

REPUBLIC OF SOUTH AFRICA

WATER SERVICES BILL

(As introduced)

L.

(MINISTER OF WATER AFFAIRS AND FORESTRY)

[B 65—97]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP WATERDIENSTE

(Soos ingedien)

(MINISTER VAN WATERWESE EN BOSBOU)

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BILL

To provide for the right of access to basic water supply and basic sanitation; to provide for the setting of national standards and of norms and standards for tariffs; to provide for water services development plans; to provide a regulatory framework for water services institutions and water services intermediaries; to provide for the establishment and disestablishment of water boards and water services committees and their powers and duties; to provide for the monitoring of water services and intervention by the Minister or by the relevant Province; to provide for financial assistance to water services institutions; to provide for certain general powers of the Minister; to provide for the gathering of information in a national information system and the distribution of that information; to repeal certain laws; and to provide for matters connected therewith.

PREAMBLE

RECOGNIZING the right of all South Africans to basic water supply and basic sanitation necessary to afford them sufficient water and an environment not harmful to their health or well-being;

ACKNOWLEDGING that there is a duty on all spheres of Government to ensure that water supply services and sanitation services are provided in a manner which is efficient, equitable and sustainable;

ACKNOWLEDGING that all spheres of Government must strive to provide water supply services and sanitation services sufficient for subsistence and sustainable economic activity;

ACKNOWLEDGING that although municipalities have authority to administer water services, all spheres of Government have a duty, within the limits of physical and financial feasibility, to work towards this object;

RECOGNIZING that the provision of water services, although an activity distinct from the overall management of water resources, must be undertaken in a manner consistent with the broader goals of water resource management;

RECOGNIZING that water services are often provided in monopolistic or near monopolistic circumstances and that the interests of consumers and the broader goals of public policy must be promoted; and

CONFIRMING the National Government's role as custodian of the nation's water resources:

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

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CHAPTER I

Introductory provisions

Definitions

1. In this Act, unless the context shows that another meaning is intended—	
(i) “approve” means approve in writing, and “approval” has a corresponding meaning; (iii)	15
(ii) “basic sanitation” means the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste-water and sewage from households; (i)	20
(iii) “basic water supply” means the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households; (ii)	
(iv) “consumer” means any end user who receives water services from a water services institution; (xii)	25
(v) “consumer installation” means a pipeline, meter, fitting or apparatus installed or used by a consumer to gain access to water services; (xiii)	
(vi) “development plan” means a water services development plan adopted in terms of this Act; (vii)	
(vii) “disposal of industrial effluent” means the collection, removal, disposal or purification of effluent emanating from industrial use of water; (xxii)	30
(viii) “industrial use” means the use of water for mining, manufacturing, generation of electricity, transport and construction; (vi)	
(ix) “Minister” means the Minister of Water Affairs and Forestry; (v)	
(x) “person” includes a water services institution; (viii)	35
(xi) “prescribe” means prescribe by regulation; (xiv)	
(xii) “Province” means the Member of the Executive Council responsible for local government in the Province concerned; (ix)	
(xiii) “regulation” means a regulation made under this Act; (x)	
(xiv) “sanitation services” means the collection, removal, disposal or purification of human excreta, domestic waste-water and sewage; (xi)	40
(xv) “this Act” includes the regulations; (iv)	
(xvi) “water services” means water supply services and sanitation services; (xv)	
(xvii) “water services authority” means any municipality responsible for ensuring access to water services; (xvii)	45
(xviii) “water services institution” means a water services authority, a water services provider, a water board and a water services committee; (xvi)	
(xix) “water services intermediary” means any person who is obliged to provide water services to another in terms of a contract where the obligation to provide water services is incidental to the main object of that contract; (xviii)	50
(xx) “water services provider” means any person who provides water services to consumers, but does not include a water services intermediary; (xix)	

- (xxi) “water services work” means a reservoir, dam, well, pumphouse, borehole, access road, pumping installation, electricity transmission line, pipeline, meter, fitting or apparatus built, installed or used by a water services institution to provide water services; (xx)
- (xxii) “water supply services” means the abstraction, conveyance, treatment and distribution of potable water or water intended to be converted to potable water. (xxi)

Main objects of Act

2. The main objects of this Act are to provide for—
- (a) the right of access of all South Africans to basic water supply and basic sanitation necessary to afford them sufficient water and an environment not harmful to their health or well-being; 10
 - (b) the setting of national standards and norms and standards for tariffs in respect of water services;
 - (c) the preparation and adoption of water services development plans by water services authorities; 15
 - (d) a regulatory framework for water services institutions and water services intermediaries;
 - (e) the establishment and disestablishment of water boards and water services committees and their duties and powers; 20
 - (f) the monitoring of water services and intervention by the Minister or by the relevant Province;
 - (g) financial assistance to water services institutions; and
 - (h) the gathering of information in a national information system and the distribution of that information. 25

Right of access to basic water supply and basic sanitation

3. (1) Everyone has a right of access to basic water supply and basic sanitation
- (2) Every water services authority must—
- (a) take reasonable measures to realise this right; and
 - (b) provide for those measures in its development plan. 30

Conditions for provision of water services

- 4.(1) Water services must be provided in terms of conditions set by the water services provider.
- (2) These conditions must—
- (a) be accessible to the public; 35
 - (b) accord with conditions for the provision of water services contained in bylaws made by the water services authority having jurisdiction in the area in question; and
 - (c) provide for— 40
 - (i) the technical conditions of supply;
 - (ii) the determination and structure of tariffs;
 - (iii) the conditions for payment; and
 - (iv) the circumstances under which water services may be limited or discontinued.
- (3) procedures for the limitation or discontinuation of water services must— 45
- (a) be fair and equitable; and
 - (b) provide for reasonable notice of intention to limit or discontinue services to be given except where— 50
 - (i) other consumers would be prejudiced;
 - (ii) there is an emergency situation; or
 - (iii) the consumer has interfered with a limited or discontinued service.
- (4) Every person who uses water services provided by a water services provider does so subject to any applicable condition set by that water services provider.
- (5) Where one water services institution provides water services to another water services institution, it may not limit or discontinue those services if the effect would be 55

that basic water supply and basic sanitation will no longer be available, unless it has given at least 30 days notice in writing of its intention to do so to-

- (a) the other water services institution;
- (b) the relevant Province; and
- (c) the Minister.

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Provision of basic water supply and basic sanitation to have preference

5. If a water services institution is unable to meet the requirements of all its consumers, it must give preference to the provision of basic water supply and basic sanitation.

Access to water services through nominated water services provider

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6.(1) Subject to subsection (2), no person may use water services from a source other than a water services provider nominated by the water services authority having jurisdiction in the area in question, without the approval of that water services authority.

(2) Any person who, at the commencement of this Act, was using water services from a source other than one nominated by the relevant water services authority, may continue with such use but must apply for approval within five years from the date of commencement of this Act and, if the approval is refused, switch to the services of the nominated water services provider within a period specified by the water services authority.

Access to water for industrial use

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7.(1) Subject to subsection (3), no person may obtain water for industrial use from any source other than the distribution system of a water services provider nominated by the water services authority having jurisdiction in the area in question, without the approval of that water services authority.

(2) Subject to subsection (3), no person may dispose of industrial effluent in any manner other than that approved by the water services provider nominated by the water services authority having jurisdiction in the area in question.

