

REPUBLIC OF SOUTH AFRICA

NATIONAL WATER AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 53490 of 10
October 2025)*
(The English text is the official text of the Bill)

(MINISTER OF WATER AND SANITATION)

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 the 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 water resource quality objectives; to provide for the periodic 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— 5
- (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: 10
- “**‘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— 15
- (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 20
- (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 the boundary or the highest level that flood waters reach during a given flood event on average in every 100 years;”;
- (d) 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;”;
- (e) 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;”;
- (f) by the insertion before the definition of “waterwork” of the following definition:
 “**‘strategic water source area’** means areas of land that either supplies a disproportionately large quantity of mean annual surface water runoff in relation to the land areas and is scientifically considered nationally important or has high groundwater recharge and where the groundwater forms a nationally important resource, or a land area that meets both criteria;”;
- (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;”;
 and
- (h) 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 40

2. Section 2 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (k) of the following paragraph:
 “(k) managing climate variability, and change, extreme events such as floods and droughts[,]; and”;
- (b) by the addition of the following paragraph: 45
 “(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: 50
 “(b) must be reviewed by the Minister 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: 55
 “(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 by the Minister at intervals of not more than 10 years.”. 5

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 by the Minister at intervals of not more than 10 years.”. 10

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 15**

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 20**Identification of strategic water source areas**

20A. (1) The Minister must, within three years of the commencement of this Chapter, by notice in the *Gazette*, publish—

(a) a list of areas identified as strategic water source areas; and

(b) a map indicating the geographical location and size of each strategic water source area. 25

(2) The notice must—

(a) specify—

(i) the criteria used to identify the strategic water source areas, including any relevant scientific data; 30

(ii) the risk category relating to each strategic water source area;

(iii) the major threats faced by each strategic water source area; and

(iv) the importance of each strategic water source area; and

(b) invite written public comments, on intended declaration of the identified areas as strategic water source areas, to be submitted to the Minister within 30 days after publication of the notice. 35

(3) The Minister must, after considering any public comments received pursuant to the invitation referred to in subsection (2)(b), publish the final list of declared strategic water source areas including the details in subsections (1)(b) and (2)(a). 40

(4) The Minister may, where necessary, amend the list of declared strategic water source areas, where the circumstances that led to the declaration of those strategic water source areas have changed or improved scientific data becomes available.

- (5) 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 strategic water source areas, which specify—
- (a) activities which are prohibited from being conducted in and around strategic water source areas; and
 - (b) activities which are restricted when being conducted in and around strategic water source areas.

Part 2: Prohibitions and restrictions of certain activities within water source areas

Open cast and underground mining 10

20B. (1) The Minister may, in accordance with section 49, prescribe the manner, extent and procedure of reviewing a water use licence granted for mining activities contemplated in subsection (1), prior to the commencement of this Chapter.

(2) The responsible authority may not issue a water use licence for any water use activity listed in section 21, relating to open cast mining or underground mining within a strategic water source area identified in terms of section 20A and categorised as high risk.

Forestry plantations

20C. (1) A water use licence may not be granted in respect of forestry plantations or incidental activities within those strategic water source areas—

- (a) which are threatened by or vulnerable to streamflow reduction activities within or adjacent to a strategic water source area; or
- (b) where a 32-meter setback from the strategic water source area has not been established.

(2) The Minister must prescribe the manner, extent and form of reviewing water use licence granted for such afforestation 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, if the water use is—

- (a) for streamflow reduction activities within the identified strategic water source area; or
- (b) for any forestry plantations or activities incidental thereto.

Agriculture 35

20D. (1) A water use licence may not be granted in respect of agricultural activities within those strategic water source areas—

- (a) which are threatened by or vulnerable to water use activities for agricultural purposes; or
- (b) where a 32-meter setback from the strategic water source area has not been established.

(2) The Minister must prescribe the manner, extent and form of reviewing a water use licence 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 setback has been established.”.

