

WATER

Water Act 54 of 1956, in part, as amended in South Africa to September 1977

Summary: This Act ([SA GG 5718](#)) concerns the control, use and conservation of water. It was repealed by the Water Resources Management Act 24 of 2004 ([GG 3357](#)), which never came into force. That Act has now been superseded by the Water Resources Management Act 11 of 2013 ([GG 5367](#)) – which repeals this Act and will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Applicability to SWA: Section 180 of the original Act stated: “The Governor-General may, by proclamation in the *Gazette*, apply the provisions of this Act to the territory of South-West Africa or any area within that territory.” As amended by *Act 77 of 1969*, section 180(1) states “The State President may, by proclamation in the *Gazette*, apply any of or all the provisions of this Act to the territory of South West Africa or any portion thereof.” Section 180(2) applies sections 1-4 of the Act to South West Africa from the date of commencement of *Act 77 of 1969* (25 June 1969).

RSA Proclamation 281 of 1970 ([RSA GG 2921](#)) applies section 162 to South West Africa with effect from 1 April 1971. It makes no mention of the applicability of future amendments to South West Africa, stating “I do hereby declare that as from 1 April 1971, the provisions of section 162 of the Water Act shall apply to the Territory of South-West Africa.” However, this proclamation presumably applied the stated sections as they stood at 1 April 1971.

RSA Proclamation 151 of 1971 ([RSA GG 3167](#)) applies sections 5-7, 9A, 21-23, 26 (excluding paragraph (a)), 27, 28(1), 30, 34-43, 44(2), 45-51, 54-56, 57(1), 59(2), 61, 66, 67, 69, 70 (excluding paragraphs (d), (f), (g) and (h)), 139-152, 164*bis*, 164*ter*, 165, 166, 170 (excluding paragraphs (3) and (5)(c)) and 171 to South West Africa. This Proclamation became effective from the date of its publication, 25 June 1971. It makes no mention of the applicability of future amendments to South West Africa, stating “I hereby declare, in terms of section 180(1) of the Water Act, 1956 (Act 54 of 1956), the provisions of the following sections of the said Act to be applicable to the Territory of South-West Africa with effect from the date of publication hereof... [followed by a list of section numbers].” However, this Proclamation presumably applied the stated sections as they stood at 25 June 1971.

The *Water Amendment Act 22 of 1985* ([OG 5142](#)) makes sections 9B, 30A(a) and 170(3) applicable to “the Territory of South West Africa”. Section 1(2) of *Act 22 of 1985* states “For the purposes of any provision of the principal Act the provisions of subsection (1) shall be deemed to be a proclamation made under section 180 of the principal Act.” *Act 22 of 1985* came into force on its date of publication (18 December 1985). It states “Sections 9B, 30A(a) and 170(3) of the Water Act, 1956 (hereinafter referred to as the principal Act), shall apply in the territory of South West Africa.” It does not make any of the amendments to these sections after the date of transfer explicitly applicable to South West Africa, and so apparently applies the stated sections as they stood in South Africa at the date of transfer, 28 September 1977. Alternatively, it is possible that *Act 22 of 1985* applied the sections in question as they stood in South Africa as of 18 December 1985. However, the first interpretation is supported by *Act 22 of 1985*: it amends section 9B “as inserted by section 2 of Act 36 of 1971 and amended by section 1 of Act 42 of 1975 and section 1 of Act 108 of 1977”. This marginal notation makes no mention of the amendment of section 9B by *Act 96 of 1984*, which amended section 9B in South Africa after the date of transfer but prior to *Act 22 of 1985*.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977) dated 28 September 1977, as amended. None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Water Amendment Act 56 of 1961* ([RSA GG 30](#))
- *Water Amendment Act 71 of 1965* ([RSA GG 1136](#))
- *Water Amendment Act 11 of 1966* ([RSA GG 1380](#))
- *Agricultural Credit Act 28 of 1966* ([RSA GG 1546](#))
- *Water Amendment Act 79 of 1967* ([RSA GG 1763](#))
- *Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969* ([RSA GG 2315](#))
- *Water Amendment Act 77 of 1969* ([RSA GG 2443](#))
Amendments in South Africa to section 162 were not applicable to South West Africa after this point.
- *Water Amendment Act 36 of 1971* ([RSA GG 3106](#))
Amendments in South Africa to other provisions of the Act which applied to South West Africa, with the *exception* of sections 9B, 30A(a) and 170(3), were not applicable after this point.
- *Water Amendment Act 45 of 1972* ([RSA GG 3516](#))
- *Water Amendment Act 42 of 1975* ([RSA GG 4720](#))
- *Water Amendment Act 108 of 1977* ([RSA GG 5660](#))
Amendments in South Africa to sections 9B, 30A(a) and 170(3) of the Act were not applicable to South West Africa after this point.