(3) Any person who, at the commencement of this Act, was—

- (a) using water for industrial use; or
- (b) disposing of industrial effluent,

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in a manner which requires the approval of a water services authority, may so continue but must apply for approval within five years from the date of commencement of this Act, and if approval is refused, switch to the manner approved by the water services authority within a period specified by the water services authority.

(4) No approval given by a water services authority under this section relieves anyone from complying with any other law relating to—

- (a) the abstraction and use of water; or
- (b) the disposal of effluent.

Approvals and appeal

8.(1) Any approval required from a water services authority in terms of section 6 or 40—

- (a) may not be unreasonably withheld; and
- (b) may be given subject to conditions, which—
 - (i) must be reasonable; and
 - (ii) may include a condition that water services must be provided to others.

(2) In determining reasonableness under subsection (1), regard must be given to-

- (a) the cost;
- (b) the management; and
- (c) the quality and reliability.

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of the services in question.

(3) An appeal lies to the Minister against any decision of a water services authority in terms of section 6 or 7 relating to the reasonableness of—

(a) the withholding of any approval; or

(b) any condition attached to any approval.

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(4) The Minister may on appeal confirm, vary or withdraw any decision of the water services authority.

(5) Section 75 applies, with the necessary changes, to any appeal in terms of subsection (3).

CHAPTER II

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Standards and tariffs

Standards

9.(1) The Minister may, from time to time, prescribe compulsory national standards relating to—

(a) water services;

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(b) the quality of water taken from or discharged into any system;

(c) the effective and sustainable use of water resources for water services;

(d) the nature, operation, sustainability, operational efficiency and economic viability of water services;

(e) qualifications of installers and operators of water services; and

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(f) the design, standards and quality of water services works and consumer installations;

(g) any other standards which are to be prescribed in terms of this Act.

(2) Those standards may differentiate between different types of geographic areas, taking into account, among other factors, the socio-economic and physical attributes of each area.

(3) In prescribing standards under subsection (1), the Minister must consider—

(a) the need for everyone to have a reasonable quality of life;

(b) the need for equitable access to water services;

(c) the operational efficiency and economic viability of water services;

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(d) any applicable tariff for water services;

(e) any other laws or any standards set by other governmental authorities;

(f) any guidelines recommended by official standard-setting institutions;

(g) any impact which the water services might have on the environment; and

(h) the obligations of the National Government as custodian of water resources.

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(4) Every water services institution must comply with national standards prescribed by the Minister.

Norms and standards for tariffs

10.(1) The Minister may, with the concurrence of the Minister of Finance, from time to time prescribe norms and standards in respect of tariffs for water services.

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(2) The norms and standards may differentiate on an equitable basis between—

(a) different types of geographic areas, taking into account, among other factors, the socio-economic and physical attributes of each area; and

(b) different types of water services.

(3) In prescribing the norms and standards, the Minister must consider—

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(a) any national standards prescribed by him or her;

(b) social equity;

(c) the financial sustainability of the water services in the geographic area in question;

(d) the recovery of costs reasonably associated with providing the water services;

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(e) the redemption period of any loans; and

(f) the need for a return on capital invested.

(4) No water services institution may use a tariff which is substantially different from any prescribed norms and standards.

CHAPTER 111

Water services authorities

Duty to provide access to water services

- 11. (1)** Every water services authority has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient, affordable, economical and sustainable access to water services. 5
- (2) This duty is subject to—
- (u) the availability of resources;
 - (b) the need for an equitable allocation of resources to all consumers and potential consumers within the authority's area of jurisdiction; 10
 - (c) the need to regulate access to water services in an equitable way;
 - (d) the duty of consumers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for tariffs for water services;
 - (e) the duty to conserve water resources;
 - (f) the nature, topography, zoning and situation of the land in question; and 15
 - (g) the right of the relevant water services authority to limit or discontinue the provision of water services if there is a failure to comply with reasonable conditions set for the provision of such services.
- (3) In ensuring access to water services, a water services authority must take into account— 20
- (a) alternative ways of providing access to water services;
 - (b) the need for regional efficiency;
 - (c) the need to achieve benefit of scale;
 - (d) the need for low costs; and
 - (e) the requirements of equity. 25
- (4) A water services authority may not unreasonably refuse or fail to give access to water services to a consumer or potential consumer in its area of jurisdiction.
- (5) In emergency situations a water services authority may provide basic water supply and basic sanitation free of charge to any person within its area of jurisdiction.
- (6) A water services authority may impose reasonable limitations on the use of water services. 30

Monitoring performance of water services providers and water services intermediaries

- 12.** Every water services authority must monitor the performance of water services providers and water services intermediaries within its area of jurisdiction. 35

Duty to prepare draft water services development plan

- 13. (1)** Within one year after the commencement of this Act, every water services authority must prepare a draft water services development plan for its area of jurisdiction as part of the process of preparing any integrated development plan in terms of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and a summary of that plan. 40
- (2) The Minister may extend the one-year period in respect of a water services authority in consultation with the Minister for Provincial Affairs and Constitutional Development and the relevant Province.

Contents of draft water services development plan 45

- 14.** Every draft water services development plan must contain details—
- (a) of the physical attributes of the area to which it applies;
 - (b) of the size and distribution of the population within that area;
 - (c) of a time frame for the plan, including the implementation programme for the next five years; 50
 - (d) of existing water services, including the number and location of persons within the area who are not being provided with a basic water supply and basic sanitation:

- (e) regarding the future provision of water services, including—
- (i) the water services providers which will provide those water services;
 - (ii) the contracts and proposed contracts with those water services providers;
 - (iii) the proposed infrastructure necessary for the water services;
 - (iv) the water sources to be used and the quantity of water to be obtained from and discharged into each source; and
 - (v) the estimated capital and operating costs of those water services and the financial arrangements to fund those water services, including the tariff structures;
- (f) of the number and location of persons to whom water services cannot be provided within the next five years, setting out—
- (i) the reasons therefor; and
 - (ii) the time frame within which it may reasonably be expected that a basic water supply and basic sanitation will be provided to those persons; and
- (g) of existing and proposed water conservation measures.

Notice of draft water services development plan

15. (1) A water services authority must—
- (a) take reasonable steps to bring its draft water services development plan to the notice of its consumers and potential consumers;
 - (b) invite written public comment thereon to be submitted within a reasonable time; and
 - (c) send copies of the draft water services development plan and of all comments received thereon to the Minister, the relevant Province and all neighboring water services authorities.
- (2) A copy of the draft water services development plan and of its summary must be—
- (a) available for inspection at the offices of the water services authority; and
 - (b) obtainable against payment of a nominal fee.

Adoption of development plan

16. (1) A water services authority must consider all comments received by it before adopting a development plan.
- (2) Notice that a development plan has been adopted must be published in the relevant *Provincial Gazette*.
- (3) A water services authority must supply a copy of every development plan to the Minister, the Minister for Provincial Affairs and Constitutional Development, the relevant Province and all neighbouring water services authorities.
- (4) A copy of the development plan—
- (a) must be available for inspection at the offices of the water services authority;
 - (b) must be obtainable against payment of a nominal fee; and
 - (c) must form part of any integrated development plan as defined in and required by the Local Government Transition Act, 1993 (Act No. 209 of 1993).

New development plan

17. A water services authority must adopt a new development plan at intervals determined by the Minister in consultation with the Minister for Provincial Affairs and Constitutional Development and the relevant Province, in accordance with the procedure set out in sections 13 to 16.

