
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF WATER AND SANITATION**NO. 4097****17 November 2023****NATIONAL WATER AMENDMENT BILL, 2023**

I, Mr Senzo Mchunu, Minister of Water and Sanitation, hereby publish for public consultations the National Water Amendment Bill.

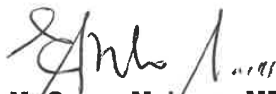
Members of the public are invited to submit within 60 days from the date of publication of this Notice in the Government Gazette, written comments on the draft Amendment Bill, to the following addresses:

By post: The Director General: Department of Water and Sanitation
Private Bag X313
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Attention: Mr Mpho Ratshisusu

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Mr Senzo Mchunu, MP
MINISTER OF WATER AND SANITATION

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REPUBLIC OF SOUTH AFRICA

NATIONAL WATER AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75 Bill; explanatory
summary of Bill and prior notice of its introduction published in Government Gazette
No. 00000000 of 00000000000000)
(The English text is the official text of the Bill.)*

(MINISTER OF WATER AND SANITATION)

[B — 2023]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Water Act, 1998, so as to insert and amend certain definitions; to ensure equitable water allocation and optimise the use of water in support of the guiding principles of National Water Act; to prohibit undesirable consequences of private water trading; to further provide for the purpose of the Act; to provide for the review period of the national water resource strategy to be increased to 10 years; to provide for the periodic review of the determination of a class of a water resource and a water resource quality objectives; to provide for the period review of the Reserve; to further provide for the protection of water source areas; to further provide for the transfer of water use authorisations; to provide for the reallocation of water; to further provide for the making of regulations; to repeal the right to declare an existing lawful water use; to provide for additional controlled activities; to further regulate the governance matters of water user associations and their membership thereof; to provide for the transformation of water user associations; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 36 of 1998, as amended by section 1 of Act 27 of 2014

1. Section 1 of the National Water Act, 1998 (Act No. 36 of 1998) (hereinafter referred to as the “principal Act”), is hereby amended—

(a) by the insertion before the definition of “aquifer” of the following definition:

“ **“afforestation”** means the cultivation of a group of trees for exploitation for, amongst others, its wood, bark, leaves or essential oils but excludes windbreaks.”;

(b) by the substitution for the definition of “estuary” of the following definition:

“ **“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] a body of surface water—

(a) that is part of a watercourse that is permanently or periodically open to the sea;

(b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the watercourse is open to the sea; or

(c) in respect of which salinity is measurably higher as a result of the influence of the sea.”;

(c) by the insertion after the definition of “estuary” of the following definition:

“ **“floodline”** means a line indicating the maximum level likely to be reached by floodwaters on average.”;

- (d) by the substitution for the definition of “government waterwork” of the following definition:

“ **“government waterwork”** means a waterwork or a water services work owned or controlled by the Minister and includes the land on which it is situated;”;

- (e) by the insertion after the definition of “instream habitat” of the following definition:

“ **“irrigation”** means the artificial watering of land to either foster plant growth, suppress dust or dispose of water containing waste;”;

- (f) by the insertion after the definition of “protection” of the following definition:

“ **“recreational use”** means the use of water for recreational purposes and includes all activities that require the use of water, including the surface of water, for—

(a) the exclusive purpose of sport, tourism or leisure;

(b) personal or commercial recreational water use; or

(c) activities which contribute to the general health, well-being and skills development of individuals and society;”;

- (g) by the substitution for the definition of “watercourse” of the following definition:

“ **“watercourse”** means—

(a) a river or spring;

(b) a natural channel in which water flows regularly or intermittently;

(c) a wetland, pan, estuary, 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;”;

(h) by the insertion before the definition of “waterwork” of the following definition:

“ **“water source area”** means all land and aquifers which form the original collection point, and provide above average amounts, of water to the rest of South Africa’s water resources, and which meet significant social, economic and environmental water requirements;” and

(i) by the substitution for the definition of “waterwork” of the following definition:

“ **“waterwork”** includes any borehole, dam, weir, canal, pipeline, siphon, pump station, reservoir, structure, earthwork or equipment installed or used for or in connection with water use;”.

