entitlement to water use.

#### **Option (b)**

A pro-rata number of votes in proportion to the quantity of water authorised under a particular entitlement, compared to the total quantity of water under all of the entitlements registered with the Association. In this calculation all fractions must be rounded off to the next higher figure.

#### **Option (c)**

A pro-rata number of votes in proportion to the quantity of water authorised under a particular entitlement, compared to the total quantity of water under all the entitlements registered with the Association. In this calculation-

(i) all fractions must be rounded off to the next higher figure; and

(ii) no member will be awarded more than 10 votes.

#### **Option (d)**

One vote for every five hectares or part of five hectares of land that can be irrigated in terms of a member's entitlement.

#### **Option (e)**

One vote for every five hectares or part of five hectares of land that can be irrigated in terms of a member's entitlement, provided that no member will be awarded more than 10 votes.

(4) If the entitlement to use water is not in the name of a natural person, the holder must nominate an accredited representative whose name must appear on the voters' list and who may exercise the vote.

(5) If the entitlement is in the name of two or more persons they must designate one of their numbers to represent them and that person's name must appear on the voters' list and he or she may exercise the vote.

(6) The voters' list must annually be revised by the Management Committee and also whenever there is an amendment to the Association's area of operation.

### **Appointment of employees**

**[Note: The appointment of a Chief Executive Officer for the Association is dealt with in Schedule 4 to the Act.]**

**16.** (1) The Management Committee may employ such persons as it considers necessary to perform the Association's functions under this constitution.

(2) The appointment of employees or any change in their conditions of service must be approved by resolution of the Management Committee.

(3) All employees of the Association will remain in office despite any change in the composition and membership of the Management Committee.

### **Raising of loans**

17. (1) The Management Committee may raise by way of loans, including bank overdrafts, any funds required by it for the purpose of carrying out any of its functions under this constitution or the Act.

(2) Whenever the Management Committee proposes to raise a loan, it must give notice in writing of its intention, setting out details of the proposal. The notice must be given to every member of the Association not less than 21 days before the date of the meeting of the Committee at which the proposal will be considered.

(3) No loan may be raised without a resolution of the Management Committee passed at a meeting at which not less than two-thirds of the members of the Committee are present.

### **Charges and the recovery of charges**

18. (1) For the purpose of defraying any expenditure that the Management Committee has lawfully incurred or may lawfully incur in carrying out its functions and duties it may annually assess charges on members according to the pricing strategy for water use set by the Minister.

(2) The Management Committee may recover the charges assessed from either -

- (a) the owners of the land concerned; or
- (b) any person to whom water is supplied on the land.

(3) Whenever the Management Committee has assessed a charge, the Committee must prepare an assessment roll setting forth -

- (a) the name of each member liable to pay charges;
- (b) a description of the piece of land, which may be a specially delineated area, in respect of which the charge is assessed;
- (c) the quantity of water or abstraction time period to which the member is entitled;
- (d) the amount of the charge assessed;
- (e) the date or dates on which payment is due and the amount due on each date; and
- (f) the rate of interest payable on non-payment and the effective date of interest.

(4) A copy of the assessment roll must lie open for inspection in the office of the Association at all reasonable times by any member of the Association.

### **Annual Report**

**[Note: The following are options. Others may be proposed. Choose and number your options.]**

#### **Option (a)**

19. The procedure as set out in Schedule 4 to the Act applies.

**[Note: This option is only recommended for use by well-established irrigation boards with a large membership and which are transformed into water user associations after promulgation of the Act.]**

#### **Option (b)**

The Management Committee must, within three months after the end of the Association's financial year, convene a general meeting of members and must at the meeting -

- (i) table an audited financial statement of the Association's accounts for the preceding financial year, including full particulars of any remuneration paid by the Association to members of the

Management

Committee and employees of the Association; and

- (ii) give an account to the members of its activities during the year.

## **Winding up**

**[Note: The following are options. Others may be proposed. Choose and number your options.]**

### **Option (a)**

**20.** (1) The Association may be dissolved by a resolution passed at a special general meeting held for that purpose, provided that -

(i) the resolution is passed by a majority of two-thirds of the members present and entitled to vote at the meeting; and

(ii) the resolution is confirmed at a further special general meeting held not less than four weeks after the preceding special general meeting by a majority vote of members entitled to vote thereon.