The following South African amending Acts were not relevant to SWA because they amend only provisions of the Act which were not applicable to SWA:

- *Water Amendment Act 75 of 1957* ([SA GG 5908](#))
- *Water Amendment Act 63 of 1963* ([RSA GG 540](#))
- *General Law Amendment Act 102 of 1972* ([RSA GG 3610](#))
- *Water Amendment Act 58 of 1974* ([RSA GG 4452](#)).
- *Expropriation Act 63 of 1975* ([RSA GG 4780](#))
- *Water Amendment Act 27 of 1976* ([RSA GG 5043](#)).

Section 33 of the Public Service Act 2 of 1980 ([OG 4116](#)) repealed section 3(2) of Act 54 of 1956. However, AG 18/1980 ([OG 4212](#)), which brought Act 2 of 1980 into force, excluded section 33, and the reference to the Water Act in section 33 of Act 2 of 1980 was deleted altogether by the Water Amendment Act 4 of 1982 ([OG 4617](#)).

The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

Act 4/1982 ([OG 4617](#)) amends sections 1 and 3.

Act 22/1985 ([OG 5142](#)) amends several sections of the Act.

This Act was repealed by the Water Resources Management Act 24 of 2004 ([GG 3357](#)), which never came into force. That Act has now been superseded by the Water Resources Management Act 11 of 2013 ([GG 5367](#)), which also repeals this Act but has not yet been brought into force.

Application of law: Section 42 of the Namibia Water Corporation Act 12 of 1997 ([GG 1703](#)) affects the applicability of this Act to the NamWater Corporation.

Regulations: Pre-independence regulations have not been comprehensively researched.

Section 180(3) and (4) of the Act give the State President of South Africa the power to issue special water regulations for application in South West Africa, so long as such regulations are approved by both the Senate and the House of Assembly. Section 180(5) provides that the South West African Water Ordinance 13 of 1932 and the Artesian Water Control Ordinance 35 of 1955) will be deemed to be regulations issued under the Act, and provides rules for their interpretation.

The **Water Ordinance 13 of 1932** (GN 13/1932) (OG 478) was initially enacted as an Ordinance. It was then deemed by section 180(5) of the *Water Act 54 of 1956*, as amended by the Water Amendment Act 77 of 1969, to constitute regulations.

The **Artesian Water Control Ordinance 35 of 1955** (GN 229/1955) (OG 1930) was initially enacted as an Ordinance. It was then deemed by section 180(5) of the *Water Act 54 of 1956*, as amended by the Water Amendment Act 77 of 1969, to constitute regulations.

Section 180(5) provides the following rules of construction in respect of these Ordinances as regulations: (a) References to the “Administration” shall be construed as a reference to the department. (b) References to the “Administrator” shall, except in section 2(2), be construed as a reference to the Minister. (d) References to the “Legislative Assembly” shall be construed as a reference to Parliament.

Section 180(5) also provides that anything done by any authority under any provision of these Ordinances prior to the commencement of the Water Amendment Act 77 of 1969 shall be deemed to have been done by the corresponding authority under such provision as so construed.

RSA GN R.1277/1971 ([RSA GG 3218](#)) sets forth regulations for SWA pursuant to section 180(3) of the Act. These regulations are amended by RSA GN R.875/1975 (RSA GG 4692), AG GN 16/1980 (OG 4097) and section 8 of the SWA Water Amendment Act 22 of 1985 ([OG 5142](#)).