Amendment of section 2 of Act 36 of 1998

2. Section 2 of the principal Act is hereby amended—

(a) by the substitution for paragraph (k) of the following paragraph:

“(k) managing climate conditions, floods and droughts[.]; and”;

(b) by the addition of the following paragraph:

“(l) promoting effective water conservation and water demand management.”.

Amendment of section 5 of Act 36 of 1998

3. Section 5 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) must be reviewed at intervals of not more than **[five]** 10 years.”.

Amendment of section 14 of Act 36 of 1998

4. Section 14 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) a system for classifying water resources has been prescribed; **[or] and**”.

Insertion of section 15A in Act 36 of 1998

5. The following section is hereby inserted after section 15 of the principal Act:

“Review of determination

15A. The class of a water resource and resource quality objectives, as determined in terms of section 13, may be reviewed at intervals of not more than 10 years.”.

Insertion of section 18A in Act 36 of 1998

6. The following section is hereby inserted after section 18 of the principal Act:

“Review of Reserve

18A. The Reserve, as determined in terms of section 16, may be reviewed at intervals of not more than 10 years.”.

Insertion of Chapter 3A in Act 36 of 1998

7. The following Chapter is hereby inserted after Chapter 3 of the principal Act:

“CHAPTER 3A
PROTECTION OF WATER SOURCE AREAS

This Chapter deals with the protection of water source areas that have a relatively high runoff in the region of interest, which is made accessible for supporting the region’s population or economy. These areas contribute substantially to developmental needs often far away from the sources.

Part 1:

Geographical location of water source areas

Identification of water source areas

20A. (1) The Minister must, within one year of the commencement of this Chapter, publish a notice in the *Gazette* listing scientifically identified water source areas, and attaching a map indicating—

- (a) the geographical location of each water source area; and
- (b) the major threats faced by each water source area.

(2) The Minister may, where necessary, amend the list of identified water source areas, especially where the circumstances that led to

the identification of those water source areas have changed.

(3) The Minister must, within three years of the commencement of this Chapter, publish in the Gazette, regulations for the management of activities within and around water source areas, which specify—

(a) activities which are prohibited from being conducted in and around water source areas; and

(b) activities which are restricted when being conducted in and around water source areas.

(4) The Minister may review the regulations contemplated in subsection (3) at the time of reviewing the national water resource strategy.

PART 2:

General prohibitions and restrictions within water source areas

Open cast and underground mining

20B. (1) All open cast mining and underground mining which may lead to acid rock drainage or acid mine drainage is prohibited, particularly, for those water source areas which are threatened by or vulnerable to mining.

(2) The Minister shall publish a notice prescribing the review of water use licence granted on mining activities contemplated in subsection (1), prior to the commencement of this Chapter.

(3) The responsible authority may not issue a water use licence for any water use activity identified under section 21, relating to open cast mining or underground mining within the identified water source area.

Forestry plantations

20C. (1) A water use licence shall not be granted within those water source areas which are threatened by or vulnerable to—

(a) streamflow reduction activities within or adjacent to a water source area;

or

(b) forestry plantations or incidental activities where a 32 meter setback from the water source area has not been established.

(2) The Minister must publish a notice prescribing the review of water use licences granted for such afforestation activities as contemplated in subparagraphs (a) and (b), prior to the commencement of this Chapter .

(3) The responsible authority may not issue a water use licence for any water use activity identified under section 21, if the water use is—

(a) for streamflow reduction activities within the identified water source area;

or

(b) for any forestry plantations or activities incidental thereto.

Agriculture

20D. (1) A water use licence may not be granted within those water source areas which are threatened by or vulnerable to agriculture, particularly where a 32 meter setback from the water source area has not been established.

