



Republic of Namibia
Annotated Statutes

Water Research Act 34 of 1971 (RSA)

(RSA GG 3105)

applied to South West Africa as of 27 October 1972

by RSA Proc. 279/1972 (RSA GG 3685)

(in terms of section 15 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 15 of the Act allows the State President by proclamation in the *Gazette* to declare “any of or all the provisions of this Act and of any amendment thereof” to be applicable in the territory of South West Africa. All of the provisions of the Act were made applicable to South West Africa by RSA Proc. 279 of 1972 (RSA GG 3685) as from 27 October 1972. However, this Proclamation made no explicit reference to future amendments: “Now, therefore, under the powers vested in me by the said section 15, I do hereby declare that all the provisions of the said Act shall, with effect from the date of publication hereof, be applicable in the Territory of South-West Africa.”

Neither of the two amending Acts enacted prior to the date of transfer – the *Water Research Amendment Act 16 of 1974* (RSA GG 4199) and the *Water Research Amendment Act 37 of 1975* (RSA GG 4700) – were applied to South West Africa by Proclamation of the State President, and it is debatable whether the wording of RSA Proc. 279 of 1972 was intended to incorporate future amendments (“...all the provisions of the said Act... with effect from the date of publication hereof...”). However, based on the approach to the Act taken by the Administrator-General of South West Africa after the date of transfer, the wording of RSA Proc. 279 of 1972 has been interpreted to incorporate amendments to the Act. (The annotations indicate how the Act would read if the amendments in question were not applicable to South West Africa.)

TRANSFER TO SOUTH WEST AFRICA: The administration of the Act was transferred to South West Africa by the Executive Powers Transfer Proclamation, AG 3 of 1977, dated 28 September 1977. (The Act gives the term “Minister” the meaning assigned to it in the *Water Act 54 of 1956*, where it is defined as being the Minister of Water Affairs, and AG 3 of 1977 applies to all laws administered by that Minister.) After the date of transfer, the Administrator General made one South African amendment – the *Water Research Amendment Act 106 of 1977* (RSA GG 5658) – applicable to South West Africa, by means of AG Proclamation 29 of 1978 (OG 3745): “Under the powers vested in me by section 2 of the Water Research Amendment Act, 1977 (Act 106 of 1977), as applied by the Executive Powers Transfer Proclamation, 1977 (Proclamation AG. 3 of 1977), I hereby determine that the said Act shall come into operation on 1 July 1978”. (Section 2 of Act 106 of 1977 states “This Act shall be called the Water Research Amendment Act, 1977, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.”)

Note that this Proclamation appears to assume that the previous amendments to the principal Act (the *Water Research Amendment Act 16 of 1974* and the *Water Research Amendment Act 37 of 1975*) were automatically applicable to South West Africa, with the power to declare a commencement date lying with the Administrator-General of South West Africa instead of the State President of South Africa by virtue of the transfer proclamation.

Section 3(2) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, excluded from transfer the provisions of any transferred law “which provide for or relate to the institution, constitution or control of any juristic person or any board or other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”. This may have excluded from transfer the provisions of this Act relating to the Water Research Commission.

as amended by

- Water Research Amendment Act 16 of 1974 (RSA) (RSA GG 4199)**
brought into force on 1 April 1974 by RSA Proc. 63/1974 (RSA GG 4237),
with no explicit reference to South West Africa
- Water Research Amendment Act 37 of 1975 (RSA) (RSA GG 4700)**
came into force on date of publication: 7 May 1975
- Water Research Amendment Act 106 of 1977 (RSA) (RSA GG 5658)**
applied to South West Africa as of 1 July 1978 by AG 29/1978 (OG 3745)
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ACT

To provide for the promotion of research in connection with water affairs; for that purpose to establish a Water Research Commission and a Water Research Fund; and to provide for matters incidental thereto.