Deviation from development plan

18. No substantial deviation from a development plan is valid unless it is embodied in a new development plan adopted in accordance with the procedure set out in sections 13 to 16.

Reporting on implementation of development plan

19. (1) A water services authority must report on the implementation of its development plan during each financial year.
- (2) The report—
- (a) must be made within four months after the end of each financial year: and 5
 - (b) must be given to the Minister, the Minister for Provincial Affairs and Constitutional Development, the relevant Province and all neighboring water services authorities.
- (3) The water services authority must publicise a summary of its report.
- (4) A copy of the report and of its summary must be— 10
- (a) available for inspection at the offices of the water services authority: and
 - (b) obtainable against payment of a nominal fee.

Contracts with water services providers

20. (1) A water services authority must either perform the functions of a water services provider itself or enter into a written contract with a water services provider to provide water services. 15
- (2) Before entering into a contract with a water services provider, the water services authority must—
- (a) publicly disclose its intention to do so; and
 - (b) follow such procurement procedures as maybe required by the Constitution or by any other applicable law. 20
- (3) The Minister may, after consultation with the Minister for Provincial Affairs and Constitutional Development, prescribe—
- (a) matters which must be regulated by a contract between a water services provider and a water services authority; and 25
 - (b) compulsory provisions to be included in such a contract.
- to ensure—
- (i) that water services are provided on an efficient, equitable and sustainable basis;
 - (ii) that the terms of the contract are fair to the water services authority, the water services provider and the consumer: and 30
 - (iii) compliance with this Act.
- (4) As soon as such a contract has been concluded, the water services authority must supply a copy thereof to the relevant Province and to the Minister.
- (5) The Minister may provide model contracts to be used as a guide for contracts between water services authorities and water services providers. 35

Water services authority acting as water services provider

21. (1) When performing the functions of a water services provider, a water services authority must manage and account separately for those functions.
- (2) A water services authority may act as a water services provider outside its area of jurisdiction, if contracted to do so by the water services authority for the area in question. 40

Bylaws

22. (1) Every water services authority must make bylaws which contain conditions for the provision of water services, and which must provide for at least— 45
- (a) the standard of the services:
 - (b) the technical conditions of SUPPLY, including units or standards of measurement, verification of meters, limits of error and settlement of disputes relating to the measurement of water services provided;
 - (c) the installation, alteration, operation, protection and inspection of water services works and consumer installations: 50
 - (d) the determination and structure of tariffs;
 - (e) the payment and collection of money due for the water services;

- (f) the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation; and
- (g) the prevention of unlawful or wasteful use of water.
- (2) Conditions under which water services are provided—
- (a) may place limits on the areas to which water services will be provided according to the nature, topography, zoning and situation of the land in question;
- (b) may provide for the limitation or discontinuation of water services where a consumer fails to meet his or her obligations to the water services provider, including—
- (i) a failure to pay for services; or
- (ii) a failure to meet other conditions for the provision of services;
- (c) may place an obligation on a payment defaulter—
- (i) to pay a higher deposit;
- (ii) to pay a reconnection fee after disconnection of water services; and
- (iii) to pay interest on outstanding amounts;
- (d) may include an option to retain limited access to at least basic water supply and basic sanitation for a consumer whose water services are to be discontinued; and
- (e) must be accessible to consumers and potential consumers.
- (3) The Minister may provide model bylaws to be used as a guide for water services authorities.

CHAPTER IV

Water services providers

Approval to operate as water services provider 25

23. (1) No person may operate as a water services provider without the approval of the water services authority having jurisdiction in the area in question.
- (2) Any approval in terms of subsection (1)—
- (a) must be for a limited period;
- (b) may be subject to renewal; and
- (c) may be granted subject to conditions.
- (3) Any person who, at the commencement of this Act, was acting as a water services provider without approval from the water services authority having jurisdiction in the area in question, may continue to do so until the expiry of reasonable notice given by that water services authority—
- (i) that it requires the provider to enter into a contract; or
- (ii) that the continuation will be subject to approval as contemplated in subsection (1).

Water services provider must give information

24. A water services provider must give such information concerning the provision of water services as may reasonably be called for by—
- (a) the water services authority having jurisdiction in the area in question;
- (b) the relevant Province;
- (c) the Minister; or
- (d) a consumer or potential consumer.

CHAPTER V

Water services intermediaries

Registration of water services intermediaries

25. A water services authority may, in its bylaws, require the registration of water services intermediaries or classes of such intermediaries within its area of jurisdiction.

Duties of water services intermediaries

26. (1) The quality, quantity and sustainability of water services provided by a water

services intermediary must meet any minimum standards prescribed by the Minister and any minimum standards prescribed by the relevant water services authority.

(2) A water services intermediary may not charge for water services at a tariff which does not comply with any norms and standards determined under this Act.

Default by water services intermediaries

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27. (1) If a water services intermediary fails to perform its functions effectively, the water services authority having jurisdiction in the area in question may direct the water services intermediary to rectify its failure.

(2) A direction in terms of subsection (1) must set out—

- (a) the nature of the failure;
- (b) the steps which must be taken to rectify the failure: and
- (c) the period within which those steps must be taken.

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(3) If the water services intermediary fails to rectify its failure within that period, the water services authority may—

- (a) after having given the water services intermediary a reasonable opportunity to make written submissions to it; and
- (b) after having afforded the water services intermediary a hearing on any submissions received,

take over the relevant functions of the water services intermediary.

(4) Where a water services authority takes over any functions in terms of subsection (3)—

- (a) it may exercise all relevant powers and perform all relevant duties on behalf of the water services intermediary to the exclusion of the water services intermediary: and
- (b) it may use the infrastructure of the water services intermediary to the extent necessary to perform those functions.

(5) A water services authority may appoint a water services institution to act on its behalf in performing the functions of a water services intermediary in terms of subsection (4).

(6) As soon as a water services intermediary is in a position to resume its functions effectively, the water services authority must stop exercising the powers and performing the duties on the intermediary's behalf.

(7) A water services authority may recover from a water services intermediary—

- (a) all outstanding expenses which it incurred; and
- (b) all losses which it suffered.

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as a result of having acted in terms of this section.

CHAPTER VI

Water boards

Establishment and disestablishment of water boards

28. The Minister may—

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- (a) establish a water board;
- (b) give it a name or change its name;
- (c) determine or change its service area: or
- (d) disestablish it.

by notice in the *Gazette* after consultation with—

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- (i) every Province concerned; and
- (ii) the water board concerned, if it is in existence: and
- (iii) every water services authority having jurisdiction in the service area; or
- (iv) every statutorily recognised organisation representing municipalities having jurisdiction in the service area.

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Primary activity of water boards

29. The primary activity of a water board is to provide water services to other water services institutions within its service area.

Other activities of water boards

30. (1) A water board may perform an activity other than its primary activity only if—
- (u) it will not limit the water board's capacity to perform its primary activity;
 - (b) it will not be to the financial prejudice of itself, any water services institution, existing consumers and other users serviced by it within its service area: 5
 - (c) it is in accordance with the board's policy statement; and
 - (d) it is provided for in a business plan.
- (2) Other activities of a water board may include, but are not limited to—
- (a) providing management services, training and other support services to water services authorities; 10
 - (b) supplying untreated or non-potable water to end users who do not use the water for household purposes;
 - (c) providing catchment management services to or on behalf of the responsible authorities; and
 - (d) with the approval of the water services authority having jurisdiction in the area— 15
 - (i) supplying water directly for industrial use;
 - (ii) accepting industrial effluent; and
 - (iii) acting as a water services provider.