Amendment of section 21 of Act 36 of 1998 50

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 22 of Act 36 of 1998

9. Section 22 of the principal Act is hereby amended by the deletion of subsections (6) to (10). 5

Amendment of section 25 of Act 36 of 1998

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

- (a) by the substitution for the heading of the following heading: 10
“Transfer of water use authorisations and prohibition of water trading”;
- (b) by the substitution for subsection (1) of the following subsection: 10
 “(1) A water management institution may[,]—
 (a) [at the request of] on application in the prescribed manner by a person authorised to use water for irrigation under this Act, [allow that person on a temporary basis] and having regard to the factors listed in section 27, allow that person to transfer water for a period not exceeding 24 months, to another land which belongs to the same person or a third person as authorised by the water management institution; and 15
 (b) on such conditions as the water management institution may determine, allow that person or third person to use some or all of [that] the water transferred for [a] the same or 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 similar purpose].”; 20 25
- (c) by the substitution for subsection (2) of the following subsection:
 “(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 belonging to him or her as contemplated in subsection (1); and 30
 (b) on condition that the surrender only becomes effective if and when such application is granted.”; and 35
- (d) by the insertion after subsection (2) of the following subsection:
 “(2A) A person who surrenders any entitlement in terms of subsection (2) may not trade in such entitlement and must surrender such entitlement to the Minister.”.

Insertion of section 25A in Act 36 of 1998 40

11. The following section is hereby inserted after section 25 of the principal Act:

“Reallocation of water by Minister

25A. (1) The Minister may, in the public interest, reallocate water between water sectors, provinces or catchments. 45

(2) The Minister must make a decision for a reallocation referred to in subsection (1), after consultation with any affected water sector, province or catchment management agency.

(3) The Minister in making a decision to reallocate water must consider all relevant factors relating to the water resource, 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

12. Section 26 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (l);
- (b) by the deletion in subsection (1) of paragraph (n);
- (c) by the substitution for the full stop at the end of paragraph (o) of the expression “; and”; and
- (d) by the addition in subsection (1) of the following paragraph: 5
 - “(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

13. Section 27 of the principal Act is hereby amended— 10
- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(b) whether the applicant is a fit and proper person as contemplated in section 27A;”; and
 - (b) by the addition of the following subsections: 15
 - “(3) A responsible authority must, when considering an application for water use authorisation, advance the redress of past racial and gender discrimination when making a decision to issue a licence or general authorisation.
 - (4) A responsible authority, after taking into account the demographic composition of the water users, in particular a water management area, may set aside a certain volume of water in each water management area to achieve the redress contemplated in subsection (3).”.

Insertion of section 27A in Act 36 of 1998

14. The following section is hereby inserted in the principal Act after section 27: 25

“Fit and proper person

- 27A.** (1) In order to determine whether a person is a fit and proper person for the purposes of section 27(1)(b), when issuing a licence or general authorisation, a responsible authority must consider all relevant factors.
- (2) The factors contemplated in subsection (1), which disqualify a person from being considered a fit and proper person include whether that person—
- (a) has contravened or failed to comply with this Act, any directive issued in terms of this Act, or any legislation applicable to water resources management and water pollution; 30 35
 - (b) is or has been a director or senior manager of a company, firm or a juristic person which has been found guilty of contravening or failed to comply with this Act, any directive issued in terms of this Act, or any legislation applicable to water resources management and water pollution; or 40
 - (c) has held a water use licence or is entitled to continue with an existing lawful water use in terms of section 34, and that licence or entitlement has been suspended or revoked.”.

Amendment of section 29 of Act 36 of 1998

15. Section 29 of the principal Act is hereby amended by the deletion of subsection (2). 45

Amendment of section 32 of Act 36 of 1998

16. 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 50

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

Amendment of section 34 of Act 36 of 1998

18. Section 34 of the principal Act is hereby amended 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;” 5

Insertion of section 34A in Act 36 of 1998

19. The following section is hereby inserted in the Principal Act after section 34:

“Curtailed water and replacement of existing lawful water use

34A. (1) A responsible authority may, by written notice to a person 10
holding an entitlement to use water through the existing lawful water use, curtail the 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

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20. Section 37 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of “and” at the end of paragraph (d);
- (b) by the substitution for the full stop at the end of paragraph (e) of the expression “; and”; and
- (c) by the addition of the following paragraph: 20
 - “(f) the exploration or production of onshore naturally occurring hydrocarbons that require stimulation, including but not limited to, fracturing or underground gasification, extraction of oil, and any activity incidental thereto that may impact detrimentally on the water resource.” 25

Substitution of section 42 of Act 36 of 1998

21. The following section is hereby substituted for section 42 of the principal Act:

“Reasons for decisions

42. (1) After a responsible authority has reached a decision on a licence application, it must promptly— 30