(English text signed by the State President)
(Assented to 7th May, 1971)

ARRANGEMENT OF SECTIONS

1. Definitions
2. Establishment and general objects of Water Research Commission
3. Functions of the commission
4. Constitution of commission, and period of office of its members
5. Advisory members of commission
6. Remuneration and allowances of members of commission
7. Meetings of commission
8. Validity of decision taken by, or act performed under authority of, the commission
9. Rules of the commission
10. Officers and employees of commission
- 10A. Committees of the commission
- 10B. Delegation of powers by commission
11. Levying of rates and charges
12. Establishment of Water Research Fund
13. Administration of the fund
14. Auditing and annual report
15. Application of Act to South-West Africa
16. Short title and commencement

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

Definitions

Water Research Act 34 of 1971 (RSA)

1. In this Act, unless the context otherwise indicates, any expression to which a meaning has been assigned in the Water Act, 1956 (Act No. 54 of 1956), shall, when used in this Act, have the same meaning, and -

[The Water Act 54 of 1956 was repealed by the Water Resources Management Act 24 of 2004, but that Act never came into force and has been superseded by the Water Resources Management Act 11 of 2013 – which also repeals Act 54 of 1956 but is not yet in force.]

“commission” means the Water Research Commission established by section 2;

“financial year” means the period from 1 April 1974 to 31 December 1974 and thereafter the period from 1 January in any year to 31 December in the same year, in each case both days inclusive;

[The definition of “financial year” is substituted by Act 16 of 1974. If this Act was not applicable to South West Africa, then the original definition would still apply:

“financial year” means the period from the first day of April in any year to the thirty-first day of March in the year next succeeding, both days inclusive;.”]

“fund” means the Water Research Fund established by section 12;

“university” means a university established by Act of Parliament.

Establishment and general objects of Water Research Commission

2. (1) There is hereby established a commission to be known as the Water Research Commission.

(2) The Commission shall be a body corporate, capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the exercise of its powers and the performance of its functions and duties in terms of this Act.

(3) The objects of the commission are to co-ordinate, to promote, to encourage or to cause to be undertaken, as determined by the Minister specifically or in broad outline, research in respect of -

- (a) the occurrence, preservation, conservation, utilization, control, supply, distribution, purification, pollution or reclamation of water supplies and water;
- (b) the use of water for -
 - (i) agricultural purposes;
 - (ii) industrial purposes; or
 - (iii) urban purposes.

Functions of the commission

3. (1) The functions of the commission shall be -

- (a) to cause, by itself or in collaboration with the Council for Scientific and Industrial Research established by section 2 of the Scientific Research Council Act, 1945 (Act No. 33 of 1945), any State department, university or other institution, research to be undertaken in respect of matters relating to water;

Water Research Act 34 of 1971 (RSA)

[The Scientific Research Council Act 33 of 1945 was repealed by the Scientific Research Council Act 32 of 1962, which was replaced by the Scientific Research Council Act 82 of 1984, which was replaced in turn by the Scientific Research Council Act 46 of 1988. Act 46 of 1988 was replaced in Namibia by the Research, Science and Technology Act 23 of 2004.]

- (b) to promote the research referred to in section 2(3), and in connection therewith to establish research programmes or to alter research programmes so established;
- (c) to make grants, with the approval of the Minister, and on such conditions as the Minister may approve (including conditions relating to rights regarding inventions and discoveries arising therefrom) from the fund to individuals, universities and other institutions for the benefit of such research, the development work for the application of the results of such research and the establishment of facilities for such research;
- (d) to receive and to examine progress reports on such research and the development work for the application of the results of such research;
- (e) to obtain information relating to such research and to development work for the application of the results of such research;
- (f) to accumulate, to assimilate and to disseminate knowledge in regard to the results of such research and the application thereof, and to promote development work for the purposes of such application;
- (g) to co-operate with institutions undertaking such research in other countries, with a view to the accumulation or dissemination of knowledge of such research and the results thereof;
- (h) to advise the Minister in respect of the levying of rates or charges under section 11;
- (i) with the approval of the Minister, to purchase, hire or otherwise acquire and to hold such immovable property as the commission may consider necessary for the performance of its functions, and to alienate or let any immovable property held by it;

[Paragraph (i) is substituted by Act 16 of 1974 and by Act 37 of 1975. If these Acts were not applicable to South West Africa, then the original wording of paragraph (i) would still apply:

- “(i) to take such other measures as the commission may consider conducive to the attainment of its objects.”]
- (j) to take such other measures as the commission may consider conducive to the attainment of its objects.