(2) The Minister must publish a notice prescribing the review of water use licences granted for agriculture and other incidental activities as

contemplated in subsection (1), prior to the commencement of this Chapter.

(3) The responsible authority may not issue a water use licence for any water use activity identified under section 21, for any ploughing or activities incidental thereto, unless a 32 meter set back has been established.

General prohibitions and restrictions

18E. The Minister may prescribe any further prohibitions or restrictions relating to other threats that may be faced by water source areas, if it is in the public interest and it is considered necessary to do so.”.

Amendment of section 21 of Act 36 of 1998

8. Section 21 of the principal Act is hereby amended by the substitution for paragraph (f) of the following paragraph:

“(f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer [**sea outfall**] or other conduit;”.

Amendment of section 25 of Act 36 of 1998

9. Section 25 of the principal Act is hereby amended—
(a) by the substitution for subsection (1) of the following:

Transfer of water use authorisations and prohibition of water trading

“(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]** on application under the Act to transfer water for a period not exceeding 24 calendar months, to another land belongs to the same person so authorized [and] on such conditions as the water management institution may determine~~[,to]~~ the use of some or all of the water transferred for the same or different purpose **[, or to allow the use of some or all of that water]** in the same vicinity **[for the same or similar purpose"]**.

(b) by the substitution in subsection (2) of the following paragraph:

“(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]** his or her own licence application under section 41 for the use of water from the same resource in respect of other land belongs to him or her in terms of subsection 1; and

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

(c) by the insertion in subsection (2) immediately after paragraph (b) of the following paragraph:

“(2A) The water use connected with surrender of entitlement is prohibited from trading in any form of nature, and such water must be surrendered to the National Government, acting through the Minister, unless the Minister directs otherwise”

Insertion of section 25A in Act 36 of 1998.

10. The following section is hereby inserted in the principal Act after section 25:

“Reallocation of water by Minister

25A. (1) The Minister may in the public interest allocate water between water sectors, provinces or catchments.

(2) Before making an allocation referred to in subsection (1), the Minister must consult with any affected water sector, province or catchment management agency, and inform them of the intention to allocate.

(3) The Minister may make a decision to allocate water only after having taking into consideration all relevant factors, including those listed in section 27(1).”.

Amendment of section 26 of Act 36 of 1998, as amended by section 2 of Act 27 of 2014

11. Section 26 of the principal Act is hereby amended

(a) by the deletion in subsection (1) for paragraph (l) of the following paragraph:

- [“(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;”]

(b) by the deletion in subsection (1) of the word “and” at the end of paragraph (n),
and the substitution of the full stop at the end of paragraph (o) of the expression
“; and” ; and

(c) by the addition in subsection (1) of the following paragraph:

“(p) prescribing the criteria that must be considered when redressing
the results of past racial and gender discrimination in relation to
water use.”.

Amendment of section 27 of Act 36 of 1998

12. Section 27 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (b); and
- (b) by the addition of the following subsection:

“(3) A responsible authority must prioritise the redress
of past racial and gender discrimination when issuing a licence or
general authorisation and set aside a certain volume of water in each
water management area to achieve this redress.”.

Amendment of section 29 of Act 36 of 1998

13. Section 29 of the principal Act is hereby amended—

- (a) by the deletion in subsection (2) for the following paragraph:

“[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”].

Amendment of section 32 of Act 36 of 1998

14. Section 32 of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (b).

Repeal of section 33 of Act 36 of 1998, as amended by section 2 of Act 45 of 1999

15. Section 33 of the principal Act is hereby repealed.

Amendment of section 34 of Act 36 of 1998

16. Section 34 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(aA) any new conditions or obligations, necessary to protect the water resources and the environment, which the responsible authority may impose;”;and

(b) by the addition of the following subsection:

“(2A) A responsible authority may curtail a volume of water which becomes available as a result of failure by water users to exercise the full existing lawful use volume for any period specified by

the Minister.”