- (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) The reasons for refusing to issue an authorisation by the responsible authority, may include, amongst others that— 35

- (a) an applicant is not a fit and proper person as contemplated in section 27A.
- (b) the applicant, or a director or member of the applicant— 40
 - (i) has, in the preceding five years, been convicted of an offence, or issued with a directive or other administrative enforcement notice, in terms of this Act;
 - (ii) held any water use or dam safety authorisation that has been suspended or cancelled; or
 - (iii) has not complied with a material condition of a water use authorisation, dam safety license or registration.” 45

Amendment of section 52 of Act 36 of 1998

22. 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, as contemplated in subsection (1), 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 53 of Act 36 of 1998

23. Section 53 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:

“(a) any provision of this [Chapter] Act;
(b) a requirement set or directive given by the responsible authority under this [Chapter] Act; or”.

Amendment of section 56 of Act 36 of 1998

24. Section 56 of the principal Act is hereby amended by the addition of the following subsection:

“(8) The Minister may, after consultation with relevant stakeholders, review the pricing strategy established in terms of subsection (1) annually.”.

Amendment of section 57 of Act 36 of 1998

25. Section 57 of the principal Act is hereby amended by the addition of the following subsections:

“(6) The Minister may determine a timetable for various water management institutions to submit their water use charges to the Minister, for purposes of confirming the compliance of such water use charges with the pricing strategy.
(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

26. 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. [Although water] 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 of the Association only if and to the extent these have been assigned or delegated to it under this Act. 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. 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.”

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Amendment of section 92 of Act 36 of 1998

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

Amendment of section 93 of Act 36 of 1998

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28. 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);
- (c) by the substitution for the full stop at the end of paragraph (h) of the expression “; and”;
- (d) by the addition of the following paragraphs:

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

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

and

- (e) 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 with regards to racial and gender representation in all components of the association.”

Amendment of section 94 of Act 36 of 1998

29. 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

30. 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 not having been repealed by]** this Act.”;

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(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 [**becomes a**] remains the property, right and liability 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 Organisations Act, 1997 (Act No. 71 of 1997), by members who formed the disestablished board.”; and

(c) by the addition of the following subsection:

“(8) A person holding an entitlement to use water under this Act for open cast and underground mining, forestry plantation or agricultural activities, may continue with such entitlement to use water, until the areas where such activities are taking place are identified and declared as strategic water source areas as contemplated in section 20A.”.

Amendment of section 118 of Act 36 of 1998

31. 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, to submit a plan at the owner’s cost, and within a period specified by the Minister, detailing 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

32. Section 148 of the principal Act is hereby amended—

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

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

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

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

Amendment of section 151 of Act 36 of 1998

33. 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.”;

(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), or (m) is liable—

(a) in the case of a first conviction, to a fine of R1 million and one year imprisonment or any other sentence the court consider appropriate; and

(b) in the case of a second or subsequent conviction, to a fine of maximum R5 million or five years imprisonment or to both such fine and such imprisonment or any other sentence the court consider appropriate.”.

Insertion of section 156A in act 36 of 1998

34. 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 of an offence by that firm referred to in section 151 or a person who is or was a municipal manager of a municipality at the time of the commission of an offence by that municipality under section 151 must, himself or herself, be guilty of such offence and liable on conviction to the penalty specified in the relevant law, including an order under subsection (2), if the offence in question resulted from the failure of the director or municipal manager to take all reasonable steps that were necessary under the circumstances to prevent the commission of the offence: Provided that proof of the said offence by the firm or municipality must constitute *prima facie* evidence that the director or municipal manager is guilty under this subsection. 5

(2) For the purposes of subsection (1), ‘director’ means a member of the board, executive committee, or other managing body of a corporate body and, in the case of a close corporation, a member of that close corporation or in the case of a partnership, a member of that partnership. 10

(3) Upon the conviction referred to in subsection (1), the court may, in addition to any competent sanction they consider appropriate, make the following orders: 15

- (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.”. 20 25

Amendment of Schedule 5 to Act 36 of 1998

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

- (a) by the insertion after item 5 of the following items:

“Rules to regulate water use

5A. (1) A water user association may make rules to regulate water use within its area of operations, subject to any catchment management agency rules under Schedule 3. 35