[paragraph (j) inserted by Act 37 of 1975, with effect from 1 April 1974 (section 1(2) of Act 37 of 1975)]

(2) If progress reports on research by virtue of the provisions of subsection (1)(a), or on research, development work or the establishment of facilities, for the benefit of which any grant is made under subsection (1)(c), are not furnished by the person or body concerned as called for by the commission from time to time, the payment or any part thereof for the research concerned, or the paying over of the grant concerned or any part thereof, may be withheld as the commission may think fit.

Constitution of commission, and period of office of its members

Water Research Act 34 of 1971 (RSA)

4. (1) The commission shall consist of the secretary, and seven other members appointed by the State President on grounds of their special knowledge or experience in regard to any aspect of the commission's functions.

(2) The Minister shall designate one of the members of the commission as chairman and one as vice-chairman of the commission for such period as he may in each case determine, and if the office of chairman or vice-chairman becomes vacant for any reason the Minister shall designate another member of the commission as chairman or vice-chairman, as the case may be, for the remainder of the period for which his predecessor was so designated.

(3) A member of the commission, with the exception of the secretary, shall hold office for such period and subject to such conditions as the State President may determine at the time of his appointment, but shall be eligible for reappointment at the expiry of such period: Provided that if in his opinion there are good reasons for doing so, the State President may at any time terminate the period of office of any member of the commission other than the secretary.

(4) The chairman of the commission shall hold office as such on a full-time basis, shall be the chief executive officer of the commission and manage and control the work authorized by the commission.

(5) If the chairman of the commission was, immediately to his designation as such, a member of a pension or provident fund established by law and administered by the State, he shall, as long as he occupies the office of chairman of the commission, retain all the rights and privileges and remain subject to all the obligations acquired or incurred by him in respect of such pension or provident fund.

(6) Any contribution (other than a contribution by the said chairman himself) to such pension or provident fund which would have been payable in respect of such chairman had he not been designated as chairman of the commission, shall as from the date of his designation as such be paid by the commission as long as he occupies office as such.

[Section 4 is substituted by Act 16 of 1974. If this Act was not applicable to South West Africa, then the original section would still apply:]

“Constitution of commission, and period of office of its members

4. (1) The commission shall consist of -

- (a) the secretary, *ex officio*, as chairman; and
- (b) a vice-chairman and six other members appointed by the State President on grounds of their special knowledge or experience in regard to any aspect of the commission's functions.

(2) A member of the commission, with the exception of the chairman, shall hold office for such period and subject to such conditions as the State President may determine at the time of his appointment, but shall be eligible for reappointment at the expiry of such period: Provided that if in his opinion there are good reasons for doing so, the State President may at any time terminate the period of office of any member of the commission other than the chairman.

(3) The vice-chairman of the commission shall be appointed on a full-time basis, shall be the chief executive officer of the commission and manage and control the work authorized by the commission.

(4) If the vice-chairman of the commission was, immediately prior to his appointment to such office, a member of a pension or provident fund established by law and administered by the State, he shall as long as he occupies the office of vice-chairman of the commission retain all the rights and privileges and remain subject to all the obligations acquired or incurred by him in respect of such pension or provident fund.

Water Research Act 34 of 1971 (RSA)

(5) Any contribution (other than a contribution by the said vice-chairman himself) to such pension or provident fund which would have been payable in respect of such vice-chairman had he not been appointed as vice-chairman of the commission, shall as from the date of such vice-chairman's appointment as such be paid by the commission as long as that vice-chairman occupies office as such."]

Advisory members of commission

5. (1) The commission may co-opt during its pleasure so many persons as the Minister may determine, in an advisory capacity as members of the commission.

(2) The members co-opted under subsection (1) may take part in the proceedings at any meeting of the commission but shall not be entitled to vote at such meeting.

Remuneration and allowances of members of commission

6. Members of the commission (including co-opted members) who are not in the full-time employment of the State shall be paid in respect of the performance of their duties as such members, such remuneration and allowances as the Minister in consultation with the Minister of Finance may determine.

Meetings of commission

7. (1) The first meeting of the commission shall be held at a time and place to be determined by its chairman, and thereafter meetings of the commission shall, subject to the provisions of subsection (2), be held at such times and places as the commission may determine.

(2) The chairman of the commission may at any time call a special meeting of the commission, and shall call such a meeting within fourteen days after receipt of a request therefor by the Minister.