Amendment of section 37 of Act 36 of 1998

17. Section 37 of the principal Act is hereby amended

by the deletion in subsection (1) of “and” at the end of paragraph (d), the substitution for the full stop at the end of paragraph (e) of the expression “; and” and the addition of the following paragraph:

“(f) the exploration or production of onshore naturally occurring hydrocarbons that require stimulation, including but not limited to, fracturing and or underground gasification, to extract, and any activity incidental thereto that may impact detrimentally on the water resource.”

Amendment of section 52 of Act 36 of 1998

18. Section 42 of the principal Act is hereby amended by the addition of the following subsection:

Reasons for decisions

42. (1) 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.

(2) A responsible authority may, at any stage that a responsible authority becomes aware that there is an investigation or court proceedings relating to the contravention of or failure to comply with this Act, defer a decision to issue a licence until such time that the investigation or court proceedings have been concluded and no wrong doing is found on the part of the Applicant.

Amendment of section 52 of Act 36 of 1998

19. Section 52 of the principal Act is hereby amended by the addition of the following subsection:

“(5) upon receiving the application for the renewal of a licence, the responsible authority may issue an extension of the period of validity of the licence, which may not exceed six months, whilst considering the application.”.

Amendment of section 57 of Act 36 of 1998

20. Section 57 of the principal Act is hereby amended by the addition of the following subsection:

“(7) The Minister may require any water management institution to redetermine its water use charges if those charges do not comply with the pricing strategy for water use charges prescribed in terms of section 56 of the Act.”

Amendment of Chapter 8 of Act 36 of 1998

21. The following explanatory note is hereby substituted for the explanatory note to Chapter 8 of the principal Act:

**"CHAPTER 8
WATER USER ASSOCIATIONS**

"This Chapter deals with the establishment, powers and disestablishment of water user associations. Water user associations are water management institutions with their primary purpose, [unlike catchment management agencies, is not water management] being operational management and monitoring of water use within their defined area, which may include operation and maintenance of both constructed and ecological infrastructure. They operate at a restricted localised level, as defined by the Minister 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 additional to what is set out in the constitution only if and to the extent these have been assigned or delegated to it by the Minister.

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] water users, 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, as amended from time to time by a notice in a Gazette. 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.”.

Amendment of section 92 of Act 36 of 1998

22. Section 92 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(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~~[.]~~;
- (c) consult with the catchment management agency to determine an area

of operation of a water user association considering specific public interest and water resource management conditions; or
(d) determine criteria for membership of the association..”

Amendment of section 93 of Act 36 of 1998

23. Section 93 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Schedule 5 contains a model constitution which
[**may**] must be used as a basis for drawing up and proposing a constitution for a proposed water user association.”;

(b) by the deletion in subsection (2) of the word “and” at the end of paragraph (g), the substitution for the full stop at the end of paragraph (h) of the expression “; and” and the addition of the following paragraphs:

“(i) procedure for annual the general meeting; and

(j) procedure for removing a member of a management committee.”;

(c) by the insertion after subsection (2) of the following subsection:

“(2A) The constitution of a water user association must detail a strategy to achieve transformation in regard to racial and gender representation in all components of the association.”; and

(d) by the addition of the following subsection:

(5) The Minister may, by notice in the Gazette, revise the model constitution.”.

Amendment of section 94 of Act 36 of 1998

24. Section 94 of the principal Act is hereby amended by the addition of the following subsection:

“(3) A water user association may use Schedule 4 to customise its governance arrangements where necessary without deviating from accountability and reporting requirements.”.

Amendment of section 98 of Act 36 of 1998

25. Section 98 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(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 having been repealed by] this Act.” ;and

(b) by the substitution for subsection (7) of the following subsection:

(7) Upon the publication of a notice under subsection (6), every property, right and liability of the board remains the property right and liability of the of the relevant water user association or may, by a majority vote of the irrigation board, be transferred to a non-profit organisation established in terms of the Non-Profit Organisation Act, 1997 (Act No. 71 of 1997), by members who formed the disestablished board.”.