(2) The rules made under subitem (1) may relate, amongst other things, to the—

- (a) times when;
- (b) places where;
- (c) manner in which; and
- (d) waterwork or water resource through which, water may be used. 40

(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. 45

(5) Before making rules a water user association must—

- (a) consult the relevant catchment management agency having jurisdiction in its area of operations;
- (b) issue a notice to all its users—
 - (i) setting out the proposed rules; and
 - (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;
- (c) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of its members, and take those steps which the water user association considers to be appropriate; 50 55

- (d) consider all comments received on or before the date specified in paragraph (a); and
- (e) consider all applicable conditions for provision of services made under the Water Services Act, 1997 (Act No. 108 of 1997), by water services institutions having jurisdiction in the area in question. 5
- (6) After complying with subitem (5), a water user association must—
 - (a) finalise the rules;
 - (b) publish them within their area of operation; and
 - (c) deliver or send a copy by post to the relevant catchment management agency having jurisdiction in its area of operations. 10

Water user association may require alterations to waterworks

5B. (1) A water user association may, by written notice to the owner or person in control of a waterwork within its area of operation, require that person to collect and submit particular information within a period specified to enable the water user association to determine whether that waterwork is constructed, maintained and operated in accordance with the Act. 15

(2) A water user association may direct the owner or person in control of a waterwork within its area of operation at the owner's own cost and within a specified period, to— 20

- (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. 25

(3) A water user association may only issue such a directive if it is reasonably necessary to—

- (a) protect authorised use of other persons;
- (b) facilitate monitoring and inspection of the water use; or
- (c) protect public safety, property or the resource quality. 30

(4) If the owner fails to comply with a directive, the water user association may—

- (a) undertake the alterations;
- (b) install the device; or
- (c) demolish, remove or alter the waterwork or render the waterwork inoperable; and 35
- (d) recover any reasonable costs from the person to whom the directive was issued.

(b) by the insertion in item 7 of subitem (3A) after subitem (3):

“(3A) All persons who, in terms of section 22(1) of the Act, excluding paragraph (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 user in the area of operation and be deemed a member of the Association.”; and 40

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

“(3) The number of votes will be determined by one vote per entitlement to water use.”. 45

Amendment of arrangement of sections of Act 36 of 1998

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

- (a) by the insertion after item 2 of the following item: 50
 - “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 items: 55

“CHAPTER 3A

PROTECTION OF WATER SOURCE AREAS*Part 1: Geographical location of water source areas*

20A. Identification of water source areas

Part 2: Prohibitions and restrictions of certain activities within water source areas 5

20B. Open cast and underground mining

20C. Forestry plantations

20D. Agriculture”;

(e) by the insertion after item 25 of the following item: 10
“25A. Reallocation of water by Minister”;(f) by the insertion after item 27 of the following item:
“27A. Fit and proper person”;

(g) by the deletion of item 33”;

(h) by the insertion after item 34 of the following item: 15
“34A. Curtailment of water and replacement of an existing lawful water use”; and(i) by the insertion after item 156 of the following item:
“156A. Apportionment of liability”.**Short title and commencement** 20**35.** This Act is called the National Water Amendment Act, 2026, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL WATER AMENDMENT BILL, 2026

1. BACKGROUND

- 1.1 The Department of Water and Sanitation (“Department”), is amending the National Water Act, 1998 (Act No. 36 of 1998) (“National Water Act”), to enhance and strengthen regulatory aspects necessary to ensure that the country’s water resources are managed, protected, used and conserved, while promoting equity and redressing past imbalances.
- 1.2 The redress of past imbalances will ensure that all citizens of the country have access to water. The amendments are further intended to clarify certain clauses of the Act which have resulted in different interpretations and applications of the law.
- 1.3 The National Water Amendment Bill, 2026 (“Bill”), amends and modifies certain definitions; includes provisions to ensure equitable water allocation and optimised use of water; prohibits undesirable consequences of private water trading; provides for the review period of the national water resource strategy to be increased to 10 years; advances the policy principle of use-it-or-lose-it; provides for the periodic review of the determination of a class of a water resource and water resource quality objectives; provides for the periodic review of the Reserve; provides for the protection of strategic water source areas; empowers the Minister to 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 and regulates the governance matters of water user associations and their membership.
- 1.4 The Bill further gives effect to section 27 of the Constitution of the Republic of South African (Act No. 108 of 1996) (“the Constitution”) by making provisions for the enhanced protection of the country’s water resources.
- 1.5 The legislative review is underpinned by the Cabinet decision on the National Water Policy Review, 2013, which is aimed at striking a balance between managing and operating the water resource for the present and future fulfillment of the country’s water needs.

