



Republic of Namibia
Annotated Statutes

Water Resources Management Act 11 of 2013

(GG 5367)

This Act has been passed by Parliament, but it has not yet been brought into force.
It will come into force on a date set by the Minister in the *Government Gazette*.

ACT

To provide for the management, protection, development, use and conservation of water resources; to provide for the regulation and monitoring of water services and to provide for incidental matters.

(Signed by the President on 2 December 2013)

ARRANGEMENT OF SECTIONS

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

[The statement above normally appears below the ARRANGEMENT OF SECTIONS, but it appears as reproduced here in the *Government Gazette* publishing this Act.]

Note that the Act uses the single words “watercourse” and “waterwork”, and the two words “water course” and “water work”, interchangeably throughout. The terms are reproduced here as they appear in the *Government Gazette*.]

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PART 1
 PRELIMINARY PROVISIONS

Definitions

1. (1) In this Act, unless the context indicates otherwise -

“abstract”, in relation to water, means -

- (a) the impounding of water flowing in a water course by constructing a dam or a dugout; or
- (b) the taking of water from a water resource by means of diversion under gravity or pumping;

“aquifer” means a water-bearing geological formation from which water can be abstracted;

“basin” means an area in which water resources are shared by natural or artificial conditions, including -

- (a) an area determined by the watershed limits of a system of surface water and groundwater draining into a common end point or common end area, being a river mouth or delta into the ocean or an inland lake, pan, delta or wetland or any other body of surface water or groundwater;
- (b) an area overlying a common aquifer;

“basin management committee” means a basin management committee referred to in section 20;

“borehole” means a well, excavation or any artificially constructed or improved underground cavity which can be used for -

- (a) intercepting, collecting or storing water in or removing water from an aquifer;
- (b) observing and collecting data and information on water level or water quality in an aquifer; or
- (c) recharging an aquifer;

“borehole works” means any works referred to in section 56(1);

“Council” means the Water Advisory Council established by section 7;

“customary rights and practices,” in relation to a water resource, includes a right or practice -

- (a) under customary law, as defined in section 1 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000); or
- (b) attaching to a customary land right as defined in section 1 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002);

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“dam” means -

- (a) a barrier or structure constructed across or next to a water course that impounds or holds back water flowing in that watercourse; or
- (b) a structure that stores or impounds effluent,

and includes the water impounded and held back or the effluent stored or impounded and the area covered by that water or effluent;

“dam with a safety risk” means -

- (a) a dam falling in a category of dams described and declared by notice in the *Gazette* under section 94(a) to be dams with a safety risk; or
- (b) a specific dam declared by written notice to the owner of such dam under section 94(b) to be a dam with a safety risk;

“domestic use” means the use of water for household purposes, including drinking, cooking, washing, watering a household garden and watering animals for reasonable own use;

“dugout” means an artificial depression or hole excavated in or next to a water course, that impounds or holds back water flowing in that watercourse, and includes the water impounded and held back and the area covered by that water;

“effluent” means liquid waste originating from domestic, industrial, agricultural or mining activities that has been treated in a wastewater treatment facility and released into the environment in a dam, an evaporation pond, an aquifer, a river, the sea or onto the surface of the ground;

“groundwater” means water -

- (a) occurring naturally below the surface of the ground; or
- (b) pumped, diverted or released into a cavity for storage underground;

“groundwater potential” means the volume of water which can be abstracted over a period from an aquifer without adversely affecting the quantity and quality of the water or the environment above the aquifer;

“High Court” means the High Court of Namibia;

“Integrated Water Resources Management Plan” means the Integrated Water Resources Management Plan developed under section 31;

[The definition of “Integrated Water Resources Management Plan” appears here in the *Government Gazette*, but this does not reflect correct alphabetical order. This definition should be below the definition of “impoundment”.]

“impoundment”, in relation to water, means the storage of water by means of a dam or a dugout;

“internationally shared water resource” means a water resource that is shared between two or more states;

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“licence” means a licence granted and in force under this Act;

“local authority” means a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“local authority area” means a local authority area as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“meteoric water” means water that precipitates from the atmosphere;

“Minister” means the Minister responsible for water affairs;

“Ministry” means the Ministry responsible for the administration of water affairs;

“owner of a dam” means the person who owns the dam and includes a person responsible to maintain, operate or control the dam on behalf of the owner;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“person”, includes an organisation, institution, entity or authority;

“pollute”, in relation to water, means directly or indirectly to alter the physical, thermal, chemical, biological, or radioactive, properties of the water so as to render it less fit for any beneficial use for which it is or may reasonably be used or to cause a condition which is hazardous or potentially hazardous to -

- (a) public health;
- (b) animals, birds, fish or aquatic life or other organisms; or
- (c) plants;

“prescribed” means prescribed by regulation;

“professional engineer” means a person registered to practise as a professional engineer in Namibia under the laws governing the engineering profession;

“regional council” means a regional council established under section 2 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regulation” means a regulation made or in force under this Act;

“resource quality”, in relation to a water resource, means the quality of all the aspects of the water resource, including -

- (a) the quantity, seasonal variation and assurance of stream flow or sub-surface flow, if any;
- (b) the water quality, including the physical, chemical and biological characteristics of the water;
- (c) the character and condition of the instream and riparian habitat, including, in the case of an aquifer, the environment above the aquifer; and
- (d) the characteristics, condition and distribution of the aquatic biota;

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“sustainable use” in relation to a water resource, means managing the use of water of the water resource in a way that does not significantly reduce its long-term resource quality;

“this Act”, includes the regulations;

“wastage of water”, includes the unrecoverable loss of water due to leakage or the lack of maintenance of a waterwork or the misuse or undue consumption of water from a water work;

“waste”, includes sewage and any matter or substance, whether wholly or partly in solid, liquid or gaseous state, which if added to water may cause the water to be polluted;

“waste disposal site” means a site where waste is disposed or stored;

“wastewater” means water containing waste;

“wastewater treatment facility” means a waterwork constructed or used for the containment, treatment, evaporation or storage of domestic, commercial, industrial, mining or agricultural effluent, including solid waste;

“watercourse” means -

- (a) a river or spring, including the base flow of an ephemeral river when there is no surface flow;
- (b) a natural channel in which water flows regularly or intermittently;
- (c) an estuary, wetland, lake or dam into which, or from which, water flows;
- (d) any collection or body of water declared under section 5(s) to be a watercourse, and includes the water in, and the bed and banks of, the watercourse;

“water management area”, in relation to a basin management committee, means the area defined under section 20 to be the water management area of the basin management committee;

“water protection area” means an area declared under section 85 to be a water protection area;

“Water Regulator” means the Water Regulator established by section 11;

“water resource” means the whole or any part of a watercourse or an aquifer and includes the sea and meteoric water;

“water services provider” means a person or an entity that provides or manages water services to end consumers;

“waterwork”, means a dam, weir, embankment, protecting wall, canal, channel, reservoir, well, borehole, pumping installation, pipeline, sluice gate, or structure used for or in connection with the impounding, storage, passage, drainage, control or abstraction of water, gauging stations, gauge posts, measuring weirs to measure runoff in rivers and groundwater monitoring instruments or water power generation facilities, or the filtration, sedimentation, treatment or purification of water, wastewater, or waste, or the protection of a watercourse against erosion, siltation, pollution or flood control or the protection of any waterwork, or irrigated land or the use of water for any other purpose or the conservation of meteoric water; and

“wetland” means a watercourse or surface water resource, including its chemical and biophysical characteristics.

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Objects of Act

2. The objects of this Act are to ensure that the water resources of Namibia are managed, developed, used, conserved and protected in a manner consistent with, or conducive to, the fundamental principles set out in section 3.

Fundamental principles

3. This Act must be interpreted in a manner that is consistent with, and promotes, the following fundamental principles -

- (a) equitable access for all people to safe drinking water is an essential basic human right to support a healthy productive life;
- (b) access by all people to a sufficient quantity of safe water within a reasonable distance from their place of abode to maintain life and productive activities;
- (c) harmonisation of human water needs with the water requirements of environmental ecosystems and the species that depend on them, while recognizing that the water resource quality for those ecosystems must be maintained;
- (d) promotion of the sustainable development of water resources based on an integrated water resources management plan which incorporates social, technical, economic, and environmental issues;
- (e) availability of open and transparent information about water resources to the public;
- (f) recognition of the economic value of water in the allocation of water;
- (g) development of the most cost effective solutions, including conservation measures, to infrastructure for the provision of water;
- (h) supporting integrated water resources management through human resources development and capacity building;
- (i) promotion of water awareness and the participation of persons having interest in the decision-making process should form an integral part of any water resource development initiative;
- (j) consistency of water resource management decisions within the specific mandate from the Government regarding the separation of policy, regulatory and operational functions;
- (k) prevention of water pollution and implementation of the principle that a person disposing of effluent or waste has a duty of care to prevent pollution;
- (l) a polluter is liable to pay all costs to clean up any intentional or accidental spill of pollutants;
- (m) cognisance of Namibia's international rights and obligations in the utilisation of internationally shared water resources and the disposal of waste or effluent; and

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- (n) cognisance of the regional diversity in water resources development and the decentralisation of responsibilities to the lowest level of Government where adequate and appropriate competency exists to manage water resources effectively.

Obligation of State in relation to water resources

4. The State, in its capacity as owner of the water resources of Namibia by virtue of Article 100 of the Namibian Constitution has the responsibility to ensure that water resources are managed and used to the benefit of all people in furtherance of the objects of this Act.

PART 2

GENERAL POWERS AND FUNCTIONS OF MINISTER

General powers and functions of Minister

5. To achieve the objects of this Act, the Minister has the following powers and functions -

- (a) to determine water resources management practices consistent with national water policies on the advice of the Water Advisory Council;
- (b) to conduct water resources management planning;
- (c) to participate in consultations and negotiations with other countries regarding internationally shared water resources and water related matters and to give effect to any international agreement on shared water resources to which Namibia is a party;
- (d) to ensure an adequate supply of water for domestic use;
- (e) to collect, compile, analyze and disseminate information for integrated water resources management;
- (f) to ensure that water resources are managed and water infrastructures are operated in accordance with the principles of environmental sustainability;
- (g) to supervise basin management committees and assist and control the performance of water services providers;
- (h) to evaluate plans, specifications, estimates of costs and reports in connection with any proposed or existing utilisation of water for any purpose, and to decide thereon;
- (i) to obtain and record information on the extent of land under irrigation, the quantity of water used or required for irrigation of the land, and the extent, nature and value of crops derived through irrigation, including information on land not used for irrigation purposes, but which is suitable to be used for that purpose;
- (j) to co-ordinate water resources management at national level;
- (k) to co-ordinate and harmonize the administration and management of water resources among basin management committees and water services providers;
- (l) to provide training programmes necessary for the implementation of this Act;

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- (m) to acquire, construct, alter, maintain, operate, repair, control and dispose of any waterwork or other associated works;
- (n) to drill boreholes or construct wells to obtain and conserve supplies of groundwater for purposes of water supply to any person for any purpose, with or without payment of any charge;
- (o) establish and maintain hydrologic and hydrographic stations and works and obtain and record observations made through such stations, including any other information and statistics relating to hydrographic and hydrologic conditions;
- (p) cause any waterwork to be inspected and require in writing a person responsible for the waterwork to carry out, within a specified time, any work for the maintenance, repair or alteration of the waterwork as the Minister may consider necessary for public safety or the protection of property and, in the event of non-compliance with such requirement, cause the work to be carried out by a person authorised by the Minister and recover, as a debt owing to the State, the reasonable expenses incurred in so doing from the person responsible for the waterwork;
- (q) cause any research to be conducted, information to be collected or technology to be developed in relation to the management of water resources;
- (r) provide financial and technical support to basin management committees or water services providers;
- (s) by notice in the *Gazette*, declare any collection or body of water to be a watercourse; and
- (t) to perform such other functions as are assigned to the Minister by this Act or as are necessary for the development, control and utilisation of water to achieve the objects of this Act.

Delegation of powers and assignment of functions by Minister

6. (1) The Minister may, in writing, and subject to conditions as the Minister may determine, delegate or assign a power or function conferred or imposed on the Minister by or under this Act to -

- (a) the Permanent Secretary or any other staff member of the Ministry, including a person seconded to the service of the Ministry or engaged under contract to perform any work or render any service;
 - (b) the Water Regulator; or
 - (c) a basin management committee.
- (2) The Minister may not delegate the power -
- (a) to delegate;
 - (b) to make regulations or to perform any other act required or permitted by this Act to be exercised by notice in the *Gazette*;
 - (c) to appoint a member of the Water Tribunal; or

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(d) to authorize a basin management committee to use temporarily any property for public purposes under section 124.

(3) The Minister is not divested of a power or function delegated or assigned under subsection (1), and may -

(a) withdraw any delegation or assignment made under that subsection; or

(b) vary or set aside any decision made under such delegation.

(4) Before delegating or assigning a power or function to a basin management committee, the Minister must have regard to the capacity of that committee to exercise or perform that power or function.

(5) The Minister may authorise in writing, any delegate or assignee contemplated in subsection (1) to further delegate or assign any power or function delegated or assigned to the delegate or assignee, subject to any conditions the Minister may determine.

PART 3 WATER ADVISORY COUNCIL

Establishment of Water Advisory Council

7. A body to be known as the Water Advisory Council is established to advise the Minister on -

(a) water policy development and review;

(b) water resources management;

(c) water abstraction and use;

(d) any matter about water raised by a basin management committee on which the Council considers it advisable to provide advice;

(e) any matter relating to the administration of this Act referred by the Minister to the Council for advice or on which the Council considers it advisable to provide advice.

Members of Council

8. (1) The Council consists of 11 members who are persons with extensive knowledge and experience in water resource management and from authorities or institutions responsible for or involved in water supply or water management.

(2) The members of the Council are appointed by the Minister upon nomination, of whom -

(a) two is to be nominated by the association of regional councils;

[The phrase "two is" should be "two are" to be grammatically correct.]

(b) two nominated by the association of local authorities;

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[There are missing words in paragraph (b),
which should probably say “two are to be nominated...”.]

- (c) one is to be nominated by water services providers;

[The word “he” should be “be”.]

- (d) one is to be nominated by basin management committees;
- (e) one is to be nominated by interested organisations in the agricultural sector;
- (f) one is to be nominated by interested organisations in the commercial sector;
- (g) one is to be nominated by interested organisations in the industrial sector;

[The word “he” should be “be”.]

- (h) one is to be nominated by the Engineering Council of Namibia; and
- (i) one is to be nominated by academic institutions.

(3) For the purpose of appointing the members of the Council, the Minister must call for nominations from interested persons and organisations required to nominate members by any means the Minister considers effective to come to the notice of those persons and organisations, including by letter or by notice published in one or more newspapers circulated widely in Namibia, and specify the time and manner within which a nomination is to be made.

(4) If a nomination of a person as a member is not made within the time or in the manner specified by the Minister, the Minister may appoint any person who, in the Minister’s opinion, has skills, knowledge or experience appropriate to the functions of the Council, to be a member instead of the person required to be appointed on that nomination.

(5) A person may not be nominated as a member unless the person has, in the opinion of the person making the nomination, skills knowledge and experience appropriate to the functions of the Council, and a nomination must be made with due regard to gender representation.

(6) Despite subsections (1) and (2) and section 9(1)(a), if the Council considers that it will need or benefit from additional fields of expertise for a particular function, the Minister may appoint a person or persons having that expertise as member or members of the Council for the specific purpose of discharging that function.

(7) The Minister may invite basin management committees and other community based organisations or associations to designate not more than two representatives to attend a particular meeting of the Council at which a matter of relevant interest is to be considered, and a person so attending may participate in the deliberations of the Council but may not vote.

- (8) The Minister must appoint one of the members of the Council to be its chairperson.

(9) The Minister must have due regard to gender representation when appointing the members of the Council.

Term of office and remuneration

9. (1) The members of the Council -

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- (a) hold office for five years, but may be reappointed on expiry of that term; and
- (b) must be paid such allowances as may be determined by the Minister, with the concurrence of the Minister responsible for finance.

(2) A casual vacancy in the membership of the Council must be filled by the appointment of another person in accordance with section 8 to fill the vacancy for the unexpired portion of the term of office of the member whose office became vacant.

Meetings of Council and administration

10. (1) The first meeting of the Council is to be held at a time and place determined by the Minister, and thereafter the Council must meet at the times and places determined by the Council.

(2) The chairperson must convene the next meeting if for any reason a meeting determined by the Council cannot take place.

(3) The Council must meet at least four times a year.

(4) The chairperson must convene a special meeting of the Council when so directed by the Minister, or when so requested in writing by at least three other members, for the purpose of dealing with any business specified by the Minister or in the written request.

(5) The chairperson of the Council must preside at a meeting of the Council at which he or she is present, and if the Chairperson is absent or unable to preside at a meeting, the remaining members must designate a member from their number to preside at that meeting.

(6) The Council must cause full and accurate minutes to be kept of its proceedings at meetings and make a copy of the minutes available to the Minister and Permanent Secretary at their request.

(7) The administrative work relating to the functions of the Council must be performed by staff members of the Ministry designated for the purpose by the Permanent Secretary.

PART 4**WATER REGULATOR AND WATER PRICING POLICY****Establishment of Water Regulator**

11. There is established a body to be known as the Water Regulator to perform the functions assigned to the Water Regulator by this Act.