RSA GN R.1278/1971 ([RSA GG 3218](#)) sets forth regulations for SWA pursuant to section 30(2) of the Act. These regulations are amended by section 8 of the SWA Water Amendment Act 22 of 1985 ([OG 5142](#)).

Notices: AG GN 12/1980 ([OG 4089](#)), GN 167/1986 ([OG 5254](#)) and GN 50/2000 ([GG 2280](#)) concern the delegation of powers under the Act.

Rates and charges: Rates and charges are dealt with in General Notice 5/1978 ([OG 3716](#)), AG GN 52/1979 ([OG 3988](#)), AG GN 62/1980 ([OG 4099](#)), AG GN 80/1981 ([OG 4487](#)), AG GN 128/1984 ([OG 4965](#)), GN 132/1986 ([OG 5228](#)) and GN 10/1988 ([OG 5487](#)).

Cases: See *Namib Plains Farming CC v Valencia Uranium (Pty) Ltd & Others* 2011 (2) NR 469 (SC) at 480C-481E and 482A-E, summarising and discussing the unreported High Court case in the same matter, which discussed sections 27, 28 and 30.

Commentary: Legal Assistance Centre / Mills International Human Rights Clinic, Stanford Law School, *Not coming up dry: regulating the use of Namibia’s scarce water resources by mining operations*, Windhoek: Legal Assistance Centre, 2009, available at www.lac.org.na.

Water Research Act 34 of 1971, as amended in South Africa to October 1972

Summary: This Act ([RSA GG 3105](#)) establishes a Water Research Commission to promote research into water affairs, as well as a Water Research Fund.

Applicability to SWA: Section 15 states “The State President may by proclamation in the Gazette declare any of or all the provisions of this Act and of any amendment thereof to be applicable in the territory of South West Africa (including the Eastern Caprivi Zipfel) or any portion thereof.” All of the provisions of the Act were made applicable to SWA by RSA Proc. 279/1972 ([RSA GG 3685](#)) as from 27 October 1972, but not future amendments: “Now, therefore, under the powers vested in me by the said section 15, I do hereby declare that all the provisions of the said Act shall, with effect from the date of publication hereof, be applicable in the Territory of South-West Africa.” This Proclamation did not make amendments to the Act in South Africa automatically applicable to SWA.

Neither of the two amending Acts enacted prior to the date of transfer – the *Water Research Amendment Act 16 of 1974* ([RSA GG 4199](#)) and the *Water Research Amendment Act 37 of 1975* ([RSA GG 4700](#)) – were applied to South West Africa by Proclamation of the State President, and it is debatable whether the wording of *RSA Proc. 279 of 1972* was intended to incorporate future amendments (“...all the provisions of the said Act... with effect from the date of publication hereof...”). However, based on the approach to the Act taken by the Administrator-General of South West Africa after the date of transfer, it appears that the wording of *RSA Proc. 279 of 1972* was understood to incorporate amendments to the Act.

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

Note that this Proclamation appears to assume that amendments to the principal Act were automatically applicable to South West Africa, with the power to declare a *commencement date* lying with the Administrator-General of South West Africa instead of the State President of South Africa by virtue of the Transfer Proclamation.

Amendments: The following pre-independence South African amendments were apparently applicable to SWA –

- *Water Research Amendment Act 16 of 1974* ([RSA GG 4199](#))
- *Water Research Amendment Act 37 of 1975* ([RSA GG 4700](#)).

AG 29/1978 makes the *Water Research Amendment Act 106 of 1977* ([RSA GG 5658](#)) applicable to SWA as from 1 July 1978. This Act amends section 11, which deals with the levying of rates and charges.

Regulations: The Act makes no provision for regulations.

Namibia Water Corporation Act 12 of 1997

Summary: This Act ([GG 1703](#)) establishes “NamWater” and provides for its powers, duties and functions. It was brought into force on 20 November 1997 by GN 234/1997 ([GG 1732](#)).