Powers of water boards 20

31. (1) A water board is a body corporate, and has the powers of a natural person of full capacity, except those powers—
- (a) which by nature can only attach to natural persons: and
 - (b) which are inconsistent with this Act or the board's policy statement or business plan. 25
- (2) A water board may set and enforce conditions, including tariffs, for the provision of water services.
- (3) Subject to section 4, a water board may limit or discontinue water services or other services provided to water services institutions, consumers or users.
- (4) A water board may establish advisory forums and committees of the board. 30

Duties of water boards

32. Every water board—
- (a) must give priority to its primary activity;
 - (b) must enter into written contracts when performing its primary and other activities: 35
 - (c) must consider every request by a water services institution for the provision of water services within its service area and may only refuse such request if, for sound technical and financial reasons, it would not be viable to provide those water services;
 - (d) must provide water services and other services to water services institutions, consumers and users in accordance with section 4 and any conditions set in terms of section 33; and 40
 - (e) must obtain a permit, authorisation or licence from the relevant authority for abstracting water or discharging any effluent,

Conditions for provision of services 45

33. (1) A water board must set conditions for the provision of services not inconsistent with this Act, relating to at least—
- (u) the technical conditions of supply, including units or standards of measurement, verification of meters, limits of error and settlement of disputes relating to the measurement of water services provided; 50
 - (b) the installation, alteration, operation, protection and inspection of water services works and consumer installations:

- (c) the determination and structure of tariffs;
 - (d) the payment and collection of money due to the water board;
 - (e) the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation; and
 - (f) the prevention of wasteful or unlawful use of water provided by the water board. 5
- (2) A water board must invite public comment before setting the conditions.
- (3) Conditions set by a water board must be submitted to the Minister and come into effect when approved by the Minister and published in the *Gazette*.
- (4) Conditions set by a water board must be accessible to the public. 10
- (5) Every person who uses services provided by a water board does so subject to any applicable conditions set by that board.

Parameters for functions of water boards

34. (1) In performing its activities, exercising its powers and carrying out its duties, a water board must— 15
- (a) *strive* to provide efficient, reliable and sustainable water services;
 - (b) optimally use available resources;
 - (c) strive to be financially viable;
 - (d) promote the efficiency of water services authorities;
 - (e) take cognizance of the needs of water services institutions, consumers and users: 20
 - (f) take into account national and provincial policies, objects and developments;
 - (g) act in an equitable, transparent and fair manner; and
 - (h) have regard for health and the environment.
- (2) For the purposes of subsection(1)(c) a water board is financially viable if it is able to recover its capital costs, operational and maintenance costs, depreciation of assets and costs associated with the repayment of capital from revenues (including subsidies) over time and to show a reasonable return on investment. 25

Governance of water boards

35. (1) A water board consists of a chairperson and such other members as the Minister may determine from time to time. 30
- (2) The Minister must appoint the chairperson and members of the board.
- (3) When appointing a member, the Minister must have regard to—
- (a) the objects of the water board;
 - (b) the need for the board to be representative of the broad population and of the interests served by it; 35
 - (c) the expertise required for the board to function effectively; and
 - (d) the desirability or otherwise of executive employees being members of the board.
- (4) The Minister may terminate the appointment of any or all the members of a water board. 40
- (5) Members of a water board may be paid out of the funds of the water board, according to a level of remuneration approved by the Minister.

Chief executive of water board

36. (1) Every water board must— 45
- (a) appoint a suitable person as chief executive of the water board, for a renewable period of not more than five years; and
 - (b) determine the duties, conditions of service and remuneration of the chief executive.
- (2) Subject to any existing rights of a person appointed before the commencement of this Act, a water board may of its own accord, or the Minister may, after consultation with the board, terminate the services of the chief executive of the water board— 50
- (a) for good reason; and

(b) in accordance with fair labour practices and the terms of his or her contract of employment.

Delegation of powers

- 37. A water board may delegate any operational power to—
 - (a) a committee of the board; 5
 - (b) its chief executive; or
 - (c) any of its employees.

Duties of water board and members

- 38. (1) A water board must—
 - (u) ensure that its functions are performed within the parameters set in section 10 34(1); and
 - (b) promote and implement the board’s policy statement and its business plan.
- (2) Members of a water board must—
 - (a) perform their duties with honesty, care and diligence; and
 - (b) disclose any conflicts of interest, 15

Policy statement

- 39. (1) A water board must prepare and adopt a policy statement.
- (2) The first policy statement of a water board must be prepared and adopted within one year of the commencement of this Act.
- (3) The policy statement must contain information concerning the water board and all 20 other companies, institutions or bodies in which it has an interest, including—
 - (a) the nature and extent of the primary and other activities to be undertaken;
 - (b) the area within which the activities will be undertaken;
 - (c) the measures to be taken to separate the primary and other activities from each other; 25
 - (d) details concerning the management of any financial risks relating to the board’s primary and other activities;
 - (e) the board’s accounting and investment policies;
 - (f) the rules and procedures to be followed before any investments are made by the board; 30
 - (g) the board’s policy on human resources and human resource development;
 - (h) the board’s policy on the environment;
 - (i) the measures by which the performance of the water board will be assessed;
 - (j) whether any advisory forums have been or are to be established. and if so. the functions and composition thereof: 35
 - (k) the procedures for consultation with water services institutions. consumers. users and advisory forums, if established;
 - (l) the nature and extent of activities aimed at ensuring access to water services provided by the board within its service area, and the extension and improvement of those services: and 40
 - (m) any other information which the Minister may prescribe from time to time.
- (4) A policy statement may be amended from time to time, and must be revised at least every five years.
- (5) Every policy statement and every amendment thereof must be submitted to the Minister and must be accessible to the public. 45
- (6) The Minister may direct a water board to amend its policy statement if the policy statement—
 - (a) is not in the best interests of the general population within its service area; or
 - (b) is not in accordance with the parameters laid down in section 34(1).

Business plan 50

40. (1) A water board must, not later than one month before the commencement of each financial year, prepare and adopt a business plan relating to the following five financial years.

- (2) The business plan must at least contain information regarding—
- (a) each specific primary and other activity to be undertaken and the performance targets for each;
 - (b) the tariff applicable to each service, the method by which it was determined, the motivation for the tariff and the estimated tariff income; 5
 - (c) forecasts of capital expenditure for the primary and other activities for the next five years: and
 - (d) any other information which the Minister may prescribe from time to time.
- (3) Every business plan must be submitted to the Minister.
- (4) A business plan may be amended from time to time, 10
- (5) The Minister may direct a water board—
- (a) to amend its business plan if the plan—
 - (i) is not in the best interests of the general population within its service area; or
 - (ii) is not in accordance with the parameters laid down in section 34(: or 15
 - (b) to submit additional business plans addressing specific issues.

Directives to water boards

41. (1) The Minister may, to the extent that it is reasonable, from time to time issue directives to a water board—
- (a) to undertake a specific activity— 20
 - (i) at its own cost: or
 - (ii) against full or partial payment, as directed by the Minister: or
 - (b) to desist from a specific activity.
- (2) The water board must comply with any directive given under subsection (1).