Functions of Water Regulator

12. (1) The functions of the Water Regulator are -

- (a) to determine the tariffs of fees and charges, or the maximum tariffs of fees and charges -
 - (i) that may be levied by a water services provider or other supplier of water, including the State, for the supply or distribution of water and the provision of wastewater services and other associated services;

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- (ii) that are payable by licence holders for the abstraction of water or the discharge of effluent or the supply or re-use of effluent;
 - (b) to set, after negotiation and by agreement with a water services provider or other water supplier, the operational targets to be achieved by the water services provider or supplier during a specified period, including targets as to the level and standard of services;
 - (c) to monitor the performance of water services providers and other water suppliers and evaluate their efficiency with respect to achieving the operational targets set in accordance with paragraph (b);
 - (d) to advise the Minister on any matter relating to compliance by a water services provider or other water supplier with its water services plan and conservation and demand management strategies contemplated in section 90(1), or the achievement or failure on the part of a service provider or other water supplier to increase access and coverage of services in accordance with any requirement made by or under this Act or any other law; and
 - (e) to perform any other functions conferred or imposed on the Water Regulator by or under this Act or any other law.
- (2) The Minister may prescribe requirements and procedures in relation to the matters referred to in paragraphs (a), (b) and (c) of subsection (1), including -
- (a) a requirement that water services providers and other water suppliers are to make submissions to the Water Regulator on proposed tariffs and operational targets;
 - (b) the identification of water services providers and other water suppliers required to make submissions;
 - (c) the time when, the form and manner in which, and the person to whom, a submission is required to be lodged;
 - (d) the information to be contained in or to be given in relation to, and the documents to accompany a submission;
 - (e) procedures relating to public notification of submissions, the manner of consideration and determination of submissions and representations made in relations to a submission, which may include the holding of a public hearing in relation to a submission.
- (3) For the purpose of performing its functions, the Water Regulator -
- (a) may, with the approval of the Minister, and must if so directed by the Minister, carry out any investigation necessary or expedient for performing a function; or
 - (b) may consult any person or authority that has knowledge or experience of, or an interest in, water pricing and water use efficiency.
- (4) The determination of fees and charges by the Water Regulator must be effected -
- (a) in accordance with norms and standards prescribed in the water, wastewater and effluent pricing policy determined under section 19; and

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- (b) with due consideration to harmonising consumer expectations and policy of decision makers regarding the price of water supply and wastewater discharge services without compromising the financial viability of service providers.
- (5) Fees and charges determined by the Water Regulator may differentiate -
 - (a) between water services providers or other water suppliers or service providers or licence holders;
 - (b) in accordance with the resource from which, or the method by which, water is supplied or abstracted;
 - (c) in accordance with the purpose for which water is supplied or abstracted;
 - (d) in accordance with the time of the year when water is supplied or abstracted;
 - (e) between different areas of Namibia; and
 - (f) on any other basis as may be prescribed.

(6) The Water Regulator must cause any tariff of fees and charges determined by it for any purpose in the performance of its functions to be published by notice in the *Gazette* and specify the date as from which the tariff of fees and charges is of effect.

(7) A person may not levy any fee or charge for the supply of water or the rendering of an associated service or for the abstraction of water from a water resource or the discharge of effluent or the supply or re-use of effluent, except in accordance with the tariff of fees and charges determined by the Water Regulator under this section.

Constitution of Water Regulator

13. (1) The Water Regulator consists of five members appointed by the Minister.

(2) The persons selected for appointment as members must be Namibian citizens who collectively bring skill and experience in the membership of the Water Regulator in any of the following fields -

- (a) water service issues, including costing, calculating prices or setting of tariffs and assessment of the operational efficiency of service providers;
- (b) water resource management;
- (c) water engineering;
- (d) finance, trade and economy;
- (e) law;
- (f) business management;
- (g) social science;
- (h) environmental management, including water conservation.

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(3) Despite subsections (1) and (2) and section 14, if the Water Regulator considers that it will need or benefit from any additional field of expertise for a particular function, the Minister may appoint a person with the relevant expertise as member of the Water Regulator for the specific purpose of discharging that function.

(4) The Minister must appoint one of the members to be the chairperson of the Water Regulator.

Term of office of members of Water Regulator

14. A member of the Water Regulator is appointed for such term, not exceeding five years, as determined by the Minister and is eligible for re-appointment on the expiry of that term.

Vacation of office and filling of casual vacancy

15. (1) The office of a member of the Water Regulator becomes vacant if the member -

- (a) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (b) resigns his or her office by notice in writing given to the Minister;
- (c) has been absent from two meetings of the Water Regulator in a year, without leave of the chairperson of the Water Regulator; or
- (d) is removed from office by the Minister.

(2) The Minister may remove a member from office if, after affording the member an opportunity to be heard, the Minister is satisfied that the member -

- (a) is mentally or physically incapable of efficiently performing the duties of a member;
- (b) is guilty of conduct that renders him or her unfit to serve as a member; or
- (c) fails to comply with or contravenes a provision of this Act.

(3) If a member dies or vacates office, the vacancy must be filled by the appointment of a person to the vacant office for the unexpired portion of the term of office of the member.

Meetings of Water Regulator and administration

16. (1) Meetings of the Water Regulator are to be held at the times and places as prescribed or as approved by the Minister.

(2) The chairperson of the Water Regulator must preside at a meeting of the Water Regulator, and if the chairperson is absent from a meeting or unable to act, the members present must elect a member to preside at that meeting.

(3) At a meeting of the Water Regulator -

- (a) a majority of the members, including any additional member appointed under section 13(3), form a quorum;

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- (b) all questions are decided by a majority of the votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also a casting vote.

(4) The Water Regulator may hold meetings or allow members to take part in its meetings by using any technology or means of communication that reasonably allows members to hear and take part in discussions as they happen, and a member so taking part in a meeting of the Water Regulator is considered to be present at the meeting.

(5) A decision taken by, or an act done under the authority of, the Water Regulator is not invalid only because of -

- (a) a vacancy in its membership; or
- (b) a defect or irregularity in the appointment of a member.

(6) The Water Regulator may decide its own procedure in relation to anything for which a procedure is not provided for by or under this Act.

(7) The Water Regulator must cause full and accurate minutes to be kept of its proceedings at meetings and make a copy of the minutes available to the Minister or Permanent Secretary at their request.

(8) The administrative work relating to the functions of the Water Regulator must be performed by staff members of the Ministry designated for that purpose by the Permanent Secretary.

Remuneration of members of Water Regulator

17. Members of the Water Regulator who are not in the full-time service of the State must be paid, from money appropriated by Parliament, the allowances, including travel and subsistence allowances as the Minister may determine, with the concurrence of the Minister responsible for finance.

Confidentiality

18. A member of the Water Regulator or a staff member designated under section 16(8) or any other person who is or was engaged in any capacity to assist in the performance of any of the Water Regulator's functions, must not disclose to any person confidential information of any water services provider or authority or person acquired in the performance of any function for the purposes of this Act, whether before, during or after his or her involvement in the affairs of the Water Regulator, except for the purposes of discharging a duty under this Act or when required to do so by any law or a court of law.

Determination of pricing policy for services in water sector

19. (1) The Minister must develop and prescribe a pricing policy for services in the water sector which sets out norms and standards for the fixing of tariffs of fees and charges for those services by the Water Regulator.

(2) For the purposes of developing the pricing policy, the Minister must by notice in the *Gazette* -

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- (a) invite institutions and interested groups and persons in, or connected with, the water sector to make submissions or contributions in relation to, or participate in any other manner as specified in, the formulation of the pricing policy; and
- (b) set out the procedures and time frames for such submissions, contribution or participation.

PART 5
BASIN MANAGEMENT COMMITTEES

Establishment of basin management committees

20. (1) The Minister, after consultation with institutions and other stakeholders and persons having an interest in water resources in a basin or part of a basin, may recognise a group of representatives of such institutions, stakeholders and persons who are organised or associated for the purpose of organising, planning or dealing with matters relating to the development, management, protection and enhancement of water resources in the basin or part of the basin, to be a basin committee for the purposes of this Act in furtherance of the Government's objective in achieving an integrated management of water resources.

(2) The Minister may recognise a group of representatives and persons as a basin management committee only if the Minister is satisfied -

- (a) that interests in the use and management of water resources in the basin or part of the basin concerned are broadly represented in the membership of the group, including interested government ministries, regional councils, local authorities, State-owned enterprises or other statutory institutions and organisations, institutions or associations representing interests in the private sector; and
- (b) that membership of the group will be open for inclusion of further representatives of any other institutions or stakeholders or interested persons as may be directed by the Minister in writing to the group concerned for the purposes of achieving broad representation of interests in their membership.

(3) A basin management committee may be recognised for any purpose connected with the use protection, development, conservation, management or control of a water resource in a basin or part of a basin, including purposes connected with -

- (a) an aquifer;
- (b) shared water supply infrastructure;
- (c) an area comprising adjacent geographic entities with joint water resource management features;
- (d) an area defined for common management of water resources;
- (e) irrigation activities.

(4) If the Minister proposes to recognise a basin management committee, the Minister must, by notice given in the prescribed manner to owners and occupiers of land situated in the area proposed to be defined as the water management area of the committee -

- (a) notify the owners and occupiers of -

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- (i) the proposed recognition of the basin management committee;
 - (ii) the purpose for which the committee proposed to be recognised;
 - (iii) the proposed boundaries of the area to be established and defined as the water management area of the committee; and
 - (iv) any limitations or prohibitions proposed to be imposed to be applicable in the management area; and
- (b) invite owners and occupiers to submit to the Minister, in the manner and within a reasonable period of not less than 30 days as specified in the notice, any representations which they may wish to make in relation to the proposed exercise of the Minister's powers under this section.
- (5) In deciding whether to recognise a basin management committee, the Minister must -
- (a) consider any representations submitted in terms of subsection (4); and
 - (b) have due regard to competing uses of land in the area proposed to be defined as the water management area of the basin management committee.
- (6) The Minister must, by notice published in the Gazette, make known the recognition of a basin committee under subsection (1), which must -
- (a) specify the name assigned to the basin management committee;
 - (b) specify the purpose for which the basin management committee is recognised;
 - (c) define the water management area within or in respect of which the basin management committee may exercise its functions, which may comprise either the whole or part of a basin;
 - (d) stipulate any limitations or prohibitions which the Minister may impose to be applicable in the management area; and
 - (e) any other matters which the Minister considers necessary or appropriate to stipulate or impose for the proper functioning of the basin management committee.
- (7) The boundaries of the water management area of a basin management committee may be described in a notice under subsection (4) or (6) by any means that is most descriptive of the area or by reference to either or both of -
- (a) survey coordinates; or
 - (b) distances from one or more conspicuous physical features.

Composition of basin management committee

21. The composition and membership of a basin management committee are governed by the constitution or other founding document or instrument embodying the terms and conditions of association of the group of representatives recognised as the basin management committee, including representatives of any institutions, stakeholders or interested persons

included in the committee's membership by virtue of a directive of the Minister under section 20(2)(b).

Support of basin management committee

22. (1) The Minister may provide, from money appropriated by Parliament for the purpose, financial and technical support to a basin management committee, including -

- (a) institutional arrangements to establish a support office in the water management area of a basin management committee operated by staff members of the Ministry designated by the Permanent Secretary for the purpose;
- (b) financial resources for defraying expenses pertaining to the functions of the basin management committee; and
- (c) water resources management levies payable to the basin management committee as part of charges for water abstraction and use and wastewater disposal charges.

(2) If a support office referred to in subsection (1)(a) is not established the Permanent Secretary must designate staff members of the Ministry to provide administrative, technical and clerical support to a basin management committee.

Functions of basin management committee

23. The functions of a basin management committee are -

- (a) to advise the Minister on matters concerning the protection, development, conservation, management and control of water resources and water resource quality in its water management area;
- (b) to promote community participation in the protection, use, development, conservation, management and control of water resources in its water management area;
- (c) to prepare or cause to be prepared an integrated water resources management plan for its water management area for submission to the Minister for consideration in developing the Integrated Water Resources Management Plan under section 31;
- (d) to make recommendations to the Minister in relation to applications for licences in respect of its water management area or the amendment, cancellation, or suspension of any such licence;
- (e) to promote community self-reliance, including arrangements for the recovery of costs for the operation and maintenance of any waterwork;
- (f) to monitor and report on the effectiveness of policies and measures in achieving sustainable management of water resources and resource quality in its water management area;
- (g) to collect, manage and share data required for the proper management of its water management area in coordination with the Minister;
- (h) to conduct, with the concurrence of the Minister, a water research agenda appropriate to the needs of institutions and water users within its water management area;

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- (i) to help resolve conflicts relating to water resources and resource quality in its management area;
- (j) to report to the Minister the occurrence or threat of serious water or pollution problems within its management area;
- (k) to compile and submit an annual report on its activities to the Minister and to assist the Minister in the co-ordination of such activities in Namibia; and
- (l) to perform such functions as are delegated or assigned to it by the Minister.

Directive to basin management committee

24. (1) The Minister may give a directive in writing to a basin management committee in relation to the performance of any of its functions.

(2) A basin management committee must give effect to a directive given by the Minister.

Basin management committee to coordinate with regional planning component in region

25. A basin management committee must co-ordinate with the regional planning component of the regional council of the region, or a local authority, where the water management area of the committee is situated to ensure that water resources and resource quality within that area and the region are effectively managed and protected in accordance with this Act.

Establishment of subcommittees

26. A basin management committee may, after consultation with stakeholders in its water management area and the Minister -

- (a) establish any subcommittee to deal with specific issues within a distinct part of its water management area; and
- (b) reconstitute or dissolve a subcommittee.

Dissolution of basin management committee

27. The Minister may, by notice in the *Gazette*, dissolve a basin management committee if the Minister considers it advisable -

- (a) to re-organise basin management committees in a particular area in the interest of effective water resources management; or
- (b) because the circumstances which supported the need for a basin management committee no longer exist.

PART 6
INTERNATIONALLY SHARED WATER RESOURCES

Functions of Minister regarding management of internationally shared water resource

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28. The functions of the Minister in relation to the joint management of internationally shared water resources are -

- (a) to participate with neighbouring and other riparian states in the establishment, development and maintenance of a common database system to store and provide data and information for the protection, sustainable use and management of shared water resources;
- (b) to engage in the joint management, planning and development of projects concerning shared water resources in furtherance of the objectives of the Southern African Development Community Revised Protocol on Shared Watercourses with regard to regional integration, economic growth and poverty alleviation;
- (c) to establish and promote institutional relationships between river basin organisations within Namibia and international river basin organisations;
- (d) to encourage the participation of Namibian stakeholders in discussions concerning the identification and formulation of the interests of Namibia in the development of internationally shared water resources;
- (e) to protect the international water resource quality, including discussion with upstream states to reduce or prevent the deterioration of water quality resulting from activities in upstream states;
- (f) to develop and improve human resource capacity to participate in the management of shared water resources, including negotiations, consultations and conflict resolution; and
- (g) to establish mechanisms, or negotiate the revision of mechanisms, for the management, prevention and resolution of disputes relating to internationally shared water resources.

Giving effect to international agreements

29. (1) For the purpose of ensuring the enforcement and compliance with Namibia's rights and obligations under any international agreement referred to in subsection (2), or any amendment of such an agreement, the Minister may make such regulations as the Minister may consider necessary or expedient for carrying out and for giving effect to the agreement.

(2) The international agreements relating to shared water resources binding on Namibia in relation to which regulations contemplated in subsection (1) may be made, are the following:

- (a) Establishment of the Orange-Senqu River Commission (Orasecom) agreement entered into on 3 November 2000 between the Kingdom of Lesotho, the Republic of Botswana, the Republic of South Africa and the Republic of Namibia;
- (b) Establishment of a Permanent Okavango River Basin Water Commission (Okacom) entered into on 15 September 1994 between the Republic of Angola, the Republic of Botswana, and the Republic of Namibia;
- (c) Zambesi Watercourse Commission (Zamcom) agreement entered into on 13 July 2004 between the Republic of Angola, the Republic of Botswana, the Republic of Malawi, the Republic of Mozambique, the Republic of Namibia, the United Republic of Tanzania, the Republic of Zambia and the Republic of Zimbabwe;

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- (d) Kunene Permanent Joint Technical Commission agreement endorsed and affirmed between the Republic of Angola and the Republic of Namibia; and
- (e) any other agreement relating to internationally shared water resources binding on Namibia, announced by the Minister by notice in the *Gazette* for the purposes of this subsection.

PART 7
MANAGEMENT OF RURAL WATER SUPPLY

Water point committees and local water committees

30. (1) The Minister may, by regulation, make provision for the establishment and accreditation of -

- (a) water point committees; and
- (b) local water committees,

to be entrusted with the responsibility of managing and controlling the supply of water at any rural State waterwork.

- (2) A certificate of accreditation issued to a -
 - (a) water point committee, authorises the committee to manage and control the supply of water at the water point specified in the certificate and established for the water supply requirements of water users in the area where the water point is located;
 - (b) local water committee, authorises the committee to manage and control a rural water supply scheme, or part of such a scheme, specified in the certificate and established for the water supply requirements of two or more water user groups at different points served by a water supply scheme.
- (3) Regulations referred to in subsection (1) may relate to -
 - (a) the requirements to be complied with for the issue of a certificate of accreditation;
 - (b) the constitution of a water point committee or a local water committee;
 - (c) rules for the holding of meetings of members of a water point committee or local water committee;
 - (d) the appointment of a management committee of a water point committee or local water committee to be responsible for the general administration and management of the affairs of the water point committee or local water committee;
 - (e) the powers and functions of a water point committee or a local water committee;
 - (f) the setting of tariffs to be levied by a water point committee or a local water committee for the supply of water;
 - (g) the imposition of conditions to be applicable in relation to a certificate of accreditation;

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- (h) the suspension or withdrawal of a certificate of accreditation; and
- (i) any other matter the Minister considers necessary or expedient to prescribe in relation to water point committees or local water committees.