(2) A meeting passing a resolution referred to in subitem (1)(i) of this constitution may also pass resolutions by a majority vote for -

(a) the appointment of a liquidator; and

(b) the disposal of surplus funds and assets of the Association after winding up and after the payment of all debts and obligations of the Association, provided that any surplus assets may only be transferred to an Association or institution with objects similar to those of the Association, or to the Minister.

### **Option (b)**

The affairs of the Association will be wound up by a person appointed by the Minister in accordance with any directives given by the Minister, and subject to section 97 of the Act.

## **LIST OF FOUNDING MEMBERS**

### **ANNEXURE 1**

**(In alphabetical order)**

## **LIST OF MEMBERS**

### **ANNEXURE 2**

**(In alphabetical order)**

## **DESCRIPTION OF SUB-AREAS AND REPRESENTATION IN MANAGEMENT COMMITTEE**

### **ANNEXURE 3**

## **Schedule 6**

## **WATER TRIBUNAL**

**[Section 148(4)]**

### ***Part 1: Water Tribunal members***

#### **Terms of office of members**

**1.** (1) A member of the Water Tribunal is appointed for a period of office determined by the Minister, which may not exceed four years.

(2) A member may be re-appointed.

## **Disqualification of members**

2. No person may hold office as a member of the Water Tribunal -
- (a) if that person is an unrehabilitated insolvent; or
  - (b) if that person has been convicted of any offence involving dishonesty or has been sentenced to imprisonment without the option of a fine. A disqualification under this subitem ends three years after the sentence has been served.

## **Nominations for appointment to Water Tribunal**

3. (1) Whenever necessary, the Minister must request the Judicial Service Commission to -
- (a) publish a notice in the *Gazette* calling for nominations for appointment to the Water Tribunal; and
  - (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 Commission considers to be appropriate.
- (2) A notice in terms of subitem (1) must set out, in general terms, at least -
- (a) the activities of the Tribunal;
  - (b) the time commitments reasonably expected from members of the Tribunal;
  - (c) the term of office for which appointments will be considered;
  - (d) the criteria for disqualification as a member;
  - (e) the requirements with which a nomination must comply;
  - (f) the date by which nominations must be submitted, which may not be earlier than 30 days after publication of the notice; and
  - (g) the address to which nominations must be sent.
- (3) Every nomination of a person for appointment to the Tribunal must be signed by a proposer and a seconder, neither of whom may be the nominee, and must contain the nominee's signed acceptance.
- (4) The Judicial Service Commission -
- (a) must consider all valid nominations received before the date contemplated in subitem (2)(f);
  - (b) may prepare a short list of nominees;
  - (c) may interview all short-listed nominees; and
  - (d) must make recommendations to the Minister on the appointment of members of the Tribunal.
- (5) In recommending a nominee for appointment the Judicial Service Commission must consider -
- (a) the criteria set out in section 146(4) of the Act;
  - (b) the reputation and integrity of the nominee; and
  - (c) any conflict of interests which the nominee may have.
- (6) The Judicial Service Commission must recommend a candidate for appointment for every vacancy, including that of chairperson or deputy chairperson, where necessary.
- (7) The Department must pay all costs -
- (a) relating to the publication of notices in terms of subitem (1); and
  - (b) incurred by the Judicial Service Commission in the performance of its task.

## **Termination of office of members**

4. (1) A member of the Water Tribunal ceases to hold office -
- (a) from the effective date of the member's resignation;
  - (b) if the member is absent without leave from the chairperson on two consecutive sittings of the Tribunal at which the member's presence is required. Leave may be granted retrospectively if the absence of the member was due to unforeseen circumstances;
  - (c) if the member has become disqualified in terms of item 2;
  - (d) if the member has been declared to be of unsound mind by a competent authority; or
  - (e) if the member's appointment has been terminated in terms of section 146 of the Act.
- (2) A member who is not the chairperson must notify the chairperson of his or her resignation. The chairperson must notify the Minister of his or her own resignation and the resignation of any other member.

## ***Part 2: Lodging and hearing of appeals and applications***

### **Lodging of appeals and applications**

5. (1) An appeal to the Water Tribunal under section 148(1) and an application for determination of compensation must be commenced by serving a copy of a written notice of appeal or application on the relevant responsible authority or catchment management agency and lodging the original with the Tribunal.

(2) The Tribunal may, for good reason, condone the late lodging of an appeal or application.