Different activities to be managed as separate units 25

42. (1) A water board must manage its primary activity and each of its other activities as separate units.
- (2) A water board must maintain separate and itemised financial accounts for its primary activity and each of its other activities.
- (3) All transactions between units of a water board engaged in different activities of the water board must be earned out on terms and conditions which could be expected to apply to similar transactions between unrelated businesses. 30

Financial matters and accounts

43. (1) The financial year of a water board is from 1 April to 31 March.
- (2) The accounts of a water board must be audited by a chartered accountant appointed by the water board, 35
- (3) A water board must, within three months after the end of each financial year, issue audited financial statements.
- (4) The accounting policy of a water board must be consistent with generally accepted accounting practices. 40

Reporting

44. (1) A water board must, within three months after the end of each financial year, issue a report on the activities of the water board for that financial year.
- (2) The report— 45
- (a) must be accompanied by the audited financial statements for that financial year:
 - (b) must be submitted to the Minister: and
 - (c) must be accessible to the public.
- (3) The report must contain sufficient information to allow the Minister and the public to assess the performance of the water board against its policy statement and business plan. 50

Provision of information

- 45. (1) A water board must give the Minister or any person authorised by him or her—
 - (a) such information as he or she requires on the affairs and financial position of the water board; and
 - (b) access to such books, accounts, documents and other assets of the water board as he or she may require. 5
- (2) The Minister may appoint a person to investigate the affairs or financial position of a water board.
- (3) The Minister may recover the fees and disbursements of any person so appointed from the water board concerned. 10

Assets and liabilities upon disestablishment

- 46. (1) If the Minister, after consultation in terms of section 28, has notified a water board that he or she intends—
 - (a) to change its service area; or
 - (b) to disestablish it, 15
 the Minister may direct that water board to transfer some or all of its assets and liabilities to another water board.
- (2) A water board must do everything within its power to give effect to that direction.
- (3) Upon the disestablishment of any water board—
 - (a) its assets and liabilities vest in the Minister; 20
 - (b) the Minister must wind up its affairs: and
 - (c) the Minister must assume the functions of the water board for the period of winding up.
- (4) In winding up the affairs of a water board, the Minister must have regard to the interests of creditors and former consumers of the water board. 25
- (5) No transfer duty, value-added tax, other tax or duty is payable in respect of the transfer of any assets—
 - (a) from the Minister to a water board;
 - (b) from a water board to the Minister: or
 - (c) from one water board to another water board. 30

Litigation against water board

- 47. (1) No court may grant an order or judgment against a water board unless the papers on which that order or judgment is sought have also been served on the Minister.
- (2) The court may, in order to secure the continued provision of water services in the public interest, limit the right of execution of a judgment creditor on the assets of a water board to specific assets or to a specific period. 35

Formal irregularities

- 48. (1) A decision taken or act performed in good faith by a water board or a committee of a water board is valid despite any failure to comply with a formal procedural requirement. 40
- (2) No decision taken by or act performed on the authority of a water board is invalid merely because of a casual vacancy on the board or because any person who was not entitled to sit as a member of the board, sat as such at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by a majority of the members of the board who were then present and were entitled to sit as 45 members and if such members present constituted a quorum.

Regulations

- 49. (1) The Minister may make regulations relating to—
 - (a) the nomination and selection of candidates for appointment as members of a water board; 50
 - (b) the criteria for qualification of members of a water board;

(c) the number, appointment and reappointment, terms of office and duties of members of a water board;	
(d) the quorum for meetings of a water board;	
(e) the composition and functioning of committees of a water board;	
(f) the procedure for convening and conducting meetings of a water board and committees of a water board;	5
(g) the remuneration for services payable to members of a water board and the chief executive officer of a water board;	
(h) the appointment of staff by a water board, their conditions of service and remuneration;	10
(i) the matters to be dealt with in policy statements of a water board;	
(j) the matters to be dealt with in the annual business plan of a water board;	
(k) the procedure for setting conditions for the provision of services;	
(l) the information to be supplied in the financial statements of a water board;	
(m) the information to be supplied in the annual report of a water board;	15
(n) norms and standards for tariffs.	
(2) The Minister may make different regulations for different water boards.	
(3) in making regulations under this section, the Minister must consider—	
(a) the basic values and principles required for public administration in terms of the Constitution;	20
(b) the main objects of this Act as set out in section 2;	
(c) the activities, powers and duties of the water board;	
(d) the financial position of the water board; and	
(e) the interests of consumers and potential consumers.	
Effect of inclusion of Chapter in Act	25

50. The inclusion of this Chapter in this Act must not be construed as giving any executive or legislative power to any Province in respect of water boards.

CHAPTER VII

Water services committees

Establishment and disestablishment of water services committees	30
51. (1) Subject to subsections (2), (3) and (4) the Minister may—	
(a) establish a water services committee;	
(b) give it a name or change its name;	
(c) determine or change its service area;	
(d) determine its powers: or	35
(e) disestablish it.	
by notice in the <i>Gazette</i> .	
(2) The Minister may only act in terms of subsection (1) after consultation with either the inhabitants of the proposed service area or with the water services committee (if already established), and in consultation with the water services authority for the area in question, the Minister for Provincial Affairs and Constitutional Development and the relevant Province, with regard to—	40
(a) the period for which the water services committee will operate;	
(b) the nature and extent of the water services to be provided;	
(c) the area or the community to be served;	45
(d) the composition of the water services committee and the appointment of its members;	
(e) any contribution to be made by the community or its members to the provision of water services: and	
(f) any other related matter.	50
(3) No water services committee may be established if the water services authority having jurisdiction in the area in question is willing and able to provide water services effectively in the proposed service area.	

(4) The Minister must disestablish a water services committee as soon as he or she is satisfied that the water services authority having jurisdiction in the area in question is willing and able to provide water services effectively within the service area.

Main function of water services committees

52. (1) The main function of a water services committee is to provide water services to consumers within its service area.

(2) A water services committee may not unreasonably exclude any person within its service area from those water services.

Powers of water services committees

53. (1) A water services committee is a body corporate, and has the powers of a natural person of full capacity except those powers—

- (a) which by nature can only attach to a natural person;
- (b) excluded by or inconsistent with this Act; and
- (c) excluded by the Minister by notice in the *Gazette*.

(2) A water services committee may set conditions, including tariffs, for the provision of water services.

(3) A water services committee may, subject to section 4, limit or discontinue water services to a consumer.

(4) A water services committee may delegate any of its powers to any employee.

Conditions for provision of services

20

54. (1) A water services committee must set conditions for the provision of services not inconsistent with this Act, relating to—

- (a) the technical conditions of supply, including units or standards of measurement, verification of meters, limits of error and settlement of disputes relating to the measurement of water services provided;
- (b) the installation, alteration, operation, protection and inspection of water services works and consumer installations;
- (c) the determination and structure of tariffs;
- (d) the payment and collection of money due to the water services committee;
- (e) the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation;
- (f) the prevention of wasteful or unlawful use of water provided by the water services committee.

(2) A water services committee must invite comment from the inhabitants of its service area before setting conditions.

35

(3) Conditions set by a water services committee must be submitted to the Minister and come into effect upon approval by the Minister.

(4) Conditions set by a water services committee must be accessible to the inhabitants of the service area in question.

(5) Every person who uses water services provided by a water services committee does so subject to any applicable conditions set by that water services committee.

Governance of water services committees

55. (1) A water services committee consists of a chairperson and such other committee members as the Minister may determine from time to time.