PART 8
INTEGRATED WATER RESOURCES MANAGEMENT PLAN

Development of Integrated Water Resources Management Plan

31. (1) The Minister must prepare an Integrated Water Resources Management Plan for the development, conservation, management and control of Namibia's water resources in furtherance of the object of this Act.

(2) For purposes of preparing the Integrated Water Resources Management Plan, the Minister must -

- (a) by notice in writing request regional councils, basin management committees and water services providers to cooperate and assist in the preparation of that proposed plan in the manner specified by the Minister in that notice; and
- (b) by notice in the *Gazette*, invite interested persons to submit written comments in relation to that proposed plan to the Minister at the address and by the cut-off date specified in that notice, being not earlier than 60 days after publication of that notice.

(3) If the Minister considers it advisable, the Minister may appoint a consultative committee, consisting of persons who have knowledge or experience in matters to be covered in the Integrated Water Resources Management Plan, to advise the Minister on -

- (a) the preparation of that plan; or
- (b) any matter to be provided for in that plan as specified by the Minister.

(4) The Integrated Water Resources Management Plan must be developed and prepared -

- (a) on the basis of the water resource management plans submitted by basin management committees in respect of their water management areas; and
- (b) with due regard to comments and advice received in accordance with subsections (2) and (3).

Scope of Integrated Water Resources Management Plan

32. (1) The Integrated Water Resources Management Plan is to include -

- (a) a water balance for the water management area of each basin management committee, or any other specified area in Namibia, that compares forecasted water demand with data and information concerning water availability;
- (b) proposed options for meeting forecasted demand for each water management area or other area referred to in paragraph (a) where the forecasted water demand exceeds available supply, including options in relation to -

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- (i) water demand management programmes;
 - (ii) determination of volumes of effluent available for re-use or for other secondary activities such as irrigation;
 - (iii) reallocation of water between economic sectors to higher value added activities;
 - (iv) necessary infrastructure construction;
 - (v) desirable institutional initiatives;
 - (vi) inter-basin transfers of water; and
 - (vii) any other measure, including appropriate legal reform, which may be necessary to achieve the objectives of the Integrated Water Resources Management Plan; and
- (c) provision for the protection of water resources and resource quality.

(2) Any conflict between the integrated water resources management plans submitted by basin management committees referred to in section 31(4) must be resolved by the Minister after consultation with the basin management committees whose plans are in conflict.

Approval and tabling of Integrated Water Resources Management Plan

33. As soon as practicable after completion of the Integrated Water Resources Management Plan, the Minister must -

- (a) submit that plan to Cabinet for approval; and
- (b) lay a copy of that approved plan on the Table of the National Assembly.

Review of Integrated Water Resources Management Plan

34. (1) The Minister must review the Integrated Water Resources Management Plan at the end of 10 years following the approval of the Plan by Cabinet, and thereafter at intervals of not more than 10 years.

(2) The Minister may review the Integrated Water Resources Management Plan at any time.

(3) The procedures that apply to the preparation, approval by Cabinet and Tabling in the National Assembly of the Integrated Water Resources Management Plan under this Part apply, with any necessary modifications, to the review of the Plan.

PART 9
WATER SUPPLY, ABSTRACTION AND USE

Safety of water supply

35. Without prejudice to the powers conferred on the Minister responsible for health under the laws relating to public health, the Minister, with the concurrence of the Minister responsible for health must, for the purpose of ensuring the supply of healthy and safe water under this Act -

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- (a) prescribe, water quality standards in respect of water supply for drinking and household purposes, including maximum levels of concentration of waterborne contaminants;
- (b) establish and maintain laboratories and other facilities and measures for the capacity to monitor, test and verify the quality of any water supply;
- (c) prescribe requirements for the licensing of privately owned laboratories established for testing and ascertaining the quality of water supply for any purpose, including qualification requirements of water laboratory technicians;
- (d) prescribe criteria for the quality of recycled water to ensure that such water is safe and suitable for its intended use;
- (e) develop and prescribe a national programme for the testing and monitoring of water quality in Namibia; and
- (f) prescribe requirements for evaluating and approving processes and designs for the treatment of potable water before a licence for a water treatment plant may be issued.

Reliability of water supply

36. (1) The Minister must ensure that all Namibians have access to water conforming to the prescribed quality standards from an affordable and reliable water supply that is adequate for basic human requirements, subject to subsection (2).

(2) If the supply of water by a water services provider is found not to comply with the prescribed water quality standards, the Minister may -

- (a) upon application by the water services provider, grant exemption to the service provider from compliance with any prescribed water quality standards if the Minister is satisfied that -
 - (i) the water supply will not adversely affect the health of water users; and
 - (ii) water users are given the relevant information in respect of the water supply;
- (b) after consultation with water services providers or basin management committees and any affected community, take any action the Minister considers necessary in the public interest to remedy any situation relating to water quality that may affect the health of water users.

(3) For the purposes of ensuring the adequacy, affordability and reliability of water supply, the Minister must -

- (a) prescribe minimum standards of water supply services to be complied with by water services providers and owners of water treatment facilities, including requirements for persons engaged for operating any waterwork used for supplying water for domestic, commercial, industrial or agricultural use;
- (b) periodically monitor the operations of water services providers and owners of water treatment facilities and the performance of persons engaged for operating a

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waterwork to ensure the minimum standards and requirements referred to in paragraph (a) are complied with.

Reservation of water resources

37. (1) If the Minister, on the Minister's initiative or on the recommendation of a basin management committee, considers it advisable in order to make provision for a water supply in the water management area concerned -

- (a) to meet the requirements of water users for domestic use; or
- (b) to reasonably protect and maintain aquatic and wetland ecosystems, including their biological diversity, and to maintain essential ecosystem functions,

the Minister may reserve all or part of the flow of a watercourse, a groundwater resource or water stored in a dam or lake from being abstracted or used under this Act.

(2) Before the Minister makes a reservation under subsection (1), the Minister must consult with the regional council of the region where the water management area is located to obtain and consider any comments of the regional council in relation to any matter pertaining to the proposed reservation.

(3) The Minister must cause a notice to be published in the *Gazette* giving particulars of a reservation made under subsection (1).

(4) The quantity of water in a water resource reserved under subsection (1) must be taken into account in determining an application for -

- (a) a licence to abstract and use water under section 46; or
- (b) a licence to discharge effluent or to construct or operate a wastewater treatment facility under section 75.

(5) Despite a reservation made under subsection (1), a licence for the abstraction or use of water from a reserved water resource may be issued in accordance with this Act for a purpose for which the resource is reserved.

Abstraction of water for domestic use

38. (1) Subject to subsection (3), a person who abstracts water from a water resource for own domestic use is exempted from the requirement for a licence to abstract and use water.

(2) A person may abstract and use water for domestic use subject only to such limitations as are imposed by or under this Act or any other law for public health or environmental purposes or as prescribed by the Minister for purposes of efficient water management practices.

(3) Subsection (1) does not apply to a person who abstracts water in bulk from a water resource and supplies it against payment to others for domestic use.

Private well for abstraction of water for domestic use

39. An owner or occupier of land situate outside a local authority area, and not being within a water protection area, may without the need of a licence -

- (a) abstract water from a well located on the land for own domestic use on the land; or
- (b) dig or sink a well on the land solely for the purpose of abstracting water for own domestic use on the land.

Right to collect meteoric water

40. An owner or occupier of land, including communal land, may, without the need for a licence, collect meteoric water falling or coming onto the land solely for purposes of own domestic use on the land, but not to an extent that may negatively affect the environment or persons downstream of such collection point.

PART 10 WATER SERVICES PROVIDERS

Licensing of water services providers

41. (1) A person may not operate as a water services provider without holding a licence as a water services provider issued by the Minister under this Act that authorises the person -

- (a) to distribute water to end-consumers; and
- (b) to operate a water treatment facility.

(2) An application for a licence as a water services provider must -

- (a) be made in the manner and form approved by the Minister; and
- (b) be accompanied by the prescribed application fee.

(3) The Minister may by notice in writing given to the applicant require the applicant -

- (a) to provide any further information specified in the notice within the period specified in the notice; or
- (b) to participate in an investigation specified in the notice designed to enable the Minister to assess the likely effects of granting the application and to bear the full costs of the investigation, or the part of those costs as specified in the notice.

(4) The Minister may take any action the Minister considers necessary for the purpose of deciding the application, including -

- (a) consulting any person or authority in relation to the application;
- (b) appointing a person or committee to carry out an investigation and report to the Minister in relation to any matter concerning the application.

(5) In determining an application the Minister may -

- (a) approve the application and issue the licence to the applicant; or
- (b) refuse the application.

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- (6) A licence of a water services provider -
 - (a) must be issued in the form determined by the Minister; and
 - (b) is subject to the conditions -
 - (i) as prescribed; or
 - (ii) as imposed by the Minister and specified in the licence.

Issue of combined licence to water services provider

42. The Minister may, with the consent of an applicant for a licence as water services provider, grant a combined licence to abstract, treat and distribute water, or to treat and distribute water, as the case may be, if the requirements prescribed by this Act for a separate licence for each type of work or activity are complied with.

Failure of water services provider to comply with licence conditions

43. (1) If a water services provider fails to comply with this Act or a condition to which the licence of the water services provider is subject, the Minister may direct the water services provider, in writing, to remedy its failure.

- (2) A directive under subsection (1) must set out -
 - (a) the nature of the failure;
 - (b) the measures required to be taken to remedy the failure; and
 - (c) a reasonable time within which those measures are to be taken.

(3) If a water services provider fails to take the measures specified in the directive, the Minister, with the concurrence of the Minister responsible for local authorities, where the water services provider is a local authority, and after affording the water services provider a reasonable opportunity to make representations, may -

- (a) direct the water services provider to cease operating any waterwork or to cease any activity under the licence; and
 - (b) authorise, in writing, any authority or person to take over and perform any functions of the water services provider under the licence.
- (4) An authority or person authorised under subsection (3) may -
- (a) exercise or perform any relevant powers or functions on behalf of the water services provider; and
 - (b) use any infrastructure of the water services provider to the extent necessary to carry out the functions of the water services provider.

(5) If the Minister is satisfied that a water services provider is able to resume its functions under the licence in an effective manner, the Minister may direct the water services provider and an authority or person authorised under subsection (3)(b) to make suitable arrangements for the resumption of the water services provider's functions under the licence, with effect from a date specified by the Minister.

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(6) Despite subsections (1) and (2), the Minister may exercise the powers conferred by subsection (3) without any prior directive in accordance with subsection (2) in any circumstances in which the Minister considers that the public interest requires that immediate action be taken.

(7) The Minister may recover from the water services provider concerned any expenses incurred in connection with any action taken by an authority or person authorised under subsection (4) on behalf of the water service provider.

PART 11
LICENCE TO ABSTRACT AND USE WATER

Licence to abstract and use water

44. (1) Except as provided by sections 38 and 39, a person may not abstract and use water from a water resource, unless the person holds a licence issued by the Minister that authorises the abstraction and use of water from that water resource.

- (2) An application for a licence to abstract and use water must -
- (a) be made in the manner and form approved by the Minister;
 - (b) contain or be accompanied by any information that is prescribed or is required by the Minister; and
 - (c) be accompanied by the prescribed application fee.
- (3) The Minister may by written notice given to the applicant require the applicant -
- (a) to provide any further information specified in the notice within the period specified in the notice; or
 - (b) to participate in an investigation specified in the notice designed to enable the Minister to assess the likely effects of granting the application and to bear the full costs of the investigation, or such part of those costs as specified by the Minister in the notice.

Consideration of application for licence to abstract and use water

45. (1) Where the location of the proposed abstraction is within the water management area of a basin management committee, the Minister must refer the application to that committee for investigation and the making of a recommendation in relation to the application.

(2) In considering an application for a licence to abstract and use water, the Minister must have regard to the following matters -

- (a) any recommendations of the relevant basin management committee made in relation to the application;
- (b) whether the proposed abstraction and use of water under the licence is consistent with -
 - (i) the objective and principles referred to in sections 2 and 3;

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- (ii) the Integrated Water Resources Management Plan; and
- (iii) any reservation of water made under section 37;
- (c) the impact the proposed abstraction and use of water under the licence is likely to have on -
 - (i) existing water users;
 - (ii) water resources;
 - (iii) water resource quality; or
 - (iv) water reserved or allocated for environmental uses;
- (d) the estimated potential of the surface water or ground water resource from which the proposed abstraction is proposed to be made;
- (e) the conformity of the proposed abstraction and use with efficient water management practices;
- (f) the need to redress the effects of past racial and gender discrimination;
- (g) the effect the proposed abstraction is likely to have on -
 - (i) the quality of water of a water resource or on an aquatic ecosystem dependent on the water resource;
 - (ii) the international obligations of Namibia relating to internationally shared waters;
- (h) if the application involves the construction of a dam or dugout to impound water, the type, size and location of the proposed dam or dugout and the purpose of the impoundment;
- (i) the need to ensure the efficient and beneficial use of water resources;
- (j) the existing water use by any traditional community from the relevant water resource and the extent of customary rights and practices in relation to the water resource; and
- (k) any other matter the Minister considers relevant to have regard to.

Determination of application

- 46.** (1) In determining the application the Minister may -
- (a) approve the application and issue the licence to the applicant; or
 - (b) refuse the application.

(2) The Minister may not approve the application unless the Minister considers that the abstraction and use of water under the licence is not likely to have any significant impact in terms of the matters to be considered under section 45.

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(3) Despite subsection (1) the Minister, instead of refusing an application for a licence to abstract and use water, may, after negotiation and with the applicant's consent, issue to the applicant a licence that confers rights different from the authorisation applied for by the applicant and to the extent the Minister considers appropriate to approve.

(4) If the approval of an application is in respect of the impoundment of water into a proposed dam or dugout, the issue of the licence may be made conditional on the completion of the construction of the dam or dugout in accordance with any requirements prescribed under section 93 or as imposed and specified in writing by the Minister.

(5) A licence to abstract and use water -

- (a) must be issued in the form determined by the Minister;
- (b) must specify the activities authorised by the licence; and
- (c) is subject to the conditions -
 - (i) as prescribed; or
 - (ii) as imposed by the Minister and specified in the licence.

(6) More than one licence to abstract and use water may be issued in respect of the same water resource, subject to the terms and conditions that the Minister may impose to protect the water resource from over utilisation.

Combined licence to water abstract and use water and to discharge effluent

47. The Minister may, with the consent of the applicant concerned, grant a combined licence to abstract and use water and to discharge effluent if the requirements prescribed by this Act for a separate licence for each type of work or activity are complied with.

Term of licence to abstract and use water

48. Unless sooner cancelled, a licence to abstract and use water, or a combined licence, remains in force for the period, not exceeding five years, as determined by the Minister and specified in the licence.

Renewal of licence to abstract and use water

49. (1) The holder of a licence to abstract and use water may, at least three months before the expiry of the licence, apply to the Minister for the renewal of the licence.

- (2) An application for renewal must -
 - (a) be made in the form and manner approved by the Minister;
 - (b) contain the information that is prescribed or required by the Minister; and
 - (c) be accompanied by the prescribed application fee for the renewal of the licence.
- (3) In considering an application for the renewal of the licence the Minister must -

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- (a) have regard to the matters mentioned in section 45 and, if it is a combined licence, also to the matters mentioned in section 75; and
- (b) renew the licence unless, in the opinion of the Minister there are good reasons not to do so.

Amendment of licence to abstract and use water

50. (1) The Minister may amend a licence issued under section 46 or 47 to the extent necessary to prevent or rectify any significant adverse effect in relation to any matter mentioned in section 45 caused or likely to be caused by an activity carried out under the licence.

- (2) Before the Minister amends the licence, the Minister must -
 - (a) give at least 30 days' written notice of the proposed amendment to the holder of the licence and specify in the notice the reasons for the amendment;
 - (b) consider any representations submitted by the holder of the licence in relation to the proposed amendment; and
 - (c) if the licence relates to a location within the water management area of a basin management committee, consider any recommendation made by that committee in connection with the proposed amendment.

Suspension or cancellation of licence to abstract or use water

51. (1) The Minister may suspend or cancel a licence issued under section 46 or 47, if the holder of the licence -

- (a) fails to comply with a condition to which the licence is subject;
- (b) fails to comply with this Act or a directive given under this Act in connection with the licence;
- (c) fails to commence with operations under the licence within the period specified in the licence;
- (d) having commenced with such operations, discontinues operations under the licence or fails to use the full quota allocated under the licence for a continuous period of at least three years; or
- (e) fails to pay any fee or charge payable in respect of the licence.

(2) The Minister may not suspend or cancel a licence under subsection (1), unless the Minister -

- (a) has given written notice to the holder of the licence that the Minister proposes to suspend or cancel the licence and the reason for the proposed action;
- (b) has given the person the opportunity to make submissions to the Minister, within a reasonable specified period of not less than 7 days, with respect to the proposed action; and
- (c) has taken any such submissions into consideration.