(3) A responsible authority or a catchment management agency against whose decision or offer an appeal or application is lodged must within a reasonable time -

(a) send to the Tribunal all documents relating to the matter, together with the reasons for its decision; and

(b) allow the appellant or applicant and every party opposing the appeal or application to make copies of the documents and reasons.

### **Hearing of appeals or applications by Water Tribunal**

6. (1) An appeal or application before the Water Tribunal must be heard by one or more members, as the chairperson may determine.

(2) A party to an appeal or application may be represented by a person of that party's choice.

(3) Appeals and applications to the Tribunal take the form of a rehearing. The Tribunal may receive evidence, and must give the appellant or applicant and every party opposing the appeal or application an opportunity to present their case.

(4) The Tribunal must keep minutes containing a summary of the proceedings of every hearing.

### **Subpoenas and evidence**

7. (1) The Water Tribunal may -

(a) subpoena for questioning any person who may be able to give information relevant to the issues; and

(b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the issues, to appear before the Tribunal and to produce that book, document or object.

(2) A subpoena must be signed by a Tribunal member and must -

(a) specifically require the person named in it to appear before the Tribunal;

(b) state the date, time and place at which the person must appear; and

(c) sufficiently identify any book, document or object to be produced by that person.

(3) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies to the questioning of any person and to the production of any book, document or object in terms of this item.

(4) The party at whose request a subpoena was issued must pay witness fees, travel and subsistence allowances to a person subpoenaed to appear before the Tribunal, at the applicable High Court scale.

(5) The Tribunal may administer an oath or accept an affirmation from any person called or subpoenaed to give evidence.

### **Contempt of the Water Tribunal**

- 8.** (1) A person commits contempt of the Water Tribunal -
- (a) if, after having been subpoenaed to appear before the Tribunal, the person without good cause does not attend;
  - (b) if the person, without good cause, fails to produce any book, document or object specified in a subpoena;
  - (c) if, after having appeared in response to a subpoena, the person fails to remain in attendance until excused by the Tribunal;
  - (d) by refusing to take the oath or to make an affirmation as a witness when the Tribunal so requires;
  - (e) by refusing to answer any question fully and to the best of that person's knowledge and belief, but subject to item 7(3);
  - (f) if during the proceedings, the person behaves improperly; or
  - (g) if the person prejudices or improperly influences the proceedings of the Tribunal.
- (2) The Water Tribunal may refer any contempt to a High Court. A High Court may make an appropriate order.

### **Decisions of the Water Tribunal**

- 9.** (1) The Water Tribunal must give its decision in writing. A majority decision of members hearing a matter (if the matter is heard by more than two members) constitutes a decision of the Tribunal.
- (2) The Tribunal must, at the request of any party and within a reasonable time, give written reasons for its decision on any matter.

## Schedule 7

### ACTS REPEALED

[Section 163(1)]

<b>Number and year of Act</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 32 of 1914	Hartebeestpoort Irrigation Scheme (Crocodile River) Act, 1914	The whole
Act No. 40 of 1916	Mapochs Gronden Water and Commonage Act, 1916	The whole
Act No. 23 of 1918	Hartebeestpoort Irrigation Scheme (Acquisition of Land) Act, 1918	The whole
Act No. 11 of 1919	Riparian Land (Erven and Commonages) Act, 1919	The whole
Act No. 13 of 1919	The Bedford Additional Water Supply (Private) Act, 1919	The whole
Act No. 14 of 1919	Rand Mines Power Supply Company Water Supply (Private) Act, 1919	The whole
Act No. 24 of 1921	Durban Waterworks Consolidation (Private) Act, 1921	The whole
Act No. 14 of 1923	Mapochs Gronden Water and Commonage Act Amendment Act, 1923	The whole
Act No. 14 of 1925	Ebenezer (Van Rhynsdorp) Exchange of Land Act, 1925	The whole
Act No. 15 of 1925	Sundays River Settlements Administration Act, 1925	The whole
Act No. 4 of 1926	Brandvlei Land and Irrigation Works Act, 1926	The whole
Act No. 16 of 1926	Winterton Irrigation Settlement (Local Board of Management) Act, 1926	The whole
Act No. 15 of 1929	Pretoria Waterworks (Private) Act, 1929	The whole
Act No. 18 of 1929	Rand Mines Power Supply Company Additional Water Supply (Private) Act, 1929	The whole
Act No. 21 of 1929	Irrigation Loans Adjustment Act, 1929	The whole
Act No. 41 of 1930	Irrigation Districts Adjustment Act, 1930	The whole
Act No. 10 of 1932	Marico-Bosveld Irrigation Scheme Act, 1932	The whole
Act No. 13 of 1932	Mafeking Waterworks (Private) Act, 1932	The whole
Act No. 20 of 1933	Franschoek Water (Private) Act, 1933	The whole
Act No. 11 of 1934	Irrigation Districts Adjustment (Amendment) Act, 1934	The whole
Act No. 38 of 1934	Vaal River Development Scheme Act, 1934	The whole
Act No. 38 of 1935	Kopjes Irrigation Settlement Act, 1935	The whole
Act No. 39 of 1935	Vyfhoek Management Act, 1935	The whole
Act No. 1 of 1936	Vyfhoek Management Amendment Act 1936	The whole
Act No. 4 of 1937	Vaal River Development Scheme (Amendment) Act, 1937	The whole
Act No. 16 of 1937	Uitenhage (Groendal) Water (Private) Act, 1937	The whole
Act No. 19 of 1937	Mapochs Gronden Amendment Act, 1937	The whole
Act No. 20 of 1937	The Durban Waterworks (Private) Act, 1937	The whole