(2) The Minister must appoint the chairperson and members of the committee.

45

(3) When appointing a member, the Minister must have regard to—

- (a) the need for the committee to be representative of the inhabitants of the service area in question; and
- (b) the expertise required for the committee to function effectively.

(4) The Minister may terminate the appointment of any of the members of a water services committee.

(5) Members of a water services committee may be paid out of the funds of the committee, according to a level of remuneration approved by the Minister.

50

Duties of committee members

56. Members of a water services committee must—
- (a) perform their duties with honesty, care and diligence; and
 - (b) disclose any conflict of interest.

Financial matters and accounts

5

57. (1) The financial year of a water services committee is from 1 April to 31 March.
 (2) The accounts of a water services committee must be audited by a chartered accountant appointed by the committee if the Minister so requires.
 (3) Every water services committee must, within three months after the end of each financial year, issue financial statements and submit a copy thereof to the Minister.
 (4) The accounting policy of a water services committee must be consistent with generally accepted accounting practices.

Formal irregularities

58. (1) A decision taken or act performed in good faith by a water services committee is valid despite any failure to comply with a formal procedural requirement. 15
 (2) No decision taken by or act performed on the authority of a water services committee is invalid merely because of a casual vacancy on the committee or because any person who was not entitled to sit as a member of the committee, sat as such at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by a majority of the members of the committee who were then present and were entitled to sit as members and if such members present constituted a quorum. 20

Provision of information

59. (1) A water services committee must give the Minister or any person authorised by him or her— 25
 (a) such information as he or she requires on the affairs and financial position of the water services committee; and
 (b) access to such books, accounts, documents and other assets of the water services committee as he or she may require.
 (2) The Minister may appoint a person to investigate the affairs or financial position of a water services committee. 30
 (3) The Minister may recover the fees and disbursements of any person so appointed from the water services committee concerned.

Assets and liabilities upon disestablishment

60. (1) Upon the disestablishment of a water services committee— 35
 (a) its assets and liabilities vest in the Minister;
 (b) the Minister must wind up its affairs; and
 (c) the Minister must assume the functions of the water services committee for the period of winding-up.
 (2) The Minister may, after the disestablishment of a water services committee, transfer any of its assets to the water services authority having jurisdiction in the area. 40
 (3) No transfer duty, value-added tax, other tax or duty is payable in respect of the transfer of any assets—
 (a) from a water services committee to the Minister; or
 (b) from the Minister to a water services authority. 45

Regulations

61. (1) The Minister may make regulations relating to—
 (a) the nomination and selection of candidates for appointment as members of a water services committee;
 (b) the criteria for qualification of members of a water services committee; 50

- (c) the number, appointment and reappointment, terms of office and duties of members of a water services committee;
 - (d) the quorum for meetings of a water services committee;
 - (e) the procedure for convening and conducting meetings of a water services committee; 5
 - (f) the remuneration for services payable to members of a water services committee;
 - (g) the appointment of staff by a water services committee, their conditions of service and remuneration;
 - (h) the information to be furnished in the financial statements of a water services committee; and 10
 - (i) the procedure for setting conditions for the provision of services.
- (2) In making regulations under this section, the Minister must consider—
- (a) the basic values and principles required for public administration in terms of the Constitution; 15
 - (b) the main objects of this Act as set out in section 2;
 - (c) the financial position of the water services committee; and
 - (d) the interests of consumers and potential consumers.

CHAPTER VIII

Monitoring and intervention 20

Monitoring of water services institutions

62. (1) The Minister must monitor the performance of every water services institution in order to ensure—
- (a) compliance with all applicable national standards prescribed under this Act;
 - (b) compliance with all norms and standards for tariffs prescribed under this Act; 25 and
 - (c) compliance with every applicable development plan, policy statement or business plan adopted in terms of this Act.
- (2) Every water services institution must—
- (a) furnish such information as maybe required by the Minister after consultation 30 with the Minister for Provincial Affairs and Constitutional Development; and
 - (b) allow the Minister access to its books, records and physical assets to the extent necessary for the Minister to carry out the monitoring functions contemplated in subsection (1).

Intervention 35

63. (1) If a water services authority has not effectively performed any function imposed on it by or under this Act, the Minister may, in consultation with the Minister for Provincial Affairs and Constitutional Development, request the relevant Province to intervene in terms of section 139 of the Constitution.
- (2) If, within a reasonable time of the request, the Province has failed to intervene 40 effectively, the Minister may assume responsibility for that function.
- (3) After assuming responsibility for that function under subsection (2), the Minister may issue a directive to the water services authority to perform that function effectively.
- (4) If the water services authority fails to comply with that directive, the Minister may 45 intervene—
- (a) by taking appropriate steps to facilitate the performance of that function, including giving financial, managerial and technical advice and assistance; or
 - (b) on notice to the water services authority, by taking over that function.
- (5) If the Minister takes over any function of a water services authority—
- (a) the Minister must table a notice to that effect in the National Council of 50 Provinces within 14 days of the commencement of its first sitting after taking over that function:

- (b) the Minister may, on behalf of that water services authority, exercise all the powers and carry out all the duties relating to that function;
- (c) the governing body of that water services authority may not, while the Minister is responsible for that function, exercise any of its powers or carry out any of its duties relating to that function; 5
- (d) the Minister may utilise all financial and other resources available to that water services authority relating to that function;
- (e) the Minister may appoint a water services institution to perform that function or any part thereof; and
- (f) the take-over of that function must end— 10
- (i) if it is not approved by the National Council of Provinces within 30 days after the commencement of its first sitting after the take-over; or
- (ii) when the water services authority is in a position to resume that function effective y.
- (6) The National Council of Provinces may from time to time review the take-over of any function of a water services authority by the Minister and make appropriate recommendations to the Minister. 15
- (7) Any expenses incurred or losses suffered by the Minister in taking over any function of a water services authority may be recovered from that water services authority. 20
- (8) In the interests of co-operative government, a Province must immediately inform the Minister of its intention to intervene by taking over any function of a water services authority under section 139 of the Constitution.
- (9) In considering the manner and implementation of any intervention under this section, the Minister must consider— 25
- (a) the reasons for the extent and the period of non-compliance by the water services authority concerned;
- (b) the attempts made to achieve compliance;
- (c) the effect of the non-compliance; and
- (d) any other relevant matter. 30

CHAPTER IX

Financial assistance to water services institution

Powers of Minister

- 64. (1)** The Minister may make grants and loans and give subsidies to a water services institution from funds— 35
- (a) appropriated by Parliament;
- (b) contributed by individuals or non-governmental organisations; or
- (c) contributed by other governments and governmental institutions,
- for those purposes.
- (2) In making any grant or loan or giving any subsidy, the Minister must consider— 40
- (a) the requirements of equity and transparency;
- (b) the purpose of the grant, loan or subsidy;
- (c) the main objects of this Act as set out in section 2; and
- (d) the financial position of the applicant.

Applications for financial assistance 45

- 65. (1)** Applications for financial assistance must be made in the prescribed manner.
- (2) The Minister may refuse financial assistance to any water services institution which fails to comply with its obligations in terms of this Act or any other law.

Regulations on financial assistance

- 66. (1)** The Minister may make regulations relating to financial assistance in terms of this Act concerning—

- (a) the financial feasibility of the construction, operation and maintenance of water services;
 - (b) the manner in which financial assistance must be applied for; and
 - (c) the terms and conditions whereunder any grant or loan may be made or subsidy may be given. 5
- (2) In making such regulations, the Minister must consider—
- (a) the main objects of this Act as set out in section 2;
 - (b) the need for equity and transparency; and
 - (c) all relevant legislation relating to financial controls.