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(3) The Minister must give written notice of the suspension or cancellation of a licence to the holder of the licence and may, in a notice of suspension, state any conditions required to be complied with for the suspension to be lifted.

(4) A suspension of a licence remains of force -

- (a) for the period specified in the notice of suspension; or
- (b) until the Minister, in writing, notifies the holder of the licence that the suspension is lifted.

(5) The Minister must cancel a licence to abstract and use water if the holder of the licence, by notice in writing to the Minister, surrenders the licence, to be of effect as from the date of surrender specified in the notice.

Procedure upon expiry or cancellation of licence to abstract and use water

52. If a licence to abstract and use water expires and is not renewed or is cancelled, the Minister may -

- (a) require the holder of the licence to take all reasonable steps to ensure that the abstraction point concerned and affected area is restored, at the person's own expense, to a condition similar to the condition before the licence was granted, including to seal off a borehole used for water abstraction in a manner directed by the Minister, if doing so is practical in the circumstances; or
- (b) enter into an arrangement with the holder of the licence or any other person appointed by agreement with the holder, for the maintenance of a waterwork or the continuation of the operation of a wastewater treatment facility.

Licence to abstract and use water not transferable

53. Except as provided by section 54, a licence to abstract and use water or any right conferred by such a licence is not transferable by way of lease, sale or alienation otherwise.

Succession to licence to abstract and use water upon death of holder of licence

54. (1) Upon the death of the holder of a licence to abstract and use water, the licence passes to any person nominated by the deceased in his or her will or, in the absence of such a nomination, to the heir or heirs of the deceased's estate, if the person or persons concerned agree to obtain the licence.

(2) A licence passed to a person in accordance with subsection (1) is subject to the same conditions that applied to the licence before the death of the holder of the licence.

(3) For purposes of succession as contemplated in subsection (1), the person nominated by the deceased or the heir or hers of the deceased's estate must provide to the Ministry -

[The word "hers" should be "heirs".]

- (a) a certified copy of the letters of execution or endorsement, as the case may be;

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- (b) where a Notice is caused by the Master of the High Court to be published in the *gazette*, as contemplated in section 18 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), a copy of the *gazette* in which such Notice is published;

[The word “Gazette” should be capitalised in both uses in paragraph (b).]

- (c) where the administration of a deceased’s estate is supervised by a magistrate in terms of section 4A of the Administration of Estates Act, 1965 (Act No. 66 of 1965), certified copies of such documents pertaining to the estate which have been lodged with the magistrate or which documents are under his or her control; or
- (d) any other certified document issued by the Master of the High Court or the magistrate supervising the administration of the deceased’s estate, indicating that such person was nominated by the deceased or that such person is a heir of the deceased’s estate.

[The phrase “a heir” should be “an heir” to be grammatically correct.]

Licence to abstract and use water does not guarantee availability of water

55. A licence to abstract and use water does not guarantee the availability of water and the State is not liable if a water resource, for whatever reason, fails to yield the quantity of water permitted for abstraction in the licence.

PART 12
CONTROL AND PROTECTION OF GROUNDWATER

Drilling or construction of borehole or well

56. (1) Except as provided by section 39, an owner or occupier of land may not undertake or permit to be undertaken on the land any work to -

- (a) drill or construct a borehole;
- (b) deepen, enlarge, alter, clean or rehabilitate a borehole;
- (c) construct a well or insert well-points; or
- (d) engage in a borehole drilling programme,

unless the person is the holder of a borehole licence issued by the Minister which authorises that such work be undertaken or such work is exempt from the requirement of a borehole licence in terms of a notice published under subsection (2).

- (2) The Minister may by notice published in the *Gazette* exempt -
- (a) any person or class of persons; or
- (b) any borehole works or class of borehole works,

from the requirement of a borehole licence in terms of subsection (1), either unconditionally, or on specified conditions or in specified circumstances.

- (3) An application for a borehole licence must -

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- (a) be made in the form and manner approved by the Minister;
- (b) contain or be accompanied by any information that is prescribed or required by the Minister;
- (c) be accompanied by the written consent of the owner of the land on which the borehole is situated or to be situated, if the applicant is not the owner of the land; and
- (d) be accompanied by the prescribed application fee.

(4) If the proposed borehole works under the licence is to be undertaken on land within the water management area of a basin management committee, the Minister must refer the application to that committee for investigation and the making of a recommendation in relation to the application.

(5) In considering an application for a borehole licence the Minister must have regard to -

- (a) any recommendation of the relevant basin management committee made in relation to the application;
- (b) the hydro geological conditions and expected groundwater potential of the area where drilling is to be undertaken, unless the purpose of the drilling work is to establish those conditions;

[The term “hydro geological” is hyphenated elsewhere in the Act.]

- (c) whether the proposed use of water to be abstracted conforms to efficient water management practices; and
- (d) the effect that the abstraction of water from the borehole or well to which the application relates is likely to have on -
 - (i) any customary rights and practices related to the water resource concerned or the needs of any community dependent on that water resource; or
 - (ii) any aquifer or the flow of groundwater.

(6) In determining an application for a borehole licence, the Minister may -

- (a) approve the application and issue the licence to the applicant; or
- (b) refuse the application.

(7) A borehole licence -

- (a) must be issued in the form determined by the Minister;
- (b) must specify the borehole works authorised to be carried out under the licence; and
- (c) is subject to the conditions -
 - (i) as prescribed; or

- (ii) as imposed by the Minister and specified in the licence.

Amendment of borehole licence

57. (1) The Minister may amend a borehole licence to the extent necessary to prevent or rectify any significant adverse effect in relation to any matter mentioned in section 56(5) caused or likely to be caused by an activity carried out under the licence.

- (2) Before the Minister amends the licence, the Minister must -
- (a) give at least 30 days' written notice of the proposed amendment to the holder of the licence and specify in the notice the reasons for the amendment; and
 - (b) consider any representations submitted by the holder of the licence in relation to the proposed amendment.

Borehole licence not transferable

58. Subject to section 59, a borehole licence or a right conferred by such licence is not transferable by way of lease, sale or alienation otherwise.

Succession to borehole licence upon death of holder of licence

59. (1) Upon the death of the holder of a borehole licence, the licence passes to any person nominated by the deceased in his or her will or, in the absence of such a nomination, to the heir or heirs of the deceased's estate, if the person or persons concerned agree to obtain the licence.

(2) A licence passed to a person in accordance with subsection (1) is subject to the same conditions that applied to the licence before the death of the holder of the licence.

Duty to keep records and provide information on drilling

60. The holder of a borehole licence, or if the holder engages another person to drill a borehole or carry out related work on land owned by the licence holder or on land owned by another person, the holder of the licence, or the contractor, where a contractor is engaged, must -

- (a) keep such records of the drilling and other operations carried out as stipulated in the licence; and
- (b) furnish the Minister with information on the findings of such drillings or operations when requested to do so by the Minister in writing.

Borehole drilling for mining or other operations

61. (1) Despite any other law, or authorisation granted by a competent authority under any other law, a person who, for the purpose of exploring for or extracting minerals or any other substance, other than groundwater, or for road or other construction work, proposes to drill a borehole, deepen or enlarge an existing borehole, or make or deepen an excavation in the ground to the level or below the level of the water table, may not commence with work in that regard unless the person, in accordance with section 56, has applied for and has been granted a borehole licence by the Minister to undertake such work.

- (2) A borehole licence granted under subsection (1) -

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- (a) must specify the work authorised to be carried out under the licence; and
 - (b) is subject to the conditions -
 - (i) as prescribed; or
 - (ii) as imposed by the Minister and specified in the licence.
- (3) Conditions referred to in subsection (2)(b) may include requirements as to -
- (a) the furnishing of any specified data or information; and
 - (b) the taking of specified measures for ensuring that groundwater is conserved and protected.
- (4) Any excess water collected for continued periods of more than 7 days, as a result of any operation referred to in subsection (1), must be disposed of as determined by the Minister in writing.

Refusal of access to State-owned borehole

- 62.** (1) A person may not -
- (a) do any act obstructing or interfering with any person from using a State-owned borehole; or
 - (b) damage, remove or otherwise tamper with any equipment or device installed at such a borehole which is provided for public use or for the monitoring of groundwater behaviour.

(2) The Minister, a water point committee or local water committee or a basin management committee may summarily remove any object causing an obstruction or interference referred to in subsection (1) and recover the reasonable costs incurred in such removal from the person responsible for the obstruction or interference.

Wastage of groundwater

- 63.** A person may not cause or allow any groundwater to run to waste from a borehole, well, shaft, mine or other excavation, except -
- (a) for the purpose of testing the capacity or quality of the supply, or to clean, sterilize, examine or repair a borehole;
 - (b) when the water interferes or threatens to interfere with mining operations or performance of any other underground work; or
 - (c) when groundwater poses a threat to life or property.

Licence to dispose of groundwater abstracted from mine or underground work

- 64.** (1) Except under authority of a groundwater disposal licence issued by the Minister, a person may not abstract and dispose of groundwater -
- (a) from a mine or other excavation to facilitate mining or other underground operations; or

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- (b) to dewater an area for construction purposes.
- (2) An application for a groundwater disposal licence must -
 - (a) be made in the form and manner approved by the Minister;
 - (b) contain or be accompanied by any information that is prescribed or required by the Minister; and
 - (c) be accompanied by the prescribed application fee.
- (3) In determining the application, the Minister may -
 - (a) approve the application and issue the licence to the applicant; or
 - (b) refuse the application.
- (4) A groundwater disposal licence -
 - (a) must be issued in the form determined by the Minister;
 - (b) must specify the activities authorised by the licence; and
 - (c) is subject to the conditions -
 - (i) as prescribed; or
 - (ii) as imposed by the Minister and specified in the licence.
- (5) The holder of a licence to dispose of groundwater may not dispose of water abstracted under the licence at a place or in a manner other than the place or manner specified in the licence or as approved by the Minister in writing.

Water abstraction in emergency

- 65.** (1) A person may in an emergency situation for the protection of human life or property, without a licence, abstract water from a mine or any other place.
- (2) A person abstracting water under subsection (1) must -
 - (a) as soon as practicable inform the Minister verbally of the emergency situation; and
 - (b) not later than 14 days after the emergency situation is resolved, furnish the Minister with a written report of the incident.

Protection of aquifers

- 66.** (1) For the purpose of promoting the sustainable use and protection of aquifers, the Minister may -
- (a) cause the groundwater potential of any aquifer to be investigated;

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- (b) by notice published in a manner appropriate for the area, impose restrictions or limitations to ensure that the total abstraction of water permitted from an aquifer does not exceed the groundwater potential;
- (c) determine and define aquifer boundaries based on available hydro-geological information;
- (d) prescribe, or impose as licence conditions, special requirements and restrictions with respect to the drilling and use of artesian and subartesian boreholes for the purpose of preventing -
 - (i) the wastage of water;
 - (ii) the leakage of water from confined artesian aquifers to other aquifers;
 - (iii) the contamination of the aquifer; or
 - (iv) the reduction or loss of artesian pressure;
- (e) investigate the need or advisability of the construction of works to enhance the natural recharge of aquifers or to facilitate the artificial recharge of aquifers where feasible;
- (f) prescribe procedures and conditions for the artificial recharge of aquifers, including standards for the quality of water that may be injected;
- (g) prescribe, or impose as licence conditions, special requirements for enhancement of natural recharge to lower the risk of aquifer pollution;
- (h) direct the owner or occupier of land to seal off any borehole situated on the land -
 - (i) which was drilled without the necessary licence; or
 - (ii) which may be leaking water from the confined artesian aquifer into the surrounding unconfined aquifers.

(2) If a person fails to comply with a directive given under subsection (1)(h) within the time specified in the directive, the Minister may -

- (a) cause the borehole to be sealed off by a person designated by the Minister for the purpose; and
- (b) recover from the owner or occupier concerned, the reasonable cost incurred in sealing off the borehole as a debt owing to the State.

Licensing of borehole drillers and well constructors

67. (1) A person may not undertake work to -
- (a) drill a borehole;
 - (b) deepen, enlarge, alter, clean or rehabilitate a borehole;
 - (c) construct a well or insert well-points; or

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- (d) seal off a borehole,

unless the person is the holder of a driller's licence of the prescribed category that authorises work of the kind proposed to be carried out, or the person is working under the continuous on-site supervision of the holder of such a licence.

(2) Subject to any exemption as may be prescribed, a driller's licence is required for the performance of any work referred to in subsection (1) in relation to a borehole or well for any purpose, including water supply, groundwater investigation, exploring for or extracting any mineral or other substance, other than water, or for road or other construction work.

- (3) An application for a driller's licence must -

- (a) be made in the form and manner approved by the Minister;
- (b) contain or be accompanied by any information that is prescribed or required by the Minister; and
- (c) be accompanied by the prescribed application fee.

- (4) In determining the application, the Minister may -

- (a) if the Minister is satisfied that the applicant has the prescribed qualifications, approve the application and issue the driller's licence to the applicant; or
- (b) refuse the application.

- (5) A driller's licence -

- (a) must be issued in the form determined by the Minister;
- (b) must specify the category of work that may be carried out under the licence; and
- (c) is subject to the conditions -
 - (i) as prescribed; or
 - (ii) as imposed by the Minister and specified in the licence.

(6) The Minister must prescribe the qualifications to be held or technical requirements to be complied with by a person in order to be eligible to be granted a driller's licence of a specified category.

(7) The Minister may prescribe obligations to be complied with by licensed drillers in relation to work carried out or to be carried out under the licence concerned.

(8) If the holder of driller's licence fails to comply with, or causes or permits a person to contravene or fail to comply with, a condition to which the licence is subject, the Minister, after giving the holder of the licence reasonable opportunity to make submissions to the Minister, may -

- (a) suspend the licence, either for a specified period or indefinitely, and state any conditions to be complied with for the suspension to be lifted;
- (b) cancel the licence; or

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- (c) order the holder of the licence to pay a penalty determined by the Minister, not exceeding the prescribed amount.

(9) A penalty imposed under subsection (8)(c) constitutes a debt due by the licence holder to the State.

PART 13
WATER POLLUTION CONTROL

Pollution Control

68. (1) A person may not by any act or omission cause a water resource to be polluted, either directly or indirectly, unless authorised to do so by or under this Act or any other law, and in accordance with that authorisation.

- (2) A person -
 - (a) who is responsible for carrying on any activity involving the production, conveyance, storage, or deposit of, or dealing otherwise with, wastewater, effluent or waste; or
 - (b) being the owner or occupier of land, or a person otherwise in control of land, where any other activity is carried on or any situation exists which is or may be a source of pollution,

must take precautions to ensure that no activity or situation results in causing a water resource to be polluted, including any measures the Minister, in writing, directs the person to take within a specified time for the purpose of preventing such pollution.

(3) A person who, by any act or omission, causes or permits any person to cause a water resource to be polluted must, without undue delay, take such measures as are reasonably necessary to remedy the effects of the pollution, including any measures the Minister, in writing, directs the person to take within a specified time for the purpose of remedying the effects of the pollution.

(4) If a person fails to comply with a directive given by the Minister under subsection (2) or (3) within the time specified in the directive, or such additional time as the Minister on application may approve, the Minister may -

- (a) cause any action to be taken that is reasonably necessary to give effect to the requirements of the directive given under the relevant subsection; and
- (b) recover from the person, as a debt owing to the State, the reasonable cost incurred in connection with work undertaken to give effect to those requirements.

Obligation to provide and operate systems for discharge of effluent, wastewater and waste

69. (1) A local authority and other water services providers or any other authority, body or person that controls or supplies water, is responsible to provide, manage and operate systems for the conveyance, treatment and disposal of wastewater produced in its area of operation, including, subject to section 70(2), industrial wastewater.

(2) A local authority and other water services provider or an authority, body or person referred to in subsection (1) must perform the functions contemplated in that subsection -

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(a) under a licence to discharge effluent, a licence to construct or operate a wastewater treatment facility or a waste disposal site issued by the Minister; and

(b) in accordance with the conditions to which the licence is subject.

(3) A local authority or any other authority or person that has authority over any area in which any domestic or industrial activity, that may cause pollution, takes place, is ultimately responsible for the prevention of any pollution in that area.

(4) Where there is more than one wastewater treatment or waste disposal site in an area referred to in subsection (3), only one licence may be issued to the local authority or other authority or person having authority over that area.

(5) A lessor of land or premises where any industrial, mining or other activity is carried on by the lessee, that may cause water pollution, is responsible to remedy the effects of any pollution caused by such activity in the event that the lessee fails to remedy the effects of such pollution.

(6) An occupier of land used for agricultural purposes is responsible to ensure that -

(a) wastewater, solid waste, manure, or other obnoxious materials produced on the land that may cause pollution of water or a water resource are stored and dealt with; and

(b) any chemicals or toxic materials, including pesticides and fertilizers, are stored and applied,

in a manner that does not pollute groundwater or surface water resources or significantly affect resource quality.

Prohibition on discharge of wastewater, effluent or waste without licence

70. (1) Except under a licence issued under this Act that authorises the holder of the licence to do so, or in accordance with an exemption granted under section 71, a person may not -

(a) by any act or omission, cause or allow any wastewater, effluent or waste to be discharged or deposited, directly or indirectly, into a water resource, or to be introduced into a borehole or well;

(b) construct a wastewater treatment facility or establish a waste disposal site above an aquifer or within such distance of an aquifer where it is likely to constitute a source of pollution, directly or indirectly, of the aquifer.