<b>Number and year of Act</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 15 of 1939	Cannon Island Settlement Management Act, 1939	The whole
Act No. 10 of 1943	Oliphants River Irrigation Works Act, 1943	The whole
Act No. 18 of 1944	Vaal River Development Scheme (Amendment) Act, 1944	The whole
Act No. 21 of 1944	Irrigation Districts Adjustment Act, 1944	The whole
Act No. 11 of 1945	The Durban Waterworks (Private) Act Amendment (Private) Act, 1945	The whole
Act No. 23 of 1945	Saldanha Bay Water Supply Act, 1945	The whole
Act No. 37 of 1946	N'Jelele Irrigation District Adjustment Act, 1946	The whole
Act No. 23 of 1947	Klipdrift Settlement Act, 1947	The whole
Act No. 24 of 1947	Skanskop Settlement Act, 1947	The whole
Act No. 37 of 1947	Vyfhoek Management Amendment Act, 1947	The whole
Act No. 5 of 1948	The Durban Waterworks (Private) Act Further Amendment (Private) Act, 1948	The whole
Act No. 21 of 1948	Vaal River Development Scheme Amendment Act, 1948	The whole
Act No. 22 of 1948	Hartebeestpoort Irrigation Scheme (Crocodile River) Amendment Act, 1948	The whole
Act No. 31 of 1948	Buffelspoort Irrigation Scheme Act, 1948	The whole
Act No. 7 of 1949	Irrigation Commission Repeal Act, 1949	The whole
Act No. 24 of 1949	Bospoort Irrigation Scheme Act, 1949	The whole
Act No. 34 of 1949	Irrigation Amendment Act, 1949	The whole
Act No. 17 of 1950	Rand Water Board Statutes (Private) Act, 1950	The whole
Act No. 23 of 1950	Olifantsnek Irrigation District Adjustment Act, 1950	The whole
Act No. 24 of 1950	Breede River Conservation District Adjustment Act, 1950	The whole
Act No. 18 of 1951	Kopjes Irrigation Settlement Amendment Act, 1951	The whole
Act No. 43 of 1951	Saldanha Bay Water Supply Amendment Act, 1951	The whole
Act No. 6 of 1952	Southern Suburbs of Cape Town Water Supply Act Amendment (Private) Act, 1952	The whole
Act No. 7 of 1952	The Durban Waterworks Additional Borrowing Powers (Private) Act, 1952	The whole
Act No. 2 of 1953	Lichtenburg Waterworks (Private) Act, 1953	The whole
Act No. 37 of 1954	Mooi River District Adjustment Act, 1954	The whole
Act No. 42 of 1954	Mapochsgronde Irrigation Scheme Act, 1954	The whole
Act No. 31 of 1956	Irrigation Districts Adjustment Act, 1956	The whole
Act No. 54 of 1956	Water Act, 1956	The whole
Act No. 45 of 1957	Hartebeestpoort Irrigation Scheme (Crocodile River) Amendment Act, 1957	The whole
Act No. 75 of 1957	Water Amendment Act, 1957	The whole
Act No. 36 of 1960	Durban Waterworks (Private) Act, 1960	The whole
Act No. 59 of 1960	Marico Bosveld Irrigation Scheme Amendment Act, 1960	The whole

