

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL WATER AMENDMENT BILL**

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*(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.)*

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**(MINISTER OF WATER AND SANITATION)**

**[B — 2025]**

**GENERAL EXPLANATORY NOTE:**

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

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**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—

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

(ii) 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

(iii) 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**

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”; 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 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:

“(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.”.

### **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 strategic water source areas**

20A. (1) The Minister must, within three year of the commencement of this Chapter, publish a notice in the *Gazette* containing a list of preliminary

identified and declared strategic water source areas, and inviting members of the public to make comments on such list, before the final determination of scientifically identified strategic water source areas can be made.

2. The final list determined for scientifically identified and declared strategic water source areas must contain a map indicating—

- (a) the geographical location of each strategic water source area;
- (b) the major threats faced by each strategic water source area; and
- (c) the importance of strategic water source area, size, and other relevant scientific data.

(3) The Minister may, where necessary, amend the list of identified and declared strategic water source areas, especially where the circumstances that led to the identification of those strategic water source areas have changed and or improved scientific information has become available.

(4) 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.

(5) The Minister may review the regulations contemplated in subsection (4) at any time the Minister considers appropriate.

## **PART 2:**

**Prohibitions and restrictions of certain activities within water source areas**

**Open cast and underground mining**

**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 within those strategic water source areas which are threatened by or vulnerable to—

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

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

(2) The Minister must prescribe the manner, extent and procedure of reviewing water use licence 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 strategic 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 strategic water source areas which are threatened by or vulnerable to water use activities for agricultural purposes, where a 32 meter setback from the strategic water source area has not been established.

(2) The Minister must prescribe the manner, extent and procedure of reviewing 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**

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).

#### **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:

**Transfer of water use authorisations and prohibition of water trading**

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

“(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, and in considerations of factors under section 27, to transfer water for a period not exceeding 24 calendar months, to another land which belongs to the same person or third person so authorised [and], on such conditions as the water management institution may determine[,to] 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]”

(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 in terms of subsection 1; and

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

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

“(2A) The water use connected with surrender of entitlement by a person entitled to use water is prohibited from trading by that person who wish to surrender, in any form or nature, and such water use must be surrendered to the National Government, acting through the Minister.”.

### **Insertion of section 25A in Act 36 of 1998**

**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.

(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**

**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) and the substitution for 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**

**13.** Section 27 of the principal Act is hereby amended—

- (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:

“(3) A responsible authority must, when considering an application for water use authorisation, elevate 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 water management area, may set aside a certain volume of water in each water management area to achieve this redress.”.

**Insertion of section 27A in Act 36 of 1998.**

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

**“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;
- (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
- (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).

#### **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**

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—

(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;”;

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

“(b) its replacement by a licence in terms of this Act applied before the expiration of the period provided in section 34(3); or”;

**Insertion of section 34A of Act 36 of 1998**

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

**"Curtailement of water and replacement of an existing lawful water use"**

**34A(1)**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**

**20.** 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 or underground gasification, to extract, and any activity incidental thereto that may impact detrimentally on the water resource.”.

### **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—

- (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 –

(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—

(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."

### **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:

- (a) by the addition of the following subsection:

“(8) The pricing strategy established by the Minister as contemplated in subsection (1), maybe reviewed annually, in consultation with all relevant stakeholders”.

#### **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.

(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.”.*

#### **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 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**

**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), 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 the annual 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 with regard 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 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 **[becomes a] 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.”.

(c) by the addition of the following subsection:

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

### **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, where that owner is a water services provider 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;”; and

- (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.”; 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), 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 a 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 by that firm of an offence referred to in 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 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.

(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.

(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:

- (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**

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

- (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.

(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 or water resource 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 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;

(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;

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

(e) 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 water user association 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 and.
- (d) deliver or send a copy to the relevant catchment management agency having jurisdiction in its area of operations

**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.

(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 -

- (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 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.

(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 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 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 user in the area of operation and be deemed a member of the Association.”;

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

“(3) The number of votes will be determined on the following basis. One vote per entitlement to water use.”.

### **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:

“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:

**"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 ”;

(e) by the insertion after item 25 of the following item:

“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:

“34A. Curtailment of water and replacement of an existing lawful water  
use”;

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

“156A. Apportionment of liability”.