Amendment of section 118 of Act 36 of 1998

26. Section 118 of the principal Act is hereby amended by the deletion in

subsection (3) of “or” at the end of paragraph (b) , the substitution for the full stop of the expression “; and” at the end of paragraph (c) and the addition of the following paragraph:

“(d) direct the owner of a dam with a safety risk, where that owner is a water services provider to submit at the owner's cost, and within a period specified by the Minister, any specific repairs or alterations to that dam and to implement specified operational rules at the dam, which are necessary to protect the public, property or the resource quality from a risk of failure of the dam.”.

Amendment of section 148 of Act 36 of 1998, as amended by section 4 of Act 27 of 2014

27. Section 148 of the principal Act is hereby amended –

(a) by the substitution of subsection (1) of the following:

(dA) a decision on the surrender of entitlement made under section 25, by a person affected thereby;

(b) by the substitution of subsection (2) of the following:

(2) An appeal under subsection (1) -

(a) does not suspend a directive given under section 19(3), 20(4)(d), 53(1) or 118(3)(b), 118(3)(c); and

Amendment of section 151 of Act 36 of 1998

28. Section 151 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection

“(2) A person convicted of an offence in terms of subsection (1) (a), (c), (d), (e), (h), (i) or (j) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.”; and

(b) by the addition of the following subsection:

“(3) Any person convicted of an offence in terms of subsection (1)(b), (f), (g), (k), (l), (m), (n) or (o) is liable—

(a) in the case of a first conviction, to a fine not exceeding R1 million or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment; and

(b) in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.”.

Insertion of section 156A in act 36 of 1998

29. The following section is hereby inserted in the principal Act after section 156:

“Apportionment of liability

156A. (1) Any person who is or was a director of a business entity at the time of the commission by that firm of an offence under section 151 or

a person who is or was a municipal manager of a municipality at the time of the commission by that municipality of an offence under section 151 shall, himself or herself, be guilty of such offence and liable on conviction to the penalty specified in the relevant law.

(2) Upon the conviction referred to in subsection (1), the court may make the following orders:

- (a) Recovering the amount of loss or damage (to rehabilitate or prevent damage);
- (b) determination of monetary value of any advantage gained as a consequence of the offence in question and recovery thereof; or
- (c) recovery of reasonable costs incurred for the investigation and prosecution of the offence”.

Amendment of Schedule 5 to Act 36 of 1998

30. Schedule 5 of the principal Act is hereby amended—

- (a) by the substitution in item 7 for subitem (1) of the following subitem:

“(1) All persons who, in terms of section 22(1) of the Act, excluding section 22(1)(a)(i) thereof, have an authorisation to use water and who may exercise the right from water works or sources under the control of the Association, must be considered a water users in the area of operation and be deemed a member of the Association.”;
and

- (b) by the substitution in item 15 for subitem (3) of the following subitem:

“(3) One vote per entitlement to water use.”.

Amendment of arrangement of sections of Act 36 of 1998

31. The arrangement of sections of the principal Act is hereby amended—

(a) by the insertion after item 2 of the following item:

“2A. Application of Act”;

(b) by the insertion after item 15 of the following item:

“15A. Review of determination”;

(c) By the insertion after item 18 of the following item:

“18A. Review of Reserve”;

(d) by the insertion after item 20 of the following item:

**"CHAPTER 3A
PROTECTION OF WATER SOURCE AREAS**

Part 1:

Geographical location of water source areas

20A. Identification of water source areas

Part 2:

General Prohibitions and restrictions within water source areas

20B. Open cast and underground mining

20C. Forestry plantations

20D. Agriculture

20E. General prohibitions and restrictions”;

(e) by the deletion of item 33; and

(f) by the insertion after item 156 of the following item:

“156A. Apportionment of liability”.

Short title and commencement

31. This Act is called the National Water Amendment Act, 2022, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.