2. OBJECTIVES OF BILL

- 2.1 The Bill seeks to ensure that the nation’s water resources are protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with the Department’s constitutional mandate.
- 2.2 The Bill enhances the ability of the Department to ensure that the national water resources are protected and to ensure the equitable allocation of water for beneficial use.
- 2.3 The Bill empowers the Minister to have full oversight and authority over the water resource management value chain and to transform and rationalise the water management institution.
- 2.4 In the main, the amendments focus on strengthening:
 - (a) the protection and conservation of water resources, including strategic water source areas;
 - (b) the ability of the department to consider and decide on water use applications speedily;
 - (c) the ability of the department to improve equity in water use allocation;
 - (d) the ability of the department to phase out previous water entitlements in order to achieve the targets for water allocation reform and ensure the efficient use of water; and

- (e) the need to ensure representivity of water user associations and to ensure that they are well governed.
- 2.5 The Bill provides for a more practical review period of the national water resource strategy, to provide sufficient time for implementation between each review.
- 2.6 It also provides for a shorter period for the determination of the class of water resources, the resource objective and reserve, which will enable water use licenses to be issued timeously.
- 2.7 The Bill further provides for the protection of strategic water source areas, which are key sources of water for the country.
- 2.8 A provision is made for a process in terms of which a water use authorisation can be revoked if the authorisation has not been exercised for a certain period (use-it or lose-it principle). It also provides for an authorised user to surrender his or her entitlement under certain conditions.
- 2.9 The Bill further makes provision for the prohibition of trading in water use entitlements between private individuals with the result that any water use entitlement which is no longer required by the licensee must revert to the Department. Furthermore, provision is made for the lapsing of claims for an existing lawful water use after a period of two years, if there was no water use within that period. These provisions will result in more water being available for reallocation by the Minister to address issues of equity.

3. OVERVIEW OF BILL

- 3.1 Clause 1 seeks to amend section 1 to introduce new definitions and also modifies certain old definitions.
- 3.2 Clause 2 seeks to amend section 2 to provides for the addition of managing climate change and promoting effective water conservation and water demand management.
- 3.3 Clause 3 seeks to amend section 5 by substituting the period for reviewing of the national water resource strategy from five to 10 years.
- 3.4 Clause 4 seeks to amend section 14 by replacing the word “or” to read “and” after section 14(1)(a), so as to indicate that it is only after a system for classifying water resources has been prescribed and a class of a water resource or resource quality objectives have been determined, that the Minister may make a preliminary determination.
- 3.5 Clause 5 seeks to insert section 15A which provides for the water resource classes and resource quality objectives to be reviewed at intervals of no more than 10 years.
- 3.6 Clause 6 seeks to insert section 18A which provides for the reserve, as determined, to be reviewed at intervals of no more than 10 years.
- 3.7 Clause 7 proposes the insertion of Chapter 3A, which provides for the protection of strategic water source areas. The inserted Chapter provides for sections 20A, 20B, 20C and 20D as outlined below.
 - (a) Section 20A provides for the identification and listing of approved strategic water source areas. The Minister will *Gazette* such areas together with the map where they are located. The water source areas are those areas that have a relatively high runoff in the region of interest, which is made accessible for supporting the region’s population or economy.
 - (b) Section 20B provides for limitations of the issuance of licenses where activities are undertaken which consist of open cast and underground

mining which may lead to acid rock drainage or acid mine drainage to certain water source areas. The Minister will further prescribe the manner, extent and procedure of reviewing a water use licence granted for mining activities.

- (c) Section 20C provide for limitations or possible refusal of the issuance of license where a water use license application relates to stream flow reduction activities within or adjacent to water source area, or in forestry plantations where a 32-meter setback from the water source area has been established.
- (d) Section 20D seeks to prohibit the water use license from being granted within those water source areas which are vulnerable to agriculture, particularly, where a 32-meter setback from the water source area has been established.

3.8 Clause 8 seeks to amend section 21 of the National Water Act, 1998, to delete the word sea outfall since the function relating to such discharge in the sea is mandated to the Department of Forestry, Fisheries and the Environment while the Department is limited to estuary as a watercourse.