(2) A person may not discharge into the sewerage system any industrial wastewater from an abattoir, tannery, brewery, dye-house or any other obnoxious industrial wastewater which may inhibit the biological process of the wastewater treatment facility of a local authority or other owner of such a facility, except if the discharge is done in accordance with a special agreement between the person discharging such industrial wastewater and the local authority or other owner concerned.

(3) A local authority or other person holding a licence to operate a wastewater treatment facility may only enter into an agreement referred to in subsection (2), in respect of the discharge of industrial wastewater, if the local authority or that person is authorised, by

virtue of a specific condition of the licence, to accept such wastewater into the sewerage system or if the Minister, in writing, grants approval for such an agreement.

Exemption of certain discharges

71. (1) The Minister may, upon application by any person, exempt that person in writing from any provision of section 70, and authorise the person -

- (a) to discharge effluent from any septic tank, French drain or similar private sewerage facility serving a single household into a water resource, including into a borehole or well;
- (b) with or without conditions, to discharge certain effluents based on volume or composition of the effluent or type of use;
- (c) to use alternative methods for the treatment or disposal of wastewater, effluent or waste in accordance with any technology evaluated and approved by the Minister.

(2) The Minister may withdraw an exemption granted under subsection (1), or amend the exemption by imposing new or further conditions, or by withdrawing certain conditions, in any circumstances in which the Minister considers that the public interest requires such withdrawal or amendment.

Application for licence to discharge effluent or construct or operate wastewater treatment facility or waste disposal site

72. (1) An application for a licence to discharge effluent or to construct or operate a wastewater treatment facility or a waste disposal site, must -

- (a) be made in the form and manner approved by the Minister;
- (b) contain or be accompanied by the information as prescribed or as required by the Minister; and
- (c) be accompanied by the prescribed application fee.

(2) The Minister may require the applicant to submit an environmental impact analysis of the likely effects of activities proposed to be authorised by the licence on water resources and owners and occupiers of land in the area where effluent is proposed to be discharged or the proposed wastewater treatment facility or waste disposal site is to be located.

(3) An environmental impact analysis referred to in subsection (2) must -

- (a) comply with such basic requirements as are prescribed and any other requirements as the Minister may require; and
- (b) be carried out and prepared, at the applicant's own expense by a person who has appropriate expertise in relation to the identification and evaluation of potential risks involved in the type of activities as proposed to be authorised by the licence.

Advertisement of application and submissions

73. (1) If the Minister considers it advisable that public notification be given of the application for the purpose of inviting submissions in relation to the application, the Minister may, in writing, direct the applicant to advertise the application.

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(2) An advertisement required under subsection (1) must be published once a week for two consecutive weeks in at least two newspapers circulated widely in Namibia and must -

- (a) contain the particulars in relation to the application as prescribed or as required by the Minister;
- (b) state that the application and, if applicable, the environmental impact analysis, are available for inspection at the office of the Permanent Secretary and any other place as the Minister may direct or approve;
- (c) invite written submissions, in relation to the licence applied for, to be lodged with the Minister; and
- (d) specify the closing date for submissions, which may not be earlier than 30 days after the date of the last publication of the advertisement in the newspapers.

(3) The applicant must furnish proof of advertisement of the application to the Minister as soon as is practicable after the date of the last publication of the advertisement in the newspapers.

(4) If any written submission objecting to the issue of the licence applied for is received, the Minister must, by written notice to the applicant -

- (a) provide the applicant with a copy of the written objection; and
- (b) advise the applicant that any representation in response to the objection may be submitted to the Minister within 30 days of the date of the Minister's notice.

Procedure for consideration of application

74. (1) The Minister may take any action the Minister considers appropriate for considering the application for a licence, which may include -

- (a) consulting any institution, person or authority on the application, the environmental impact analysis or any submission received in relation to the application;
- (b) appointing any person or a committee of persons to carry out an investigation, including a process of public consultation, and to report to the Minister, in relation to any matter concerning the application, the environmental impact analysis or any submission;
- (c) holding a public hearing or directing a public hearing to be held before a person or committee designated by the Minister for the purpose.

(2) At least 14 days before the date fixed for the holding of a public hearing, in accordance with subsection (1)(c), the Minister must give notice of the hearing -

- (a) in writing to the applicant;
- (b) in writing to every person from whom a submission in relation to the application has been received; and
- (c) by publication of the notice in at least two newspapers circulated widely in Namibia.

- (3) The notice in terms of subsection (2) must -
- (a) specify the date, time and place of the public hearing; and
 - (b) contain a brief description of the nature of the application.

Considering and determining application

75. (1) In considering an application for a licence to discharge effluent or operate a wastewater treatment facility or a waste disposal site, the Minister must, in addition to any submissions made in relation to the application, have regard also to the following matters -

- (a) whether the activities sought to be authorised by the licence applied for are consistent with the Integrated Water Resources Management Plan;
- (b) the purposes for which water from any source to which the discharge is proposed to be made are being used or which may be affected by the waste disposal site;
- (c) the concentration of waterborne contaminants;
- (d) the impact of the discharge or waste disposal site on existing water uses;
- (e) the impact of the proposed wastewater treatment facility or waste disposal site upon groundwater;
- (f) the impact of the proposed effluent discharge on the environment, including owners and occupiers of land and water resources, and water resource quality in the vicinity of the proposed effluent discharge or wastewater treatment facility or waste disposal site;
- (g) the effect the proposed effluent discharge or wastewater treatment facility or waste disposal site could have on Namibia's obligations relating to internationally shared waters;
- (h) the need to ensure the efficient and beneficial use of water resources, including re-use of water;
- (i) the installation of metering devices by the applicant to measure wastewater and effluent;
- (j) the application of cleaner production techniques in industrial, agricultural and mining activities designed to improve efficiency in the use of resources by reducing or preventing pollution and waste generation at the source thereof; and
- (k) any other criteria the Minister considers appropriate to be taken into account.

(2) In determining the application, the Minister may -

- (a) approve the application and issue the licence applied for to the applicant; or
- (b) refuse the application.

(3) A licence to discharge effluent or to construct or operate a wastewater treatment facility or a waste disposal site -

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- (a) must be issued in the form determined by the Minister;
- (b) must specify the activities authorised by the licence; and
- (c) is subject to the conditions -
 - (i) as prescribed; or
 - (ii) as imposed by the Minister and specified in the licence.

Standards of effluent quality

76. (1) For the protection of water resources and the environment from pollution, the Minister may prescribe -

- (a) quality standards with which effluent discharges must comply; and
 - (b) requirements for the acceptance, storage, treatment and disposal of solid waste.
- (2) The Minister may -
- (a) establish and maintain laboratories and other facilities necessary for the capacity to monitor, test and verify the quality of soils, wastewater and effluent;
 - (b) prescribe requirements for the licensing of privately owned laboratories established for testing and ascertaining the quality of soils, wastewater and effluent for any purpose, including qualification requirements of technicians that may be engaged in such laboratories;
 - (c) prescribe requirements for the recycling and re-use of treated wastewater, including industrial wastewater, the management and operation of any system for the recycling, re-use and supply of such treated water, including criteria in respect of quality standards of such water for use for a specified purpose; and
 - (d) develop a national programme for the testing and monitoring of soils and effluent quality.

Duration of licence to discharge effluent or construct or operate wastewater treatment facility or waste disposal site

77. A licence to discharge effluent or to construct or operate a wastewater treatment facility or a waste disposal site, unless cancelled before the period of validity indicated on such license, remains in force for a period, not exceeding five years, as determined by the Minister and specified in the licence.

Renewal of licence to discharge effluent or construct or operate wastewater treatment facility or waste disposal site

78. (1) At least three months before the expiry of a licence to discharge effluent or to construct or operate a wastewater treatment facility or a waste disposal site, the holder of the licence may apply to the Minister for the renewal of the licence.

- (2) An application for renewal must -

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- (a) be made in the form and manner approved by the Minister;
 - (b) contain the information that is prescribed or required by the Minister; and
 - (c) be accompanied by the prescribed renewal fee for the licence.
- (3) In considering an application for the renewal of the licence the Minister must -
- (a) have regard to the matters mentioned in section 75(1); and
 - (b) renew the licence unless, in the opinion of the Minister, there are good reasons to refuse renewal of the licence.

Amendment of licence to discharge effluent or construct or operate wastewater treatment facility or waste disposal site

79. (1) The Minister may amend a licence to discharge effluent or to construct or operate a wastewater treatment facility or a waste disposal site to the extent necessary to prevent or rectify any significant adverse effect in relation to any matter mentioned in section 75(1) caused or likely to be caused by an activity carried out under the licence.

- (2) Before the Minister amends the licence, the Minister must -
- (a) give at least 30 days' written notice of the proposed amendment to the holder of the licence and specify in the notice the reasons for the amendment; and
 - (b) consider any representations submitted by the holder of the licence in relation to the proposed amendment.

Transfer of licence to discharge effluents or construct or operate wastewater treatment facility or waste disposal site

80. (1) A licence to discharge effluent or to construct or operate a wastewater treatment facility or a waste disposal site may, with the written approval of the Minister, be transferred by the holder of the licence to another person.

- (2) An application for the Minister's approval for transfer of a licence under subsection (1), must -
- (a) be made in the form and manner approved by the Minister;
 - (b) contain or be accompanied by the information as prescribed or as required by the Minister; and
 - (c) be accompanied by the prescribed application fee.
- (3) Upon receipt of an application in terms of subsection (2), the Minister must -
- (a) consider whether the terms and conditions of the proposed transfer are consistent with the terms and conditions of the licence;
 - (b) consider any deviation from the terms and conditions of the licence that may have an adverse impact upon other persons or the environment; and

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- (c) give the proposed transferee and any persons having an interest who wish to make any representation in relation to the application, a reasonable opportunity to make such representation.

(4) The Minister must, within 60 days of receipt of the application make a determination in respect of the application, and may -

- (a) grant approval for the transfer of the licence in question, subject to such conditions as the Minister may impose; or
- (b) refuse to grant approval for the transfer of the licence.

(5) If the Minister refuses to grant approval for the transfer of the licence, the Minister must, in writing, inform the holder of the licence of the reason for the refusal.

Succession to licence to discharge effluent or construct or operate wastewater treatment facility or waste disposal site

81. (1) Upon the death of an individual who is the holder of a licence to discharge effluent or to construct or operate a wastewater treatment facility or a waste disposal site, the licence passes to any person nominated by the holder of the licence in his or her will or, in the absence of such a nomination, to the heir or heirs of the deceased's estate if the person or persons concerned agree to obtain the licence,

(2) A licence passed to a person in accordance with subsection (1) is subject to the same conditions that applied to the licence before the death of the holder of the licence.

Suspension or cancellation of licence to discharge effluent or construct or operate wastewater treatment facility or waste disposal site

82. (1) Subject to subsections (2) and (3), the Minister may cancel a licence to discharge effluent or to construct or operate a wastewater treatment facility or a waste disposal site, or suspend it in whole or in part, if -

- (a) the holder of the licence fails to comply with this Act or any condition to which the licence is subject;
- (b) the holder of the licence fails to commence with operations under the licence within the period stipulated in the licence;
- (c) having commenced with such operations, the holder of the licence discontinues operations under the licence for a continuous period of at least three years;
- (d) it is in the public interest to do so.

(2) The Minister may suspend or cancel a licence under subsection (1) only if the Minister has given the holder of the licence an opportunity to make representations to the Minister within 30 days of receipt of the notification of the intention of the Minister to suspend or cancel the licence and the Minister, after considering any representations made, decides that the licence be suspended or cancelled.

Failure of holder of licence

83. (1) If the holder of a licence to discharge effluent or to construct or operate a wastewater treatment facility or a waste disposal site, fails to comply with this Act or a

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condition to which the licence of that holder is subject, the Minister may, without prejudice to the powers conferred by section 82, and instead of exercising a power under that section, direct the holder of the licence in writing to remedy the failure in question.

(2) A directive under subsection (1) must set out -

- (a) the nature of the failure;
- (b) the measures required to be taken to remedy the failure; and
- (c) a reasonable time within which those measures are to be taken.

(3) If a the holder of the licence fails to take the measures specified in the directive, the Minister, with the concurrence of the Minister responsible for local authorities, where the holder of the licence is a local authority, and after affording that holder a reasonable opportunity to make representations, may -

- (a) direct the holder of the licence to cease operating any waterwork or to cease any activity under the licence; and
- (b) authorise in writing any authority or person to take over and perform any functions of the holder of the licence under that licence.

(4) An authority or person authorised under subsection (3)(b) may -

- (a) exercise or perform any relevant powers or functions on behalf of the holder of the licence; and
- (b) may use any infrastructure of the holder of the licence to the extent necessary to carry out the functions of the holder of the licence.

(5) If the Minister is satisfied that the holder of the licence is able to resume functions under that licence in an effective manner, the Minister may direct the holder of that licence and an authority or person authorised under subsection (3)(b) to make suitable arrangements for the resumption of those functions by the holder of that licence with effect from a date specified by the Minister.

**[The word “from” in the phrase “with effect from”
is misspelt in the *Government Gazette*, as reproduced above.]**

(6) Despite subsections (1) and (2), the Minister may exercise the powers conferred by subsection (3) without any prior directive in accordance with subsection (2) in any circumstances in which the Minister considers that the public interest requires that immediate action be taken.

(7) The Minister may recover from the holder of the licence, as a debt due to the State, the reasonable expenses incurred in connection with any action taken by an authority or person authorised under subsection (4) on behalf of the holder of that licence.

Procedure after expiry or cancellation of licence to discharge effluent or construct or operate wastewater treatment facility or waste disposal site

84. If a licence to discharge effluent or to construct or operate a wastewater treatment facility or a waste disposal site expires and is not renewed or is cancelled, the Minister may -

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- (a) direct the holder of that licence to restore, at the holder's own expense, any affected area of any land or other property, to a condition similar to the condition before that licence was granted, if doing so is reasonable and practicable under the circumstances; or
- (b) enter into an arrangement with the holder of that licence or any other interested person for the maintenance of the wastewater treatment facility or waste disposal site.

PART 14
WATER PROTECTION AREAS

Declaration of water protection area

85. (1) The Minister, on his or her own initiative or upon application by persons having an interest, may declare, by notice in the *Gazette*, an area to be a water protection area if the Minister considers it advisable in order to protect and enhance any water resource, riverine habitat, watershed, ecosystem or other environmental resource that is at risk of significant changes to resource quality, depletion, contamination, extinction or disturbance from any source, including aquatic or terrestrial weeds.

(2) If the Minister proposes to declare a water protection area, the Minister must, by notice published or given in a manner appropriate for the area as the Minister thinks fit -

- (a) make known the proposed declaration of the water protection area, specifying -
 - (i) the resource proposed to be protected and the purpose for which it is to be protected;
 - (ii) the proposed boundaries of the protection area; and
 - (iii) any limitations or prohibitions proposed to be imposed in respect of activities in the protection area; and
- (b) invite owners and occupiers of land in the area and other interested persons to make submissions to the Minister on any matter in relation to the proposed declaration not later than the date specified in the notice, which must be not earlier than 30 days after the date the notice is published or given by the Minister.

(3) If the Minister, after consideration of any submissions made, decides to declare the area a water protection area, the Minister must do so by notice published in the *Gazette*, which must -

- (a) specify the resource protected and the purpose for which it is required to be protected;
- (b) give a description of the geographic boundaries of the protection area; and
- (c) specify any limitations or prohibitions imposed in respect of activities that are applicable in the protection area.

(4) In determining the boundaries of a water protection area, the Minister must take into account competing interests in water resources and other environmental resources in the area.

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(5) The boundaries of a water protection area may be described in a notice under subsection (3) by any means that is most descriptive of the area or by reference to either or both of -

- (a) survey coordinates; or
- (b) distances from one or more conspicuous physical features.

Effect of declaration of water protection area

86. (1) A person may not, by any act or omission, within a water protection area contravene or fail to comply with any limitation or prohibition imposed and specified in the notice of declaration of the water protection area or any other provision of this Act.

(2) Without prejudice to the generality of the powers conferred on the Minister by section 85(3)(c), limitations or prohibitions imposed in respect of a water protection area may relate to -

- (a) the drilling of boreholes, construction of wells or the abstraction of water;
- (b) the erection of structures;
- (c) the possession, use or keeping of specified chemical products or toxic materials, including pesticides or fertilizers;
- (d) the alteration of land contours, including the construction or grading of roads or the cultivation of crops;
- (e) the removal or harvesting of vegetation, including the felling of trees, the removal of riparian growth, the draining of wetlands or the use of wetland resources;
- (f) the discharge of effluent;
- (g) operations for mining, dredging or the reclamation of land; and
- (h) any other measures necessary for the protection of a water resource.

(3) If a limitation imposed on water abstraction or effluent discharge within a water protection area affects an existing licence and requires a consequential variation of any allocation under the licence, the Minister may -

- (a) by written notice to the holder of the licence concerned, amend the licence to the extent necessary to give effect to the limitation;
- (b) if two or more licences to abstract or discharge effluent are affected, by written notice to the holders of the licences concerned, amend the licences to achieve an equitable balance, as far as is possible, in the distribution of allocations under those licences.