CHAPTER X 10

National information system

Establishment of national information system

67. (1) The Minister must ensure that there is a national information system on water services.
- (2) The information system may form part of a larger system relating to water 15 generally.
- (3) The public is entitled to reasonable access to the information contained in the national information system, subject to limitations necessitated by the rights enshrined in Chapter 2 of the Constitution.

Purpose of national information system 20

68. The purpose of the national information system is—
- (a) to record and provide data for the development, implementation and monitoring of national policy on water services; and
 - (b) to provide information to water services institutions, consumers and the public— 25
 - (i) to enable them to monitor the performance of water services institutions;
 - (ii) for research purposes; and
 - (iii) for any other lawful reason.

Provision of information

69. The Minister may require any Province, water services institution and consumer 30 to furnish information to be included in the national information system.

Funding of national information system

70. (1) The Minister may fund the national information system from money appropriated by Parliament for that purpose or received from any other source for that purpose. 35
- (2) The Minister or the provider of the national information system may charge a reasonable fee for making information available.

CHAPTER XI

General powers and duties of Minister

Procedure for making regulations 40

71. The Minister must, before making regulations under this Act—
- (a) publish the draft regulations in the *Gazette* for written public comment within a specified time; and
 - (17) consider all written comments timeously received.

Consultation by Minister 45

72. If anything is required in terms of this Act to be done by the Minister after consultation with another person or body, it is sufficient compliance with such requirement if the Minister has—

- (a) requested the written comments of that person or body: and
- (b) considered any comments received.

General powers of Minister

73. (1) The Minister may—
- (a) acquire a water services work and may transfer or dispose of any water services work belonging to the National Government; 5
 - (b) construct, operate, alter or repair any water services work with the permission of the owner;
 - (c) contract with any person to perform any work which the Minister is authorised to perform under this Act; 10
 - (d) act as a water services provider under contractor approval;
 - (e) provide water services in Emergency situations;
 - (f) perform the functions of a water services authority or water board;
 - (g) levy tariffs for water services provided by him or her;
 - (h) issue guidelines to water services institutions on performing their functions in terms of this Act; 15
 - (i) issue model conditions for the provision of services for use by water boards and water services committees;
 - (j) prescribe measures to be taken by water services institutions to conserve water; 20
 - (k) prescribe how any matter arising out of the repeal of any law by this Act must be dealt with, to the extent that this Act does not sufficiently provide for it; and
- (1) on good cause. extend any time period provided for in this Act.

(2) No water services work owned by the Minister may be transferred or disposed of without the approval of Parliament if its value exceeds an amount to be specified by notice in the *Gazette* from time to time by the Minister with the concurrence of the Minister of Finance. 25

(3) The Minister acts on behalf of the National Government in owning, taking transfer or disposing of any water services work,

Delegation of powers 30

74. (1) Subject to subsection (2), the Minister may in writing delegate any power vested in him or her by or under this Act.

- (2) The Minister may not delegate the power—
- (a) to make regulations;
 - (b) to prescribe policy; or 35
 - (c) to expropriate.
- (3) A Province may in writing delegate any power given to it by this Act.

Appeals

75. (1) Any affected person may appeal to the Minister against a decision taken by any person acting under a power delegated in terms of this Act. 40

(2) An appeal under subsection(1) must be noted by lodging a written notice of appeal with the Minister and with the person against whose decision the appeal is made. within 21 days of the affected person becoming aware of the decision.

(3) An affected person may appeal to the Minister if a person to whom a power has been delegated fails to make a decision on any matter pertaining to such delegated power within a reasonable time. 45

- (4) An appeal under subsection (3)—
- (a) must be conducted as if a decision had been given against the affected person; and
 - (b) must be noted as described in subsection (2). 50

(5) The Minister must consider any matter submitted to him or her on appeal, after giving every person with an interest in the matter an opportunity to state his or her case.

Advisory committees

76. (1) The Minister may appoint advisory committees for matters falling within the scope of this Act.

(2) An **advisory** committee consists of a chairperson and such members as the Minister may **determine**, with due regard to the expertise required. 5

(3) A member of an advisory committee may be paid an allowance determined by the Minister.

(4) An advisory committee has the functions conferred on it by the Minister.

CHAPTER XII

General provisions

10

Transferability of servitudes

77. (1) The **rights** and obligations of any water services institution in terms of a personal servitude (whether registered or not) are transferable to another water services institution, **notwithstanding** any law to the contrary.

(2) A registrar of deeds must register a notarially executed deed of cession to transfer 15 a personal servitude from one water services institution to another.

Ownership of water services works

78. (1) Any water services work placed in good faith by a water services institution in or on property not owned by it, remains the property of that water services institution, whether the work is fixed to any part of that property or not, and may be removed by it. 20

(2) When a water services work is removed under subsection (1), the owner or occupier of the **property**—

(a) may require the water services institution concerned to restore any physical damage caused to the property by the removal, as far as may be reasonably possible; and 25

(b) has no other claim against the water services institution concerned.

(3) Any water services institution may transfer its rights in respect of improvements on property not owned by it to another water services institution.

Entry and inspection of property

79. (1) Any person authorised in writing by the Minister, the Province or any water 30 services institution **may**—

(a) at any reasonable time and without prior notice, except in the circumstances set out in subsection (3), enter any property and inspect any water services work in order to ascertain whether this Act or any regulation or directive made under it is being complied with; 35

(b) after reasonable notice to the owner or occupier of any property, enter that property with the necessary persons, vehicles, equipment and **material**—

(i) to repair, maintain, remove or demolish any water services work belonging to or operated by the Minister, the Province or water services institution concerned; 40

(ii) to remove vegetation interfering with any water services work belonging to or operated by the Minister, the Province or the water services institution concerned;

(iii) to establish the suitability of any water source or site for the construction of a water services work; and 45

(c) after reasonable notice to the owner or occupier of any property, cross the property in order to enter another property lawfully.

(2) Any person entering property must identify himself or herself and present his or her authorisation.

- (3) A dwelling may only be entered—
 (a) where it is necessary in terms of this Act to do so: and
 (b) on reasonable notice; and
 (c) at a reasonable time.

Expropriation

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80. (1) Property may be expropriated by the Minister or by any water board or water services committee acting with the approval of the Minister.

(2) The Expropriation Act, 1975 (Act No. 63 of 1975), applies to all expropriations under this Act.