(3) Four members of the commission shall form a quorum for any meeting of the commission.

(4) The chairman, or in his absence the vice-chairman, of the commission shall preside at all meetings thereof at which he is present, and if both the chairman and the vice-chairman are absent from any meeting, the members present shall elect one of their number to preside at such meeting.

(5) The decision of a majority of the members of the commission present at any meeting thereof shall be the decision of the commission, and in the event of an equality of votes on any matter before such a meeting, the person presiding at such meeting shall have a casting vote in addition to his deliberative vote.

(6) A member of the commission (including a co-opted member) shall not be present at or take part in the discussion of or vote upon any matter before the commission, in which he or his spouse or his partner or employer or the partner or employer of his spouse has, directly or indirectly, any pecuniary interest, unless-

- (a) he has previously in writing informed the commission of such interest; and
- (b) the commission has approved that he may be so present or so take part or so vote.

Validity of decision taken by, or act performed under authority of, the commission

8. No decision taken by the commission or act performed under authority of the commission, shall be invalid by reason only of a defect in the appointment of a person purporting

to be a member of, or the existence of a vacancy on, the commission, or of the fact that a person who was not entitled to sit and act as a member of the commission sat or acted as a member of the commission at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the commission who were present at the time and entitled to sit and act as members.

Rules of the commission

9. The commission may make rules in relation to the procedure at meetings of the commission, including the keeping of minutes of the proceedings at meetings of the commission, and such other matters as it may consider necessary or expedient for the due performance of the functions of the commission.

Officers and employees of commission

10. (1) The commission may appoint at such remuneration and on such other conditions of service as the Minister may in consultation with the Minister of Finance approve, such officers and employees as it may deem to assist it in the performance of the functions assigned to it by this Act.

(2) The conditions of service mentioned in subsection (1) may also relate to contributions by officers and employees to a pension or provident fund as well as to contributions thereto from the fund.

[Section 10 is substituted by Act 16 of 1974. If this Act was not applicable to South West Africa, then the original section would still apply:

“How commission’s functions are to be performed

10. Subject to the laws governing the public service, the Minister shall appoint such officers and employees in the department as may be necessary for the carrying out of the administrative, professional and executive work arising from the performance by the commission of its functions.”]

Committees of the commission

10A. The commission may establish committees, consisting of members of the commission, for such purposes as it may deem fit, and may at any time dissolve any committee established by it.

[section 10A inserted by Act 37 of 1975]

Delegation of powers by commission

10B. The commission may delegate any power of powers conferred upon it by or under this Act to a member of the commission or to an officer in the full-time service of the commission or to a committee established under section 10A, to be exercised by such member or officer or committee subject to such directions or conditions (if any) as the commission may give or determine from time to time.

[section 10B inserted by Act 37 of 1975]

Levying of rates and charges

11. (1) Notwithstanding anything contained in any law, the Minister may, in consultation with the Minister of Finance, from time to time by notice in the *Gazette* -

Water Research Act 34 of 1971 (RSA)

- (a) levy rates on land which may be irrigated by means of water supplied or made available by the State, an irrigation board or a water board;
- (b) levy charges on water supplied or made available for use for agricultural purposes, urban purposes, industrial purposes or any other purposes by the State, an irrigation board, a water board, a local authority, the Rand Water Board or any other body; or
- (c) levy both such rates and such charges.

(2) Rates or charges levied under subsection (1), shall be recovered in the manner prescribed by any such notice from the occupiers, or, failing such occupiers, from the owners, of land referred to in subsection (1)(a), or from the persons or bodies entitled to use water referred to in subsection (1)(b), by -

- (a) the secretary, on behalf of the State;
- (b) the irrigation board, water board, local authority or other body concerned, or the Rand Water Board,

as the case may be.

- (3) (a) The amounts of such rates or charges recovered by any body referred to in subsection (2)(b) shall be paid over to the secretary.
- (b) Duly audited statements in support of the amounts referred to in paragraph (a) shall be submitted annually to the secretary.

(4) Any notice referred to in subsection (1) may, in respect of the amount or tariff of such rates or charges, differentiate between different classes or categories of occupiers, owners, persons or bodies referred to in subsection (2), and may absolve any particular such class or category from liability for the payment of any such rate or charge.