Amendment or withdrawal of water protection area declaration

87. (1) The Minister may, by notice in the *Gazette* -

- (a) amend the declaration of a water protection area by -

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- (i) altering the geographic boundaries of the area; or
 - (ii) amending any limitation or prohibition imposed in respect of activities to be applicable in the area, including by imposing any further limitation or prohibition; or
- (b) withdraw the declaration of the water protection area if the circumstances under which the declaration was made no longer exist.

(2) The procedures prescribed in subsections (2), (3), (4) and (5) of section 85 apply, with any necessary modifications, to the amendment of a water protection area declaration under subsection (1)(a).

PART 15

WATER RELATED EMERGENCY OR POLLUTION THREATS

Emergency powers to limit right to abstract and use water

- 88.** (1) The Minister may, by notice given in accordance with subsection (2) -
- (a) declare that a water shortage exists in a particular area or a water resource if the Minister is of the opinion that the volume of water available in the area or the water resource -
 - (i) is or is likely to be inadequate to meet the demand for any reason; or
 - (ii) is adversely affecting, or is likely to adversely affect, the quality of the water in the area or water resource; and
 - (b) restrict or prohibit the abstraction and use of water from a water resource in the area or a particular water resource.
- (2) A notice under subsection (1) must be given by notice -
- (a) published in a newspaper circulating in the area to which the notice relates; or
 - (b) served on any person to which the notice relates.

(3) In a case of urgent necessity, a notice in terms of subsection (2) may be given by radio, television or telephone or by facsimile, e-mail or other means of electronic communication, but a further notice must then be given in accordance with that subsection as soon as practicable.

Emergency powers to control pollution

89. (1) In this section “incident” means an event or occurrence where any material or substance is discharged, deposited or released or leaks or escapes at a place or in circumstances which -

- (a) causes or is likely to cause a water resource to be polluted; or
 - (b) has, or is likely to have any other detrimental effect on a water resource.
- (2) If an incident occurs -

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- (a) the owner or occupier or other person in control of the land where the incident occurs; and
- (b) the person in control of the material or substance involved in the incident, if not the person referred to in paragraph (a),

must as soon as practicable after the incident occurs report the incident to the Minister, a member of the Namibian Police, a member of the emergency services of the nearest local authority or the relevant basin management committee.

(3) The owner or occupier or other person in control of land where an incident occurs, must -

- (a) take all reasonable measures -
 - (i) to contain and minimise the effects of the incident; and
 - (ii) to clean up polluted areas and remedy the effects of the incident; and
- (b) take any measures the Minister directs the person in writing to take in relation to the incident within the time specified by the Minister, including measures the Minister may direct on advice of the relevant basin management committee.

(4) If a person responsible to take any measure under subsection (3), or a directive given under that subsection, fails to take the required action the Minister may authorise a person to enter on the land and take the required action.

(5) Any reasonable costs incurred in taking measures referred to in subsection (4) constitute a debt due by the responsible person to the State.

(6) If two or more persons are liable in terms of subsection (5) to reimburse the State for the costs referred to in that subsection, the Minister may, at the request of any of the persons concerned, and after giving the other an opportunity to be heard, apportion the costs to be paid by each person as the Minister considers just and reasonable, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

PART 16
WATER SERVICES PLANS AND EFFICIENT WATER
MANAGEMENT PRACTICES

Water service plans and water conservation and water demand management strategies

90. (1) The Minister may by regulation require water services providers and bulk water users, as defined in the regulations, to develop and adopt water services plans, including water conservation and water demand management strategies, in accordance with procedures and criteria set out in the regulations and to be submitted to the Minister and the Water Regulator in the prescribed manner and within the prescribed time.

(2) For the purpose of prescribing requirements referred to in subsection (1), the Minister may consult with water services providers and institutions or undertakings in the water industry and water users having an interest.

Implementation of efficient water management practices

91. (1) The Minister may -

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- (a) after consultation with the Water Regulator, prescribe criteria for the setting of operational targets and performance indicators for water services providers and other water suppliers and bulk water users;
- (b) cause periodic inspections to be carried out to review and investigate the efficiency of a water services provider or other water supplier or bulk water user in complying with its water services plan or water conservation and demand management practices;
- (c) direct any water services provider or other water supplier or bulk water user to implement specified water management practices within a specified period for purposes of water management efficiency.

(2) If a water services provider or other water supplier or bulk water user fails to comply with a directive given under subsection (1)(c), the Minister may by written notice require the water services provider or other water supplier or bulk water user to take any measures specified in the notice within a specified time, not exceeding 60 days, in order to comply with that directive.

(3) If a water services provider or other water supplier or bulk water user fails to comply with the requirement of a notice referred to in subsection (2), the Minister may, subject to subsection (4) -

- (a) cancel or suspend the licence of the water services provider or other water supplier or bulk water user; or
- (b) if the bulk water user is not the holder of a licence under this Act, restrict the water supply to the water user for purposes of domestic use only.

(4) The Minister may not exercise a power conferred by subsection (3), unless the Minister has given written notice to the water services provider or other water supplier or bulk water user of the Minister's intention to exercise such power and invited the water service provider or other water supplier or bulk water user to show cause, within 30 days of receipt of the Minister's notice, why the Minister should not exercise such power.

PART 17

DAMS, DAM SAFETY AND FLOOD MANAGEMENT

Obstruction of a watercourse

92. (1) A person may not engage in any construction work or other activity that causes, or is likely to cause, the natural flow conditions of water in, to or from a watercourse to be modified, unless the Minister has granted prior written approval for the work or activity to be carried out.

- (2) The Minister may -
 - (a) by notice in writing, require any person who is responsible for carrying out any work or activity referred to in subsection (1) without the Minister's prior approval, to take any reasonable measures necessary to remove any structure or thing resulting from such work or activity that causes, or is likely to cause, a modification of natural flow conditions mentioned in that subsection, or to take any other measures approved by the Minister to minimize the effects of such a modification; and

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- (b) if the person required to take such measures fails to comply with the requirements of the notice, cause the necessary measures to be taken in accordance with those requirements and recover from the person, the reasonable costs incurred for that purpose as a debt due to the State.

Requirements for construction of dams

93. (1) The Minister may prescribe -

- (a) standards for the design, construction, maintenance, surveillance, operation and abandonment of dams; and
- (b) standards for carrying out works in constructing a dam.

(2) The power conferred by subsection (1) includes the power to incorporate in regulations the provisions of any standard publication, or any part thereof, by reference to such standard publication or part thereof without the need to publish the provisions of such standard publication in the *Gazette*.

(3) In subsection (2), “standard publication” means any code of practice, standard specification or standard regulations published or issued by any body, organisation or authority established with the object of promoting standardisation, whether in Namibia or elsewhere, and which Namibia is authorised to apply by agreement entered into with that body, organisation or authority.

(4) If a dam, in respect of which the issue of a licence to abstract water has been made conditional on completion of construction of the dam, is not completed in accordance with any requirements prescribed under subsection (1) or as imposed by the Minister under section 46(4), the Minister may by notice in writing to the owner of the dam -

- (a) vary the licence as approved to the extent the Minister considers appropriate; or
- (b) withdraw the Minister’s approval for the issue of the licence to abstract and require the owner of the dam to take such action as specified in the notice within a specified time, including the emptying, breaching, modification or removal of the dam and repair of the site of the dam.

(5) If a person fails to comply with any action specified in a notice under subsection (4) within the specified time, or such additional time as the Minister on application may approve, the Minister may -

- (a) authorise a person to enter on the land and take any action specified in the notice and such other action as may be necessary or desirable to make good any damage caused by the construction of the dam; and
- (b) recover from the person, as a debt owing to the State, the reasonable expenses incurred in connection with work undertaken to give effect to the requirements of the notice.

Dams with safety risk

94. For the purposes of this Act, a dam is taken to be a dam with a safety risk if it is -

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- (a) a dam belonging to a category of dams which the Minister, by notice in the *Gazette*, has described and declared to be dams with a safety risk; or
- (b) a dam which the Minister, by written notice to the owner of the dam, has declared to be a dam with a safety risk.

Obligations of owner of dam

95. (1) An owner of a dam must -

- (a) upon a written request of the Minister, and within a reasonable time specified in the request, provide the Minister with any information, drawings, specifications, design assumptions, calculations, documents or test results in relation to the dam as may be specified in the request; and
- (b) give access to the dam to any person authorised by the Minister in writing to inspect and determine -
 - (i) any matter relating to the safety of the dam;
 - (ii) whether the dam ought to be declared to be a dam with a safety risk;
 - (iii) whether the condition of the dam requires any directive to be given to the owner of the dam as to any work to be undertaken for the maintenance, repair or alteration of the dam; or
 - (iv) whether the requirements of this Act have been or are being complied with in relation to the dam.

(2) The Minister may, by written notice to the owner of a dam with a safety risk, direct the owner -

- (a) to obtain and submit to the Minister, at the owner's cost, and within a reasonable time specified in the notice, a report by a professional engineer regarding the safety condition of the dam; or
- (b) to undertake, at the owner's cost, and within a reasonable time specified in the notice, any work for the, maintenance, repair or alteration of the dam as specified in the notice that is reasonably required in order to ensure the safety of the dam.

[The comma between "the" and "maintenance" is superfluous.]

(3) If the owner of a dam with a safety risk to whom a directive is given under subsection (2) fails to comply with the directive -

- (a) under paragraph (a) of that subsection, the Minister may appoint any professional engineer to carry out an investigation and report to the Minister on the safety condition of the dam; or
- (b) under paragraph (b) of that subsection, the Minister may cause the work specified in the notice, to be carried out in accordance with the directive,

and the Minister may recover the reasonable cost incurred in so doing from the owner of the dam as a debt due to the State.

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- (4) Before giving a directive under subsection (3)(b), the Minister must -
- (a) be satisfied that the work for the maintenance, repair or alteration of the dam that is required to be carried out in respect of the dam is necessary, adequate, effective and appropriate to reduce the risk to an acceptable level; and
 - (b) consider the impact on public safety, property, the resource quality and socio-economic aspects, should the dam fail.

Responsibilities of professional engineer

96. (1) When carrying out an investigation in terms of this Part, a professional engineer has a duty of care towards the State and the general public.

- (2) A professional engineer appointed to carry out any work in relation to a dam must -
- (a) ensure that the work is carried out according to acceptable dam engineering practices;
 - (b) keep the prescribed records;
 - (c) compile the prescribed reports;
 - (d) where the work includes constructing, altering or repairing a dam, issue a completion certificate to the owner of the dam to the effect that the work on that dam has been carried out according to the applicable design, drawings and specifications; and
 - (e) provide the Minister with a copy of the completion certificate referred to in paragraph (d), within 30 days of issuing the certificate.
- (3) A professional engineer who carries out a dam safety evaluation must -
- (a) ascertain whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam safety conform to acceptable dam engineering practices; and
 - (b) compile, date and sign a report on the matters set out in paragraph (a), in accordance with the prescribed requirements, and submit the signed report to the owner of the dam within the prescribed period.

Registration of dam with safety risk

97. (1) The Minister must keep a register of dams with a safety risk, in such form as the Minister determines.

(2) The owner of a dam with a safety risk must register that dam with the Minister in the prescribed manner.

(3) An application for registration must be made within 120 days after the date on which a declaration of the dam as a dam with a safety risk becomes of effect by virtue of a notice under section 94 (a) or (b), as the case may be.

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(4) A successor-in-title to an owner of a dam with a safety risk must forthwith inform the Minister in writing of the relevant details of the succession, and the Minister must cause the details to be recorded in the register.

Considerations in declaring dams to be dams with safety risk

98. In considering a declaration of dams to be dams with a safety risk in accordance with subsection 94, the Minister must take into account -

- (a) the need to protect the public, property and the resource quality against the potential hazard posed by the dam or category of dams;
- (b) the extent of potential loss or harm involved;
- (c) the cost of any prescribed measures and whether they are reasonably achievable;
- (d) the socio-economic impact that may result if the dam fails; and
- (e) in the case of a particular dam, also -
 - (i) the manner in which the dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned;
 - (ii) the person by whom the dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned; and
 - (iii) the manner in which water is contained, stored or impounded in the dam.

Exemption of owners of certain categories of dams

99. (1) The Minister may exempt -

- (a) by notice in the *Gazette*, owners of dams belonging to a specified category; or
- (b) in writing, an owner of a specific dam,

from complying with a provision of this Part, or a regulation in force in relation to this Part, on conditions determined and specified by the Minister.

(2) The Minister may, in the manner an exemption was made under subsection (1), withdraw the exemption or impose further or new conditions in respect of the exemption.

(3) Before deciding on an exemption, the Minister must consider -

- (a) the degree of risk or potential risk posed by the dam or category of dams to public safety, property and the resource quality;
- (b) the manner of design, construction, alteration, repair, impoundment of water in, operation or abandonment of the dam or category of dams;
- (c) the extent and nature of supervision carried out in respect of the dam or category of dams;

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- (d) alternative measures proposed for regulating the design, construction, alteration, repair, operation, maintenance, impoundment of water, inspection or abandonment of the dam or category of dams and the effectiveness of those measures;
- (e) the knowledge and expertise of persons involved in any work relating to the dam or category of dams;
- (f) the costs relating to the dam or category of dams;
- (g) any security provided or intended to be provided for any damage which could be caused by the dam or category of dams; and
- (h) whether the dam or category of dams is permitted in terms of a licence or any other authorization issued by or under any other law.

Prevention of flood risk

100. (1) For the purpose of preventing or minimizing the risk of flooding or flood damage, the Minister may -

- (a) by written notice to the owner of any structure causing, or likely to cause, an obstruction to the runoff of floodwater, direct the owner to remove the obstruction within a period specified in the notice, and if the owner fails to comply with the notice, the Minister may cause the obstruction to be removed and recover the reasonable cost from the owner as a debt due to the State;
- (b) by notice in writing given specifically to any person, or by regulation, prohibit the construction on submersible lands of dykes, levees or other structures likely to hinder the runoff of floodwater, or authorize the construction of such structures if they are necessary for the protection of existing residences or other private structures;
- (c) alter or demolish dykes, embankments, levees, structures or other works, irrespective of their legal status and recover, as a debt due to the State, the reasonable cost incurred in so doing from the owner of the structure if, in the Minister's opinion, they hinder water runoff or extend the flood plain with harmful results;
- (d) by notice in writing given specifically to any person, or by regulation, prohibit the growing of crops, the building of structures or the placing of deposits on land located between a watercourse and any protective dykes, embankments or levees;
- (e) consult with any regional council or local authority in determining the geographic extent of floodplain areas in its region or local authority area, as the case may be, and assist any such councils in regulating the development and use of land within a floodplain area; or
- (f) prescribe measures for the control and management of storm and flood risk within local authority areas.

(2) For purposes of this section, reference to "owner of the structure", includes any person who is engaged in the construction of the structure.

RESOURCES AND RESOURCE QUALITY

Control of use of wetland resources

101. For the purpose of the protection and enhancement of water resource quality and wetland aquatic ecosystems, the Minister may by regulation prohibit or regulate the use of any wetland or dam for specified purposes or the carrying on of specified activities within any wetland or dam, except under authority of a licence issued, and in accordance with licence conditions as prescribed, including -

- (a) the commercial recreational use of wetland resources;
- (b) development on the banks of any wetland or dam; and
- (c) the removal of rocks, sand or gravel or any other material from a watercourse.

Control of aquatic invasive species

102. (1) The Minister may prescribe requirements and measures, including prohibitions, for the importation, use or control of aquatic invasive species, so as to reduce their negative impact on water resource quality and wetland aquatic ecosystems.

(2) Regulations under subsection (1) may declare certain species to be alien invasive species and impose measures -

- (a) for the eradication or control of a species so listed; or
- (b) for regulating or prohibiting, the importation, transport or spreading of a species so listed.

Protection of riparian zones

103. The Minister may prescribe requirements and measures for -

- (a) the removal or use of riparian species, so as to protect water resources or water resource quality;
- (b) the protection of any riparian species if considered of national or strategic importance or if it forms part of wetland resources.

PART 19

WATER SERVICES PROVIDED BY STATE

Recovery of fees and charges for water services provided by the State

104. (1) The Minister may prescribe tariffs of fees and charges, in accordance with a determination by the Water Regulator, and the conditions applicable in respect of water services provided by the State to users of water controlled by the State and for the discharge of effluent or wastewater or the deposit of waste in a facility or at a site controlled or operated by the State.

- (2) Fees and charges referred to in subsection (1) owing to the State -
 - (a) are recoverable as a debt due to the State; and

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- (b) bear interest on any amount that remains unpaid after the due date at the rate determined by the Minister responsible for finance under the laws relating to State finances in respects of debts owing to the State.

(3) The Minister may prescribe a penalty fee to be levied and recovered against a user who is in default with the payment of fees and charges owing to the State in respect of services referred to in subsection (1).

(4) Conditions prescribed under subsection (1), may include conditions relating to the restriction or suspension of the supply of water to a user who is in default with the payment of any fees or charges and the payment of a reconnection fee for restoration of the supply.

Charge on land

105. (1) Fees and charges under this Part, including any interest or penalty, and any cost awarded by a court in proceedings for the recovery of such fees and charges, are a charge on the land on, or in respect of which the relevant services have been provided and may be recovered from the current owner without releasing any other person who may be liable for the fees and charges.

(2) Upon a written application by any person, the Minister must cause to be issued, within 30 days of the application, a certificate as to the amount, if any, due in respect of fees and charges for services levied in respect of any land.

(3) A charge created by subsection (1) expires if the certificate is not issued within the period of 30 days referred to in subsection (2).