(3) Where the Minister expropriates any property under a power given by this Act, any reference to “Minister” in the Expropriation Act, 1975, must be construed as being a reference to the Minister of Water Affairs and Forestry. 10

(4) Where any water board or water services committee expropriates property under a power given by this Act, any reference to “Minister” and “State” in the Expropriation Act, 1975, must be construed as being a reference to that water board or water services committee. as the case may be. 15

Offences

81. (1) No person may—

(a) continue the wasteful use of water after being called upon to stop by the Minister, a Province or any water services authority; 20

(b) unlawfully and intentionally or negligently interfere with any water services work;

(c) intentionally utilise water services, use water or dispose of effluent in contravention of section 6 or 7;

(d) intentionally obstruct any person exercising or attempting to exercise any right of entry and inspection of property under section 79; 25

(e) fail or refuse to give information, or give false or misleading information when required to give information in terms of this Act; and

(f) fail to provide access to any books, accounts, documents or assets when required to do so in terms of this Act. 30

(2) Any person who contravenes subsection (1) is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

(3) Whenever an actor omission by any employee or agent—

(a) constitutes an offence in terms of this Act, and takes place with the express or implied permission of any employer, the employer shall, in addition to the employee or agent, be liable to conviction for that offence; or 35

(b) would constitute an offence by the employer in terms of this Act, that employee or agent shall in addition to that employer be liable to conviction for that offence. 40

State bound by Act

82. This Act binds the State and its organs.

Repeal of laws, and savings

83. (1) The laws set out in the Schedule are hereby repealed to the extent set out in the third column of the Schedule. 45

(2) Notwithstanding subsection (1) the following organisations continue to exist and are deemed to be water boards established in terms of this Act:

(a) Any water board established in terms of the Water Act, 1956 (Act No. 54 of 1956);

(b) the Rand Water Board established under the Rand Water Board Incorporation Ordinance, 1903 (Ordinance No. 32 of 1903 (Transvaal)). as consolidated in the Rand Water Board Statutes (Private) Act, 1950 (Act No. 17 of 1950); and 50

(c) the North-West Water Supply Authority established by the North-West Water Supply Authority Act, 1988 (Act No. 39 of 1988 (Bophuthatswana)).

(3) The governance, name and service areas of those water boards remain as defined in the legislation in terms of which they were established, until the Minister determines otherwise by notice in the *Gazette*. 5

(4) All existing rights and obligations of those water boards remain in force after the commencement of this Act.

(5) Notwithstanding subsection (1) the provisions of the Rand Water Board Statutes (Private) Act, 1950, the Water Act, 1956, and the North-West Water Supply Authority Act, 1988 (Bophuthatswana), requiring a water board to obtain the approval of the Minister in order to perform any functions, remain in force until two months after the first policy statement and business plan has been prepared and submitted to the Minister by the water board concerned. 10

(6) Anything done before the commencement of this Act by an organisation contemplated in subsection (2) and any regulation made or condition set under or in terms of any law repealed by subsection (1) remains valid and is deemed to have been done, made or set under or in terms of the corresponding provision of this Act if—

(a) it is capable of being done, made or set under or in terms of this Act; and

(b) it is not in conflict with the main objects of this Act as set out in section 2.

Short title

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84. This Act is called the Water Services Act, 1997

SCHEDULE

Number and year of Act	Short title	Extent of repeal
Act 17 of 1950	Rand Water Board Statutes (Private) Act, 1950	The whole, except sections 2, 113 and 123 to 130
Act 54 of 1956	Water Act, 1956	Sections 26 A to 26H and 107 to 138
Act 29 of 1964	Rand Water Board Statutes (Private) Act Amendment Act, 1964	The whole, except section 1
Act 31 of 1972	Rand Water Board Statutes (Private) Act Amendment Act, 1972	The whole, except section 1 and sections 25 to 30
Act 58 of 1974	Water Amendment Act, 1974	The whole
Act 107 of 1977	Rand Water Board Statutes (Private) Act Amendment Act, 1977	The whole
Act 89 of 1981	Water Amendment Act, 1981	The whole
Act 90 of 1983	Rand Water Board Statutes (Private) Act Amendment Act, 1983	The whole
Act 39 of 1988 (Bophuthatswana)	North-West Water Supply Authority Act, 1988	The whole
Act 40 of 1988	Rand Water Board Statutes (Private) Act Amendment Act, 1988	The whole, except section 1
Act 36 of 1990	Rand Water Board Statutes (Private) Act Amendment Act, 1990	The whole, except section 1

MEMORANDUM ON THE OBJECTS OF THE WATER SERVICES BILL

1. The Water Act, 1956, was not intended to provide a framework for the provision of water supply and sanitation services to households (hereinafter referred to as “water services”) and is thus not systematically structured for that purpose. It does not reflect the roles and responsibilities of the different spheres of government in a manner consistent with the Constitution. Currently there is thus no national legislation in that regard and water services are dealt with in a fragmented and partially inconsistent manner in provincial ordinances.

2. Section 24 of the Constitution gives everyone the right to an environment not harmful to their health or well-being and the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that secure the **ecologically** sustainable development and use of natural resources while promoting justifiable economic and social development. Section 27 of the Constitution gives everyone the right to access to sufficient water. The State is required to take reasonable legislative and other measures to achieve the progressive realisation of that right within its available resources.

3. The Constitution further states how national and provincial government must pursue their responsibilities in functions that are, in the first instance, the competence of local government. It obliges the different spheres to support each other in a spirit of co-operative government. In terms of section 152(1)(b) of the Constitution one of the objectives of local government is to ensure the provision of services to communities in a sustainable manner and Schedule 4B specifically identifies water and sanitation services, limited to potable water supply systems and domestic waste water and sewage disposal systems, as a local government function. In terms of section 154(1) of the Constitution national and provincial governments must, by legislative and other measures, support and strengthen the capacity of municipalities to manage their own affairs and to perform their functions. National and provincial governments also have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise of this executive authority.

4. The Bill aims to provide a developmental regulatory framework for the provision of water services by clearly defining the role and responsibilities of the different spheres of government in a manner consistent with the Constitution. The Bill enables the national government to set national standards and norms and standards for tariffs to ensure efficient, reliable, affordable and equitable water services, while building capacity and assisting local government to perform its functions. The Bill further reflects the specific Water Law Principles relating to water services which were accepted by Cabinet, namely support for the right of all citizens to basic water services (Principle 25); the regulation of water services in a manner which is consistent with and supportive of the broader local government framework (Principle 26); the provision of water services in a manner consistent with the goals of water resource management (Principle 27) and the protection of the individual consumer and the wider public and the promotion of the broad goals of public policy where water services are provided in a monopoly situation (Principle 28).

5. The Bill aims—

- (a) to ensure and define the right of access to basic water supply and basic sanitation services;
- (b) to promote, support and strengthen water services authorities (municipalities) while creating mechanisms for their effective monitoring by consumers, the Province and National Government;
- (c) to promote the effective and sustainable use of financial and natural resources;
- (d) to provide for the setting of national standards and norms and standards for tariffs to ensure efficient, reliable, affordable and equitable water services;
- (e) to regulate contracts between water services institutions so as to promote the fair and transparent provision of water services;
- (f) to create effective and financially viable statutory water services institutions;

(g) to enable water services authorities to effectively ensure and regulate sufficient access to water services.

6. The following persons and institutions were consulted in the drafting of the Bill:

(a) **Water Services Institutions**

Water Boards;

SALGA (South African Local Government Association);

Statutorily recognised organisations representing municipalities, consulted at provincial workshops in each province;

Individual municipalities;

The general public at provincial workshops in each Province on the Water Law Principles and at a national consultative workshop held in October 1996;

Private sector companies involved in the water services sector.

(b) **Other**

Department of Constitutional Development;

University of Pretoria and University of the Witwatersrand on specific legal issues;

Practicing attorneys and advocates on constitutional issues.

(c) **Publication of draft Bill**

The draft Bill was published in the *Government Gazette* for comment in terms of section 154(2) of the Constitution. It was also published for comment on the Internet.

7. The Department of Water Affairs and Forestry and the State Law Advisers are of the opinion that the Bill should be dealt within terms of the procedure established by section 76 of the Constitution.