(5) The Minister may charge interest on any rates and charges referred to in subsection (1), levied by him and which are due and payable but unpaid, as from the date fixed for payment thereof, at a rate not exceeding the standard interest rate which at that date applies in respect of loans granted by the State out of the State Revenue Fund under section 26(1) of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975), and the amount of any such rate or charge which is unpaid shall for the purposes of this Act be increased by the amount of such interest accrued in respect thereof: Provided that no interest shall be payable in respect of such last-mentioned amount.

[Subsection (5) is inserted by Act 106 of 1977. The Exchequer and Audit Act 66 of 1975 was repealed in South West Africa by the State Finance Act 1 of 1982, which was replaced in Namibia by the State Finance Act 31 of 1991.]

- (6) The provisions of this section shall bind the State.

[subsection (6) inserted by Act 106 of 1977]

Establishment of Water Research Fund

12. There is hereby established a fund to be known as the Water Research Fund, into which shall be deposited all moneys which become payable to the commission.

Administration of the fund

Water Research Act 34 of 1971 (RSA)

13. (1) The fund shall consist of -

- (a) moneys appropriated by Parliament for the benefit of the fund;
- (b) rates and charges levied under section 11;
- (c) donations, bequests or contributions which the commission may receive from any other source.

(2) Subject to the provisions of subsection (6), the commission shall utilize the moneys in the fund for defraying expenses, in connection with the performance of its functions, which are not defrayed from other sources.

(3) The commission shall utilize any moneys appropriated by Parliament for the benefit of the commission in accordance with the statement in question of its estimated income and expenditure referred to in subsection (5) as approved by the Minister: Provided that, subject to the provisions of subsection (2), the commission may utilize any amount or portion of any amount required to be so utilized for a particular purpose in connection with a specified matter, for any other purpose in connection with that matter: Provided further that the commission may utilize any balance of such moneys remaining at the end of the commission's financial year in question, for any expenses in connection with the performance of its functions.

(4) The commission shall utilize any donations, bequests or contributions contemplated in subsection (1)(c) in accordance with the conditions (if any) imposed by the donor, testator or contributor in question.

(5) The commission shall in each financial year, at a time determined by the Minister, submit a statement of its estimated income and expenditure during the following financial year to the Minister for his approval in consultation with the Minister of Finance.

(6) The commission may invest any unexpended portion of its moneys with the Public Debt Commissioners or in such other manner as may be determined by the Minister in consultation with the Minister of Finance.

(7) The commission shall cause proper books to be kept of all moneys deposited in or paid out of the fund.

[Subsection (7) is substituted by Act 16 of 1974. If this Act was not applicable to South West Africa, then the original section would still apply:

“(7) The secretary shall cause proper books to be kept of all moneys deposited in or paid out of the fund.”]

(8) The secretary shall, as soon as practicable after the end of every month, pay to the commission all moneys recovered by him in terms of section 11(2)(a) during that month and all moneys paid over to him in terms of section 11(3)(a) during that month.

[subsection (8) inserted by Act 16 of 1974]

(9) The amount of any expenses incurred by the secretary by virtue of the provisions of section 11(2)(a) and (3)(a) and subsection (8) of this section, as determined by the secretary, shall be paid by the commission to the State out of the moneys in the fund.

[subsection (9) inserted by Act 16 of 1974]

Auditing and annual report

Water Research Act 34 of 1971 (RSA)

14. (1) The Controller and Auditor-General shall audit the accounts of the commission.

(2) The commission shall furnish the Minister with such information in connection with the activities and financial position of the commission as he may from time to time require, and shall in addition, as soon as practicable after the end of every financial year, submit to the Minister an annual report, including a balance sheet and a statement of income and expenditure certified by the Controller and Auditor-General, and such other particulars as the Minister may require.

(3) The Minister shall lay the said report upon the Table of the Senate and of the House of Assembly within fourteen days after receipt thereof, if Parliament is in ordinary session or, if Parliament is not in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

Application of Act to South-West Africa

15. The State President may by proclamation in the *Gazette* declare any of or all the provisions of this Act and of any amendment thereof to be applicable in the territory of South-West Africa (including the Eastern Caprivi Zipfel) or any portion thereof.

Short title and commencement

16. This Act shall be called the Water Research Act, 1971, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.