**Short title and commencement**

**35.** This Act is called the National Water Amendment Act, 2025, 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, 2025**

### **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 draft National Water Amendment Bill 2024 amends and modifies certain definitions; includes provisions to ensure equitable water allocation and optimized 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 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 THE BILL**

2.1 The draft National Water Amendment, 2024 ("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 nation's 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 rationalize the water management institution.

2.4 In the main the amendments are focused 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;
- (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 time

(use-it or lose-it principle). It also provides for an authorized 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 2 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 THE BILL**

3.1 Clause 1 of the Bill introduces new definitions and also modifies certain old definitions”.

3.2 Clause 2 of the Bill provides for the addition of managing climate change and promoting effective water conservation and water demand management.

3.3 Clause 3 amends section 5 of the National Water Act by changing the period for reviewing of the national water resource strategy from five to 10 years.

3.4 Clause 4 amends section 14 of the National Water Act and replaces 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 water source areas. Part 1, of the inserted Chapter provides for the identification of water source areas and consists of section 20A. Part 2 of Chapter 3 provides for the categories of prohibitions and restrictions within water source areas and consist of sections 20B-20D.

3.8 The proposed section 20A provides for the identification and listing of scientifically approved 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. These areas contribute substantially to developmental need often far away from the sources.

3.9 Section 20B seeks to prohibit activities which consist of open cast and underground mining which may lead to acid rock drainage or acid mine drainage to

certain water source areas.

3.10 Section 20C seeks to provide the grounds for the refusal of a water use licence application relating 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.

3.11 Section 20D seeks to prohibit the water use licence 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.

3.12 Clause 8 seeks to amend section 21 of the National Water Act to delete the word sea outfall since the function relating to such discharge is mandated to the Department of Environmental Affairs.

3.13 Clause 9 proposes an amendment to section 25(1) which seeks to allow any person to use their water use entitlement on another property in the same vicinity and for any purpose, for a limited period of two years.

3.14 Clause 10 provides for the surrender of unused water allocation to the National Government 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.

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

3.16 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.

3.17 Clause 13 empowers the responsible authority to prioritise the redress of past racial and gender discrimination when issuing a licence. The responsible authority also has the power to set aside certain volume of water in each catchment in order to achieve the redress.

3.18 Clauses 14, 15 and 16 seek ,to first empower the Minister to verify and validate the existing lawful water use with new conditions, and secondly, to bring to the finality the acknowledgement and declaration of existing lawful water use. The Minister is further empowered to curtail a certain volume of water due to the failure by water users to exercise the full existing lawful water use volume for a period to be specified by the Minister.

3.19 Clause 17 amends section 37 of the National Water Act and seeks to introduce the exploration or production of onshore naturally occurring hydrocarbons as a controlled activity.

3.20 Clause 18 empowers a responsible authority to defer a decision to issue a

licence where there is an ongoing investigation or court proceedings, until such time that the investigation or court proceedings have been concluded and no wrongdoing is found on the part of the Applicant.

3.21 Clause 19 seeks to amend section 52 of the National Water Act by providing 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.

3.22 Clause 20 is amended to empower the Minister to direct a 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.

3.23 Clause 21 seeks to amend the explanatory note applicable to Chapter 8 of the National Water Act.

3.24 Clause 22 amends 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.

3.25 Clause 23 amends 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 of transformational goals necessary to redress past racial and gender

discrimination.

3.26 Clause 24 amends 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.

3.27 Clause 25 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.

3.28 Clause 26 amends 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 where that owner is a water services provider 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.

3.29 Clause 27 amends 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.

3.30 Clause 28 amends section 151 of the National Water Act by making general

provisions relating to offences, and penalties in the form of fines or imprisonment.

3.31 Clause 29 proposes 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.

3.32 Amendment of schedule 5

#### **4. DEPARTMENTS/BODIES/PERSONS CONSULTED**

The following Departments and Entities were consulted, National Treasury; Department of Health; Department of Cooperative Governance & Traditional Affairs; Department of Mineral Resources and Energy; Department of Forestry, Fisheries and 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***<sup>1</sup> ("***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...".

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<sup>1</sup> (CCT/12/99) [1999] ZACC 15.

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*<sup>2</sup> ("*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. We are 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 contain provisions that affect traditional or Khoi-San communities or pertain to customary law or customs of traditional or Khoi-San communities

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<sup>2</sup> 2010 (8) BCLR 741 (CC).