PART 20
SERVITUDES

Definitions for this Part

106. In this Part -

- (a) “servitude of abutment” means the right to occupy the bed or banks of a stream, or adjacent land belonging to another person, by means of a waterwork;
- (b) “servitude of aqueduct” means the right to occupy land belonging to another person by means of a waterwork for abstracting or leading water or discharging effluents; and
- (c) “servitude of submersion” means the right to occupy land belonging to another person by submerging it under water.

Acquisition of servitude

107. (1) The holder of a licence issued under this Act to abstract and use water or discharge wastewater or effluent may claim, in accordance with section 108, and to the extent necessary to give effect to that licence -

- (a) a servitude of abutment, aqueduct or submersion; or
- (b) an amendment to an existing servitude of abutment, aqueduct or submersion.
- (2) A servitude claimed under subsection (1)(a) may be -

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- (a) a personal servitude in favour of the claimant; or
- (b) a praedial servitude in favour of the claimant in the claimant's capacity as owner of land on which the claimant may use the water.

(3) A servitude referred to in subsection (1) may also be claimed in respect of an existing waterwork.

Procedure for acquisition or amendment of servitude

108. (1) A servitude may be acquired or amended by -

- (a) an agreement negotiated and concluded between the person claiming the servitude and the owner of the land over which the servitude is claimed; or
- (b) an order of the High Court awarding the servitude to the claimant over the land in respect of which it is claimed.

(2) A person claiming a servitude or an amendment of a servitude may, on reasonable notice to the owner of the land over which the servitude is claimed or exists, as the case may be, enter the land in order to -

- (a) make any investigation; or
- (b) undertake any operation,

on the land to the extent reasonably necessary for determining anything relating to the nature and extent of the servitude or an amendment to the servitude.

(3) A person who causes any damage to the land during an investigation or operation in terms of subsection (2), must -

- (a) repair, as far as is reasonably possible, the damage at the person's own cost; or
- (b) compensate the landowner in the amount agreed between the parties or as determined by a competent court.

(4) An owner of the land subject to a servitude, or over which a servitude is claimed, may claim to share in the use of the waterwork to which the servitude or proposed servitude relates if -

- (a) the owner is authorized to use water from a specific water resource;
- (b) the use of the waterwork is compatible with the owner's licensed or permitted water use; and
- (c) the owner agrees to be responsible for a proportionate share of the costs of constructing, repairing and maintaining the waterwork.

(5) A share in the use of a waterwork claimed under subsection (4) may be acquired -

- (a) by an agreement between the parties; or
- (b) by an order of the High Court in terms of section 110.

Rights and duties of servitude holders and landowners

109. (1) A holder of a servitude has a right of access to the land which is subject to the servitude -

- (a) for the purpose of constructing, altering, replacing, inspecting, maintaining, repairing or operating a waterwork necessary to exercise a right under the servitude; or
- (b) for any purpose necessary for the effective enjoyment of the servitude.

(2) Subject to compliance with the requirements of any other law, the holder of a servitude may, in a reasonable manner -

- (a) take from the land subject to the servitude any material or substance reasonably required for constructing, altering, replacing, maintaining or repairing a waterwork or part of a waterwork in respect of which the servitude has been acquired;
- (b) remove and use vegetation or any other obstacle which is on the land subject to the servitude and which is detrimental to the reasonable enjoyment of the servitude;
- (c) deposit on the land subject to the servitude any material or substance excavated or removed from the waterwork in the reasonable exercise of the servitude;
- (d) during the period of construction of the waterwork in respect of which the servitude has been acquired, occupy as much of the land subject to the servitude as may reasonably be required for -
 - (i) constructing camps or roads;
 - (ii) constructing houses, reservoirs or other buildings or structures; or
 - (iii) installing machinery or equipment, necessary for the construction of the waterwork;
- (e) occupy, for the duration of the servitude, as much of the land subject to the servitude as is reasonably required for -
 - (i) accommodating people;
 - (ii) workshops; or
 - (iii) storage purposes,to the extent necessary for the control, operation and maintenance of the relevant waterwork.

(3) Upon a written request by the owner of the land which is subject to a servitude, the holder of the servitude must, at his or her own cost -

- (a) maintain the servitude area;
- (b) repair and maintain any waterwork relating to the servitude; and

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(c) repair and maintain access roads associated with the servitude.

(4) If the holder of a servitude fails to carry out work reasonably requested under subsection (3), the owner of the land may arrange for the necessary work to be done and may recover the reasonable cost incurred from the holder of the servitude.

(5) On termination of a servitude, the holder of the servitude must restore, at the holder's own expense, any physical damage to the land caused by any activity carried on under the servitude, as far as is reasonably possible.

Powers of Court in respect of claim for servitude

110. On hearing a claim for a servitude or an amendment to a servitude under this Part, the High Court may -

- (a) award the claim, with or without modifications, and subject to conditions the Court thinks fit;
- (b) award or refuse to award compensation;
- (c) determine whether a proportionate amount of compensation should be paid to the holder of a right of lease, mortgage, usufruct or similar right over the land in respect of the award of the servitude, and order that the amount of compensation be paid; or
- (d) dismiss the claim.

Compensation payable for grant of servitude

111. (1) In determining the amount of compensation payable for the grant of a servitude or for the amendment of a servitude, the High Court must take into account all relevant factors, including -

- (a) the nature of the servitude or amendment, including the nature and function of the waterwork required;
- (b) whether an existing waterwork will be used to give effect to the servitude or amendment;
- (c) the probable duration of the servitude;
- (d) the extent of any loss or deprivation of use of the land likely to result from the grant of the servitude or amendment;
- (e) the rental value of the land affected by the servitude or amendment;
- (f) the nature and extent of the actual inconvenience or loss likely to result from the exercise of rights under the servitude or amended servitude;
- (g) the extent to which the land can reasonably be restored on termination of the servitude;
- (h) any advantage the landowner, or a person with an interest in the land subject to the servitude is likely to derive as a result of the servitude or amendment; and

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- (i) the public interest served by the waterwork relating to the servitude or amendment.
- (2) The High Court may determine the time and manner of payment of compensation.

Noting of servitude and amendment by endorsement against title deed

112. (1) The acquisition, amendment or cancellation of a servitude by virtue of an order of the High Court takes effect when the order is noted in terms of the Deeds Registries Act, 1947 (Act No. 37 of 1947) or the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976).

(2) Nothing in this section prevents a person from registering the acquisition, amendment or cancellation of a servitude in accordance with the Deeds Registries Act, 1947.

[The Deeds Registries Act 47 of 1937 and the Registration of Deeds in Rehoboth Act 93 of 1976 have been replaced by the Deeds Registries Act 14 of 2015.]

Cancellation of servitude

113. An owner of land subject to a servitude of abutment, aqueduct or submersion may apply to the High Court for the cancellation of the servitude -

- (a) if the licence associated with the servitude is cancelled;
- (b) if the rights and obligations in respect of the servitude have not been exercised on the land for a continuous period of three years; or
- (c) for any other valid reason.

Joint waterwork involving servitude

114. Two or more holders of licences to abstract and use water or to discharge effluent, may, in order to give effect to their licences -

- (a) construct a joint waterwork; and
- (b) jointly claim and create a servitude associated with that waterwork.

Ownership of State waterwork on land belonging to another

115. (1) The ownership of any State waterwork placed in good faith on land belonging to another remains vested in the State, and the Minister may -

- (a) remove the waterwork from that land; or
- (b) transfer a right held in respect of an improvement on the land to any person.
- (2) If a waterwork is removed from land under subsection (1)(a), the owner of the land -
 - (a) may require the Minister to restore, as far as reasonably possible, any physical damage to the land caused by the removal; and
 - (b) has no other claim against the Minister concerned, apart from the claim referred to in paragraph (a).

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(3) The right of the State in respect of an improvement on land not owned by the State may be transferred to any person.

Transfer of personal servitude

116. (1) Despite anything to the contrary in any law contained, a personal servitude, whether registered or not, held by the State may be transferred from the State to any body or institution established by or under any law for the purpose of performing functions provided for in that law and being capable of holding immovable property or a right in immovable property.

(2) The Registrar of Deeds must register a notarially executed deed of cession to transfer a registered personal servitude referred to in subsection (1).

PART 21
WATER TRIBUNAL AND APPEALS

Establishment of Water Tribunal

117. (1) An appeal body, to be known as the Water Tribunal, is established to hear and decide appeals in matters referred to in section 120.

(2) The members of the Water Tribunal consist of -

- (a) a chairperson, appointed by the Minister with the concurrence of the Judge President of the High Court, who must be a person qualified in law with at least 10 years experience in the practice of law; and
- (b) such other persons, not exceeding six, as the Minister may select and appoint from persons with knowledge or experience in engineering, water resources management and fields relevant to the objective of this Act.

(3) The Minister must appoint one of the members referred to in subsection (2)(b) to be the deputy chairperson of the Water Tribunal.

(4) A member of the Water Tribunal is appointed for a period of five years and is eligible for re-appointment from time to time.

(5) The office of a member of the Water Tribunal becomes vacant if the member -

- (a) resigns the office by giving the Minister at least 30 days' written notice of resignation;
- (b) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (c) is declared insolvent; or
- (d) is removed from office under subsection (6).

(6) The Minister may, by notice in writing, terminate the appointment of a member if the Minister, after giving the member an opportunity to make representations, is satisfied that the member -

- (a) is mentally or physically incapable of performing satisfactorily the duties of his or her office; or

- (b) is guilty of conduct that renders him or her unfit to serve as a member of the Water Tribunal.

(7) A member of the Water Tribunal who is not in the service of the State must be paid the allowances, including subsistence and travel allowances and sitting allowances, as the Minister may determine with the concurrence of the Minister responsible for finance.

Administrative functions and financing

118. (1) The Permanent Secretary must designate staff members of the Ministry to perform the administrative work relating to the functions of the Water Tribunal.

(2) Expenditure relating to the functions of the Water Tribunal must be defrayed from money appropriated by Parliament for the purpose.

Conduct of hearing by Water Tribunal

119. (1) After considering the appropriate field of knowledge for determining an appeal, the chairperson of the Water Tribunal may decide that the appeal be determined at a sitting of all the members of the Water Tribunal or of such members, but not fewer than 3, as the chairperson may designate to determine the appeal.

(2) The chairperson of the Water Tribunal, after consultation with the parties involved in the appeal who are present or represented, may determine the procedure to be followed for the determination of the appeal, which may include determination exclusively by means of written submissions by interested parties or by the hearing of evidence.

(3) In an appeal by hearing of evidence, the Water Tribunal may, in the prescribed manner, either at the Water Tribunal's initiative or at the request of a party involved in the appeal -

- (a) subpoena for questioning any person who may be able to give information relevant to any issue before it; or
- (b) subpoena any person who is believed to be in possession or control of any book, document or object relevant to any such issue, to appear before it and to produce such book, document or object.

(4) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce a book, document or object before a court of law, applies in relation to the questioning of a person or the production of a book, document or object in terms of this section.

(5) A party at whose request a subpoena is issued must pay witness fees, travel and subsistence allowances to a person subpoenaed to appear before the Water Tribunal, at the scale applicable in respect of witnesses in a civil case in a magistrate's court.

(6) The person presiding at a hearing of the Water Tribunal may administer an oath or accept an affirmation from any person appearing as a witness before the Water Tribunal.

(7) A majority decision of the members hearing an appeal constitutes the decision of the Water Tribunal, and in the event that an equality of votes on a decision is reached, the chairperson or deputy chairperson, presiding over the Water Tribunal has a casting vote in addition to his or her deliberative vote.

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(8) The Water Tribunal or a member of the Water Tribunal is not liable for an act or omission committed in good faith while performing a function under this Act.

(9) A person who wilfully -

- (a) obstructs, prevents or in any way interferes with, or attempts to obstruct, prevent or interfere with, the service of a summons issued by the Water Tribunal; or
- (b) dissuades, hinders or prevents or attempts to dissuade, hinder or prevent any person lawfully summoned to appear as a party or witness before the Water Tribunal, from so appearing,

commits an offence.

(10) A person who -

- (a) having been subpoenaed to appear before the Water Tribunal, without good cause fails to attend;
- (b) without good cause, fails to produce any book, document or object specified in a subpoena;
- (c) having appeared in response to a subpoena, fails to remain in attendance until excused by the Water Tribunal;
- (d) refuses to take the oath or to make an affirmation as a witness when required to do so by the Water Tribunal;
- (e) subject to subsection (4), refuses to answer any question fully and to the best of the person's knowledge and belief;
- (f) during proceedings before the Water Tribunal, behaves improperly or insults a member of the Water Tribunal or interrupts the proceedings; or
- (g) prejudices or improperly influences the proceedings of the Water Tribunal,

commits contempt of the Water Tribunal.

Appeal to Water Tribunal

120. (1) An appeal lies to the Water Tribunal against any of the following decisions by the Minister -

- (a) refusal to issue a licence;
- (b) issuing a licence to discharge effluent or construct or operate a water treatment facility or a waste disposal site, if the appellant was an objector to the application for the licence;
- (c) refusal to grant approval for the transfer of a licence to discharge effluent or construct or operate a water treatment facility or a waste disposal site;
- (d) determining the term of a licence;
- (e) imposing a discretionary condition on a licence;

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- (f) refusal to renew a licence;
 - (g) the amendment of a licence;
 - (h) suspending or cancelling a licence;
 - (i) ordering the holder of a driller's licence to pay a penalty under section 67(8)(c);
 - (j) giving a directive to any person of measures to be taken as specified in the directive;
 - (k) a decision or action taken, or a prohibition imposed by notice, under section 100;
 - (l) to recover expenses incurred in taking measures which a person failed to take in accordance with a directive given.
- (2) An appeal must be lodged not more than 30 days after the decision was made.
 - (3) The procedures for lodging, hearing and determining an appeal are as prescribed.
 - (4) A party to an appeal may be represented by any person as the party may decide to appoint.
 - (5) The person presiding at proceedings in an appeal before the Water Tribunal must cause minutes to be kept containing a summary of the proceedings.

Mediation of disputes

121. (1) If a dispute arises between two or more persons or between any person and the Minister, the Minister may, on the Minister's initiative or at the request of any party to the dispute, direct that the dispute be dealt with by way of mediation involving an independent mediator.

(2) A directive under subsection (1) must specify the period within which the mediation process must commence, and request the parties to select by agreement an independent mediator and determine the place and time of the mediation proceedings.

(3) If the parties fail to select a mediator, the Minister, by agreement with the parties, may appoint the mediator, who may be a staff member of the Ministry, if the Minister is not a party to the dispute.

(4) The parties, by agreement, may at any time during the course of mediation proceedings appoint another person to act as mediator.

(5) The contents of discussions and submissions made during the mediation proceedings are privileged and may not be used in evidence in any court of law, unless the parties agree otherwise.

(6) The fees and expenses of a mediator must be paid by the parties to the dispute.

PART 22
GENERAL PROVISIONS

Appointment of authorised persons

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122. (1) The Minister may appoint, in writing -

- (a) staff members of the Ministry; and
- (b) other persons employed in the service of a statutory body or institution,

as the Minister considers necessary to be authorised persons for the purposes of this Act.

(2) Before appointing an employee of a statutory body or an institution as an authorised person, the Minister must consult and negotiate with the relevant employer to obtain consent for, and agree upon the conditions of, the appointment.

(3) An appointment of an authorised person may be made -

- (a) for a limited term stated in the letter of appointment; and
- (b) subject to conditions limiting the area within which, or the purposes for which, the person appointed may exercise the powers of an authorised person.

(4) The Minister must provide an authorised person with an identity card which must stipulate -

- (a) the term of appointment of the authorised person, if appointed for a limited term; and
- (b) any conditions imposed under subsection (3)(b) in respect of the authorised person's appointment.

(5) An authorised person, if so required by a person who may be affected by the exercise of the officer's powers under this Act, must produce his or her identity card for inspection by that person and, if the authorised person fails to produce the identity card when so required, the person is not obliged to comply with a requirement of the authorised person.

Powers of authorised persons

123. (1) An authorised person has a right of entry on, in and over any land and premises in accordance with this section and, in the exercise of powers under this section, the authorised person may -

- (a) be accompanied by such other persons as the authorised person reasonably requires for the purpose; and
- (b) take onto the land or premises any vehicle, plant, machinery, equipment and materials reasonably required for performing a function under this Act.

(2) An authorised person may, at any reasonable time and without notice, enter any land or premises where activities under a licence issued under this Act are carried on for the purpose of -

- (a) inspecting any waterwork or the use of water or the discharge of wastewater effluent or waste; or
- (b) ascertaining whether this Act or the conditions of the licence are being complied with.

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(3) An authorised person may, after giving at least three day's notice to the owner or occupier of any land or premises, enter the land or premises for the purpose of -

[The word "day's" should be "days" to be grammatically correct.]

- (a) establishing the suitability of a water resource or site for constructing a waterwork;
- (b) constructing, maintaining or removing a waterwork or carrying out any modification or addition to a waterwork;
- (c) establishing hydrographic stations and installing other structures and equipment for monitoring and recording information and statistics in relation to a water resource;
- (d) undertaking any work necessary for cleaning, clearing, stabilising or repairing a water resource and protecting the resource quality;
- (e) carrying out any survey, investigation or research in connection with a water work for the supply of water or a water resource.