3.9 Clause 9 amends section 22 by deleting subsections (6) to (10).

3.10 Clause 10 seeks to amend section 25(1) in order to allow any person to apply in the prescribed manner to a water management institution to approve that the person transfer water for a period not exceeding 24 months, to another land which belongs to the same person or a third person.

Clause 10 further provides for the surrender of entitlement to the Minister as the public trustee of water resources. The effect of this amendment is that the trading of water use entitlement between private individuals is prohibited. If the holder of a water use entitlement no longer needs that entitlement, the water allocation must revert to the National Government so that it can be allocated equitably by the Minister.

3.11 Clause 11 seeks to insert section 25A which provides for the reallocation of water between water sectors and provinces. Such reallocation will be done after considerations of certain factors and having consulted with all those who are affected.

3.12 Clause 12 seeks to empower the Minister to prescribe regulations for the criteria that must be considered when allocating water use to address the past racial and gender discrimination in relation to water use.

3.13 Clause 13 seeks to empower the responsible authority to take into account, amongst others, when issuing a general authorisation or license, whether a person applying for a license is a fit and proper person. The clause further empowers the responsible authority to prioritise the redress of past racial and gender discrimination when issuing a licence.

3.14 Clauses 14 seeks to insert section 27A which list factors which disqualify a person from being considered as a fit and proper person.

3.15 Clause 15 seeks to amend section 29 by deleting subsection (2), in order to discontinue any form of water trading between two private individuals.

3.16 Clause 16 seeks to amend section 32 by deleting subsection (1) of paragraph (b), as a consequential amendment to section 33 which has been repealed to discontinue the declaration of existing lawful water use.

3.17 Clause 17 seeks to provide for the repeal of section 33 to discontinue the declaration of existing lawful water use which was authorised under any law which was in force before the commencement of the National Water Act, 1998 or identified as a stream flow reduction or controlled activity as contemplated in sections 36 and 37 respectively.

- 3.18 Clause 18 seeks to amend section 34(1) by the addition of paragraph (aA) which provides for the inclusion of any new conditions or obligations, necessary to protect the water resources and the environment, which the responsible authority may impose when verifying and validating the claim for existing lawful water use.
- 3.19 Clause 19 seeks to introduce section 34A which empowers the Minister to give a written notification to a person entitled to use water through an existing lawful water use, and curtail the volume of water which becomes available as a result of failure by water users to exercise the full existing lawful use volume.
- 3.20 Clause 20 seeks to amend section 37 of the National Water Act to introduce the exploration or production of onshore naturally occurring hydrocarbons as a controlled activity.
- 3.21 Clause 21 seeks to amend section 37 which seeks to empower a responsible authority to provide reasons for refusing to issue an authorisation, which reasons may include, amongst others that an applicant is not a fit and proper person and has, in the preceding five years, been convicted of an offence, or issued with a directive or other administrative enforcement notice, in terms of this Act.
- 3.22 Clause 22 seeks to amend section 52 which seeks to provide for the extension not exceeding six months of the validity period of a licence that is about to expire while considering the application to renew the water use licence. The application to review must be done before the expiry period.
- 3.23 Clause 23 seeks to amend section 53 by substituting reference to “this Chapter” to read “this Act”.
- 3.24 Clause 24 seeks to amend section 56 which seeks to empower the Minister to review the pricing strategy annually.
- 3.25 Clause 25 seeks to amend section 57 which seeks to empower the Minister to determine a timetable for various water management institutions to submit their water use charges. The Minister is further empowered to 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 the Act.
- 3.26 Clause 26 seeks to amend the explanatory note applicable to Chapter 8 of the National Water Act.
- 3.27 Clause 27 seeks to amend section 92 of the National Water Act and provides for consultation with the catchment management agency when considering the proposal to establish a water user association. The Minister will further, in the *Gazette*, determine the criteria for membership.
- 3.28 Clause 28 seeks to amend section 93 of the National Water Act by providing for procedures for annual general meetings and procedure for removal of a member of a management committee. A water user association is directed to give a detail strategy on achieving transformational goals necessary to redress past racial and gender discrimination.
- 3.29 Clause 29 seeks to amend section 94 of the National Water Act by requiring that the model constitution contained in Schedule 5 must be used as a basis for drawing up and proposing a constitution for a proposed water user association.
- 3.30 Clause 30 seeks to amend section 98 of the National Water Act by seeking to communicate that the existence and disestablishment of the irrigation boards is limited to the provisions of the National Water Act. The clause further seeks

to transfer the assets and liabilities of the board to a non-profit entity established by members who were part of the disestablished board.