<b>Number and year of Act</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 1 of 1961	Vyfhoek Management Amendment Act, 1961	The whole
Act No. 56 of 1961	Water Amendment Act, 1961	The whole
Act No. 1 of 1962	Cannon Island Settlement Management Amendment Act, 1962	The whole
Act No. 50 of 1963	Klipdrift Settlement Amendment Act, 1963	The whole
Act No. 63 of 1963	Water Amendment Act, 1963	The whole
Act No. 75 of 1963	Northern Vyfhoek Settlement Adjustment Act, 1963	The whole
Act No. 29 of 1964	Rand Water Board Statutes (Private) Act, 1964	The whole
Act No. 35 of 1964	Kopjes Irrigation Settlement Adjustment Act, 1964	The whole
Act No. 36 of 1964	Olifants River (Oudtshoorn) Act, 1964	The whole
Act No. 28 of 1965	Great Fish River Irrigation District Adjustment Amendment Act, 1965	The whole
Act No. 71 of 1965	Water Amendment Act, 1965	The whole
Act No. 11 of 1966	Water Amendment Act, 1966	The whole
Act No. 53 of 1966	Roodepoort and Weltevreden Agricultural Settlements Adjustments Act, 1966	The whole
Act No. 71 of 1967	Vaal River Development Scheme Amendment Act, 1967	The whole
Act No. 73 of 1967	Mafeking Waterworks (Private) Amendment Act, 1967	The whole
Act No. 79 of 1967	Water Amendment Act, 1967	The whole
Act No. 34 of 1968	Waterval River (Lydenburg) Act, 1968	The whole
Act No. 53 of 1969	Rand Water Board Statutes (Private) Act Amendment Act, 1969	The whole
Act No. 77 of 1969	Water Amendment Act, 1969	The whole
Act No. 78 of 1969	Orange River Development Project Act, 1969	The whole
Act No. 68 of 1970	Van Wyksvlei Settlement Regulation Act, 1970	The whole
Act No. 36 of 1971	Water Amendment Act, 1971	The whole
Act No. 31 of 1972	Rand Water Board Statutes (Private) Act Amendment Act, 1972	The whole
Act No. 45 of 1972	Water Amendment Act, 1972	The whole
Act No. 42 of 1975	Water Amendment Act, 1975	The whole
Act No. 27 of 1976	Water Amendment Act, 1976	The whole
Act No. 105 of 1977	Vaal River Development Scheme Amendment Act, 1977	The whole
Act No. 108 of 1977	Water Amendment Act, 1977	The whole
Act No. 34 of 1978	Irrigation Districts Adjustment Amendment Act, 1978	The whole
Act No. 73 of 1978	Water Amendment Act, 1978	The whole
Act No. 51 of 1979	Water Amendment Act, 1979	The whole
Act No. 92 of 1980	Water Amendment Act, 1980	The whole
Act No. 8 of 1982	Rand Water Board Statutes (Private) Amendment Act, 1982	The whole
Act No. 11 of 1982	Vaal River Development Scheme Amendment Act, 1982	The whole
Act No. 96 of 1984	Water Amendment Act, 1984	The whole

<b>Number and year of Act</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 122 of 1984	Forest Act, 1984	Sections 7, 8 and 9
Act No. 110 of 1986	Water Amendment Act, 1986	The whole
Act No. 68 of 1987	Water Amendment Act, 1987	The whole
Act No. 37 of 1988	Water Amendment Act, 1988	The whole
Act No. 38 of 1988	Water Act (Bophuthatswana), 1988	The whole
Act No. 40 of 1988	Rand Water Board Statutes (Private) Act Amendment Act, 1988	The whole
Act No. 36 of 1990	Rand Water Board Statutes (Private) Act Amendment Act, 1990	The whole
Act No. 68 of 1990	Water Amendment Act, 1990	The whole
Act No. 16 of 1991	Water Amendment Act, 1991	The whole
Act No. 92 of 1993	Water Amendment Act, 1993	The whole
Act No. 32 of 1994	Water Laws Rationalisation and Amendment Act, 1994	The whole
Act No. 51 of 1995	Water Amendment Act, 1995	The whole
Act No. 58 of 1997	Water Amendment Act, 1995	The whole