(4) An authorised person who has a reasonable belief that there is or has been on, or in connection with any land or premises, any contravention of this Act may enter the land or premises at any reasonable time without notice for the purpose of ascertaining whether in fact there is or was any such contravention.

(5) An authorised person who enters any land or premises under this section may -

- (a) take measurements or samples or conduct tests; and
- (b) make surveys.

(6) An authorised person may use reasonable force to enter on any land or a building or other structure on the land -

- (a) under authority of a warrant issued by a judge of the High Court or a magistrate authorising such entry; or
- (b) if the authorised person believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(7) A judge of the High Court, or a magistrate having jurisdiction in the area concerned, may issue a warrant for the purposes of subsection (6) if the judge or magistrate is satisfied, on information given on oath or affirmation -

- (a) that there are reasonable grounds to suspect that an offence under this Act has been, is being, or is about to be, committed; and
- (b) that the warrant is reasonably required in the circumstances.

(8) Despite anything in this section, an authorised person may not enter any premises or part of premises used as a dwelling without the consent of the occupier or without a warrant authorising entry.

(9) An owner or occupier of land is entitled to be paid reasonable compensation by the Minister for damage caused to land as a result of any construction works performed under subsection (3).

Expropriation or temporary use of property

124. (1) Subject to subsection (2), the Minister may, in accordance with the laws relating to the expropriation of property -

- (a) expropriate any property;
- (b) use temporarily any property; or
- (c) in writing, authorize a statutory institution to use temporarily any property,

for any purpose connected with the exercise of a function of the Minister under this Act, if the expropriation or use of the property is in the public interest.

(2) For purposes of the powers conferred by subsection (1), a provision of the law relating to expropriation of property conferring a power on any other Minister, is construed as being a reference to the Minister.

Appointment of persons on contract

125. (1) Despite the Public Service Act, 1995 (Act No. 13 of 1995), the Minister may appoint on contract, on terms and conditions determined by the Minister, with the concurrence of the Minister responsible for finance, any person for purposes of a specific project connected with any function of the Minister under this Act.

(2) A person appointed under subsection (1) is not appointed as a staff member in the Public Service and must be remunerated from money appropriated by Parliament for the purpose or from money made available by way of a donation or grant from any source and in accordance with any conditions specified by the source.

Financial assistance

126. (1) The Minister may give financial assistance to -

- (a) any institution, organisation, body or person performing functions in relation to -
 - (i) the development or protection of a water resource; or
 - (ii) the maintenance or operation of a waterwork; or
- (b) any person for a purpose in furtherance of the objective of this Act.

(2) Financial assistance under subsection (1) -

- (a) must be paid from money appropriated by Parliament for the purpose;
- (b) may be given in the form of a grant, loan or subsidy, subject to conditions as prescribed or as imposed by the Minister in writing.

(3) In deciding whether to give financial assistance, the Minister must take into account all relevant considerations, including -

- (a) the need for equity;

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- (b) the need for transparency;
- (c) the need for redressing the effects of past racial and gender discrimination; and
- (d) the financial situation of the proposed recipient.

Offences

- 127.** (1) A person commits an offence if such person -
- (a) abstracts and uses or disposes of water otherwise than in accordance with a licence under this Act or as permitted by this Act;
 - (b) constructs or uses a waterwork for the discharge or disposal of wastewater, effluent or waste otherwise than -
 - (i) in accordance with a licence under this Act that authorises the construction or use of that work; or
 - (ii) as permitted by this Act;
 - (c) fails to comply with a written directive given by the Minister under section 68(3), 89(3)(b), 95(2) or 100(a);
 - (d) contravenes or fails to comply with section 62(1)(a), 63, 64(5), 65(2), 67(1), 92(1) or 95(1);
 - (e) unlawfully and intentionally or negligently destroys, damages or tampers or interferes with a waterwork or any seal or device attached to a waterwork;
 - (f) refuses or fails to give data or information, or gives false or misleading data or information, when required to give data or information under this Act;
 - (g) in or in connection with an application under this Act, makes a statement that the person knows to be false or misleading in a material particular;
 - (h) obstructs or interferes with an authorised person in the performance of the authorised person's functions under this Act;
 - (i) by any act or omission unlawfully and intentionally or negligently causes a water resource to be polluted;
 - (j) fails to register a dam with a safety risk;
 - (k) fails to comply with a temporary restriction on the abstraction or use of water imposed under this Act;
 - (l) levies any fee or charge otherwise than in accordance with a tariff of fees and charges determined by the Water Regulator under this Act;
 - (m) causes or permits any borehole works to be carried out otherwise than in accordance with a borehole licence issued under this Act or as permitted by this Act; or

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- (n) drills or constructs a borehole or well of any kind otherwise than in accordance with a driller's licence that is held by that person and that authorises the person to drill or construct boreholes or wells of that kind;
 - (o) commits contempt of the Water Tribunal;
 - (p) by any act or omission intentionally or negligently wastes water at a water point.
- (2) A person convicted -
- (a) of an offence referred to in subsection (1), other than the offence mentioned in paragraph (p) of that subsection, is liable to a fine not exceeding N\$50 000 or imprisonment for a period not exceeding two years, or to both such fine and such imprisonment and, in the case of a second conviction, to a fine not exceeding N\$500 000 or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment; or
 - (b) of the offence mentioned in paragraph (p) of subsection (1), is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.
- (3) Despite subsection (2), if the offence of which a person is convicted is in respect of a continuing act or omission -
- (a) the person is liable, in addition to the fine otherwise applicable to the offence in terms of that subsection, to a fine for each day during which the act or omission continues of not more than one-fifth of the fine prescribed for that offence; and
 - (b) if the act or omission continues after the conviction, the person is guilty of a further offence under the relevant provision of the Act and liable, in addition to the penalty otherwise applicable to the further offence, to a fine for each day during which the act or omission continues after the conviction of not more than one-fifth of the penalty prescribed for the offence.

Compensation order for damage arising from commission of offence

128. On the conviction of a person for an offence under this Act, the court by which the person is convicted -

- (a) upon a written request of a person who has suffered any damage arising from the commission of the offence; or
- (b) upon a written request of the Minister, where damage arising from the commission of the offence has been caused to a water resource or its dependent ecosystems,

may, after enquiry into the nature and extent of the damage, order the person convicted to pay, in addition to any other penalty that may be imposed, compensation to the person for the damage suffered or, in the case of damage to a water resource, compensation to the Minister representing the actual or expected cost of restoring or rehabilitating the water resource or its dependent ecosystems.

Regulations

- 129.** (1) The Minister may make regulations in relation to -

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- (a) any matter required or permitted to be prescribed by regulation under this Act;
- (b) the particulars to be furnished in connection with any application for a licence or a permit or other authorisation under this Act;
- (c) the information to be provided for purposes of recording in any register kept or required to be kept under this Act;
- (d) the composition of basin management committees, including institutions, organisation or bodies to be represented in the membership of a basin management committee;
- (e) any matter necessary or expedient for the efficient functioning of a basin management committee or its management structure, including a subcommittee of a basin management committee;
- (f) the imposition of a requirement that any engineering work, or engineering work of a specified nature, in relation to a dam with a safety risk may be carried out only by a professional engineer registered by the Minister for that purpose, the procedures for and renewal of such a registration, the obligations to be complied with by a professional engineer so registered and the circumstances in which such a registration may be cancelled or suspended;
- (g) the imposition of a requirement that a person practising as a geo-hydrologist in Namibia, may perform work of a specified nature related to the profession of a geo-hydrologist only if the person is registered by the Minister to perform work of that nature, the procedures for and renewal of such a registration, the obligations to be complied with by a geo-hydrologist so registered and the circumstances in which such a registration may be cancelled or suspended;
- (h) the eligibility of any institution, organisation, body or person for financial assistance under section 126, the manner in which an application for financial assistance must be made and the terms and conditions applicable to any financial assistance granted;
- (i) the classification of dams into categories;
- (j) the construction, maintenance and repair of dams;
- (k) the manner and extent of monitoring of dams with safety risk;
- (l) the fees payable in respect of applications for any licence, permit, registration or other authorisation under this Act, the issuing and renewal of a licence, permit, registration certificate or other authorisation or the issue of a duplicate, licence permit, registration certificate or other authorisation;
- (m) the registration of impoundments and dams, including dams with a safety risk; and
- (n) generally any matter which the Minister considers necessary or expedient to prescribe in order to achieve the purposes of this Act.

(2) If the Minister considers it advisable for the purpose of making a regulation in connection with any matter mentioned in subsection (1), the Minister may, by written notice given in a manner the Minister considers appropriate, invite any institution, organisation, body or person, including any basin management committee, the controlling body of the engineering

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profession, any local authority, regional council or other organ of State to participate in any consultation, as specified in that notice, for the purpose of formulating the regulation proposed to be made.

- (3) Regulations made under subsection (1) may -
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;
 - (c) confer powers or impose duties on any person; and
 - (d) create a criminal offence for any contravention of, or failure to comply with any provision of the regulations and prescribe penalties in respect of any such offence not exceeding a fine of N\$100,000 or imprisonment for a period not exceeding 2 years, or both such penalty and such imprisonment.

State bound

130. This Act binds the State, except a provision imposing criminal liability for an offence.

Limitation of liability

131. The State or an other person is not liable for any damage or loss caused by –

[The phrase “an other person” should be
“any other person” or “another person”.]

- (a) the exercise of a power or the performance of a function under this Act; or
- (b) the failure to exercise a power, or perform a function under this Act,

unless the exercise of or failure to exercise the power, or performance of or failure to perform the function, was unlawful, negligent or in bad faith.

Transitional provisions

132. (1) In this section “repealed law” means a law repealed by section 133.

(2) Any declaration of an area as a water control area that was of force under a repealed law immediately before the commencement of this Act, continues to be of force and is deemed to have been declared a water protection area under section 85 of this Act.

(3) A person who immediately before the commencement of this Act was authorised to abstract and use water under a permit in force under a repealed law, may continue to abstract and use water in accordance with the authorisation granted by that permit, but that person must apply to the Minister, not later than 18 months after the date of commencement of this Act, for the issue of a licence to abstract and use water under section 44 of this Act, and such application must be accompanied by a statement setting out -

- (a) the volume of water abstracted during each of the two years immediately preceding the application;
- (b) the water resource from which the abstraction is made;

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- (c) the purpose for which the abstracted water is being used;
- (d) the date when the abstraction commenced;
- (e) the particulars in relation to effluent, if any, discharged as a result of the abstraction; and
- (f) any other information as prescribed or as the Minister may require.

(4) A person who immediately before the commencement of this Act was authorised to discharge effluent under a permit in force under a repealed law, may continue with the discharge of effluent in accordance with the authorisation granted by that permit, but that person must, in accordance with section 72 of this Act, apply to the Minister, not later than 18 months after the date of commencement of this Act, for the issue of a licence to discharge effluent under this Act, and such application must be accompanied by a statement setting out -

- (a) the volume of effluent discharged during each of the two years preceding the application;
- (b) any water resource into which the effluent is discharged;
- (c) the chemical constituents and the concentration values of the effluent, as far as is known;
- (d) the date when the discharge commenced; and
- (e) any other information as the Minister may require.

(5) A person who immediately before the commencement of this Act operated a wastewater treatment facility or waste disposal site may continue to operate that wastewater treatment facility or waste disposal site, despite the requirements of section 69(2), but that person must, in accordance with section 72, apply to the Minister for the issue of a licence to operate that wastewater treatment facility or disposal site under this Act not later than 18 months after the date of commencement of this Act.

(6) Without prejudice to subsections (3), (4) and (5), a person who, on the date of commencement of this Act, owns or uses or is in control of any dam, impoundment or borehole or carries on an activity which is required by this Act to be licensed, registered or authorised otherwise, and in respect of which, before the commencement of this Act, a permit or other authorisation was not required in terms of a repealed law, may continue to use or control such dam or borehole or to carry on such activity without the required licence, registration or authorisation, but that person must, in accordance with this Act, apply to the Minister for the issue of the appropriate licence, registration certificate or other authorisation under this Act, not later than 18 months after the date of commencement of this Act.

- (7) A person authorised by -
 - (a) subsection (3) to continue with the abstraction and use of water in accordance with the permit referred to in that subsection;
 - (b) subsection (4) to continue with the discharge of effluent in accordance with the permit referred to in that subsection;

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- (c) subsection (5) to continue operating a wastewater treatment facility or waste disposal site; or
- (d) subsection (6) to continue using or controlling a dam or borehole or carrying on an activity referred to in that subsection,

ceases to be so authorised on the expiry of the 18 months' period referred to in those subsections if the person has failed to apply to the Minister for the issue of the appropriate licence, registration or other authorisation under this Act before the expiry of that period, unless the Minister upon application and good cause shown by any affected person grants an extension of that period, but not exceeding an additional period of 12 months, and subject to such conditions as the Minister may impose.

(8) Any tariffs of fees and charges in respect of water supply and other water related services which were of force and levied by any authority, body or person under any law, immediately before the date of commencement of this Act, continue to be of effect until tariffs of fees and charges are determined by the Water Regulator in respect of that authority, body or person under this Act.

(9) Any application for a licence contemplated in subsection (3), (4), (5) or (6) must be dealt with and evaluated in accordance with the procedures and requirements of this Act applicable to a new application.

Repeal and amendment of laws and savings

133. (1) The laws set out in the Schedule to this Act are repealed or amended to the extent indicated in Column 3 of the Schedule.

(2) Subject to section 132, anything done under a law repealed by subsection (1), which was of force immediately before the date of such repeal and which may be done under a corresponding provision of this Act, continues to be of force and is deemed to have been done under that corresponding provision.

Short title and commencement

134. (1) This Act is called the Water Resources Management Act, 2013 and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in any provision of this Act to the commencement of this Act is construed as a reference to the date determined under subsection (1) relating to that particular provision.

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SCHEDULE

LAWS REPEALED OR AMENDED
(Section 133)

No. and Year of Law	Short Title	Extent of Repeal or Amendment
Act No. 54 of 1956	Water Act, 1956	Repealed as whole
Act No. 75 of 1957	Water Amendment Act, 1957	Repealed as whole
Act No. 56 of 1961	Water Amendment Act, 1961	Repealed as whole
Act No. 63 of 1963	Water Amendment Act, 1963	Repealed as whole
Act No. 71 of 1965	Water Amendment Act, 1965	Repealed as whole
Act No. 11 of 1966	Water Amendment Act, 1966	Repealed as whole
Act No. 79 of 1967	Water Amendment Act, 1967	Repealed as whole
Act No. 77 of 1969	Water Amendment Act, 1969	Repealed as whole
Act No. 34 of 1971	Water Amendment Act, 1971	Repealed as whole
Act No. 45 of 1972	Water Amendment Act, 1972	Repealed as whole
Act No. 58 of 1974	Water Amendment Act, 1974	Repealed as whole
Act No. 42 of 1975	Water Amendment Act, 1975	Repealed as whole
Act No. 27 of 1976	Water Amendment Act, 1976	Repealed as whole
Act No. 108 of 1977	Water Amendment Act, 1977 [full stop should be a comma]	Repealed as whole
Act No. 4 of 1982	Water Amendment Act 1982 [missing comma]	Repealed as whole
Act No. 22 of 1985	Water Amendment Act 1985 [missing comma]	Repealed as whole
Act No. 23 of 1992	Local Authorities Act, 1992	The amendment of section 30(1) by the substitution in paragraph (u) for the words preceding subparagraph (i) of the following words: ["subparagraph" is misspelt]
		“(u) to determine by notice in the <i>Gazette</i> , the charges, fees and other moneys payable in respect of any service, amenity or facility established and provided by it under this Act, <u>but subject, in the case of fees and charges in respect of the supply of water and other water related service, to any tariff of fees and charges determined by the Water Regulator under the Water Resources Management Act, 2013 that is applicable to the local authority council,</u> or any matter regulated and controlled by it thereunder, including -”.
Act No. 12 of 1997	Namwater Corporation Act, 1997	(a) The amendment of section 6 -
		(i) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
		“(a) explore, develop and manage water resources <u>under the Corporation’s control</u> for the purpose of water supply;” and
		(ii) by the substitution for paragraph (c) of the following paragraph:
		“(c) subject to section 7 [and notwithstanding any

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<p>Act No. 24 of 2004</p> <p>R 1278 of 1971</p>	<p>Water Resources Management Act, 2004</p> <p>Regulation R 1278 of 23 July 1971</p>	<p>provisions of the Water Act to the contrary], supply water to customers within and outside the borders of the Republic of Namibia;”.</p> <p>(b) The amendment of section 7 -</p> <p>(i) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) <u>levy tariffs for the supply of water in accordance with the tariffs of fees and charges determined by the Water Regulator in accordance with Part 4 of the Water Resources Management Act, 2013, which tariffs are to be determined by the Water Regulator on a full cost recovery basis.</u>”; and</p> <p>(ii) by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p>“(b) determine and levy charges for services rendered, <u>other than water supply</u>, facilities provided or rights leased by the Corporation;” and</p> <p>(c) The substitution for subsection (1) of section 14 of the following subsection:</p> <p>“(1) The Corporation shall, subject to the provisions of this Act <u>and any standards prescribed in respect of water quality and water supply services under the Water Resources Management Act, 2013</u>, and after consultation with such bodies or persons as it may deem necessary, formulate and maintain service standards in respect of water, services and facilities or lease of rights under this Act, and may from time to time amend those standards.”.</p> <p>Repealed as whole</p> <p>Repealed as whole</p>
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