- 3.31 Clause 31 seeks to amend section 118 of the National Water Act by providing for the management of risks associated with dams. The Minister may direct the owner of the dam with safety risk 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 or property and the resource quality from a risk of failure of the dam.
- 3.32 Clause 32 seeks to amend section 148 of the National Water Act by providing for the non-suspension of directives issued in relation to matters relating to the contravention of dam regulations.
- 3.33 Clause 33 seeks to amend section 151 of the National Water Act by making general provisions relating to offences and penalties in the form of fines or imprisonment.
- 3.34 Clause 34 seeks to propose the insertion of section 156A which provides for the apportionment of liability and where possible to hold directors of a firm or company personally liable. The recourse can include, *inter alia*, the recovery of the money lost due to the contravention or an order to rehabilitate.
- 3.35 Clause 35 seeks to amend schedule 5 by inserting item 5A to provide for rules to regulate water use.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

The following departments and entities were consulted, National Treasury; Department of Health; Department of Cooperative Governance and Traditional Affairs; Department of Mineral Resources and Energy; Department of Forestry, Fisheries and the Environment; Department of Basic Education; Department of Higher Education; Department of Agriculture, Land Reform and Rural Development; Department of Human Settlements; Water Boards; Catchment Management Agencies and SALGA.

5. IMPLICATIONS FOR PROVINCES

There will be consultative engagements with Provinces where the Bill calls for such.

6. FINANCIAL IMPLICATIONS FOR STATE

The Bill does not create new financial obligations for the Department. All the activities in the Bill will be accommodated within the existing budget.

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers and the Department are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 7.2 Chapter 4 of the Constitution specifies the manner in which legislation must be enacted by Parliament. It prescribes different procedures for Bills, including ordinary Bills not affecting provinces (section 75 procedure), and ordinary Bills affecting provinces (section 76 procedure). The determination of the procedure to be followed in processing the Bill is referred to as tagging.
- 7.3 In terms of section 76(3) of the Constitution, a Bill must be dealt with in accordance with section 76 if it falls within a functional area listed in Schedule 4. Schedule 4 to the Constitution lists functional areas of concurrent national

and provincial legislative competence. In the Constitutional Court judgment of *Ex-Parte President of the Republic of South Africa in Re: Constitutionality of the Liquor Bill*¹ (“Liquor Bill judgment”), Cameron AJ held the following:

“[27] It must be borne in mind that section 76 is headed ‘ordinary Bills affecting provinces’. This is my view, a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 be dealt with under section 76.

[28] . . .

[29] Once a Bill falls within a functional area listed in Schedule 4, it must be dealt with not in terms of section 75, but by either the section 76(1) or the section 76(2) procedure”.

7.4 Following the *Liquor Bill* judgment, the Constitutional Court, in the judgment of *Tongoane and Others vs Minister for Agriculture and Land Affairs and Others*² (“Tongoane judgment”), confirmed the following:

“[59] . . . the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4 and not on whether any of its provisions are incidental to its substance.”.

7.5 Furthermore, the Constitutional Court held that—

“[66] . . . procedural safeguards are designed to give more weight to the voice of the provinces in legislation substantially affecting them . . . they are fundamental to the role of the NCOP in ensuring that provincial interests are taken into account in the national sphere of government”.

7.6 As the Court held in the *Tongoane* judgment, a Bill must be tagged as a section 76 Bill if its provisions, in substantial measure, deal with a Schedule 4 functional area. The Department is therefore of the view that the Bill should be classified as a section 75 Bill, which is an ordinary Bill not affecting provinces, as its provisions do not fall within a functional area listed in Schedule 4 to the Constitution.

7.7 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders, in terms of section 39 of the Traditional and Khoi San Leadership Act, 2019 (Act No. 3 of 2019), since it does not directly affect traditional or Khoi-San communities or pertain to customary law or customs of traditional or Khoi-San communities.

1. CCT 100/09 [2010] ZACC 10.

2. *Tongoane* at paragraph 59.