Amendments: Act 17/2001 ([GG 2674](#)), which has not yet been brought into force, amends sections 17, 18 and 19 and substitutes section 21.

The Water Resources Management Act 24 of 2004 ([GG 3357](#)), which has not yet been brought into force, amends a cross-reference in the Act.

The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and later re-named the Public Enterprises Governance Act 2 of 2006, amends sections 17, 18, 19, 21, 22 and 28.

The Water Resources Management Act 11 of 2013 ([GG 5367](#)), which has not yet been brought into force, amends sections 6 and 7 and will repeal the Water Resources Management Act 24 of 2004.

Regulations: Regulations are authorised by section 43 of the Act, but none have yet been promulgated.

Notices: The date for the transfer of bulk water supply functions from the Department of Water Affairs to the Namibia Water Corporation Ltd is determined to be 1 April 1998 in GN 169/1998 ([GG 1909](#)).

Tariffs: Bulk water supply tariffs are set forth from time to time and have not been recorded here.

Appointments: Directors of the Board are announced in GN 248/1998 ([GG 1965](#)), GN 186/2000 ([GG 2386](#)) and GN 58/2004 ([GG 3181](#)).

***Water Resources Management Act 24 of 2004**

Summary: This Act ([GG 3357](#)) concerns the management, development, protection, conservation and use of water resources. It establishes a Water Advisory Council, a Water Regulatory Board and a Water Tribunal. This Act was intended to replace the *Water Act 54 of 1956*. However, it never came into force and has been repealed by the Water Resources Management Act 11 of 2013 ([GG 5367](#)), which will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Commentary: Legal Assistance Centre / Mills International Human Rights Clinic, Stanford Law School, *Not coming up dry: regulating the use of Namibia’s scarce water resources by mining operations*, 2009, available at www.lac.org.na.

***Water Resources Management Act 11 of 2013**

Summary: This Act ([GG 5367](#)) concerns the management, development, protection, conservation and use of water resources. It establishes a Water Advisory Council, a Water Regulator and a Water Tribunal, as well as Basin Management Committees and Water Point Committees. It provides for an Integrated Water Resources Management Plan and a Water Pricing Policy, and covers licencing for water services providers and for water abstraction and use. Amongst the other topics it addresses are management of internationally shared water resources, protection of groundwater, control of water pollution, dams, flood management and wetlands. This Act repeals the *Water Act 54 of 1956* and the Water Resources Management Act 24 of 2004 (which was never brought into force). It will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

Regulations: Subject to certain transitional provisions, anything done under a law repealed by this Act which may be done under a corresponding provision of this Act, remains in force. Pre-independence regulations have not been comprehensively researched.

Regulations: Pre-independence regulations have not been comprehensively researched.

Section 180(3) and (4) of the *Water Act 54 of 1956* gave the State President of South Africa the power to issue special water regulations for application in South West Africa, so long as such regulations were approved by both the Senate and the House of Assembly. Section 180(5) provided that the South West African Water Ordinance 13 of 1932 and the Artesian Water Control Ordinance 35 of 1955) would be deemed to be regulations issued under the Act, and provides rules for their interpretation.

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Section 180(5) of the *Water Act 54 of 1956* provided the following rules of construction in respect of these Ordinances as regulations: (a) References to the “Administration” shall be construed as a reference to the department. (b) References to the “Administrator” shall, except in section 2(2), be construed as a reference to the Minister. (d) References to the “Legislative Assembly” shall be construed as a reference to Parliament.

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RSA GN R.1278/1971 ([RSA GG 3218](#)) sets forth regulations for SWA pursuant to section 30(2) of the *Water Act 54 of 1956*. These regulations are amended by section 8 of the SWA Water Amendment Act 22 of 1985 ([OG 5142](#)).

Rates and charges: Rates and charges have not been recorded here.

Cases: The following post-independence case concerns the repealed *Water Act 54 of 1956* – *Namib Plains Farming CC v Valencia Uranium (Pty) Ltd & Others* 2011 (2) NR 469 (SC) at 480C-481E and 482A-E, summarising and discussing the unreported High Court case in the same matter, which discussed sections 27, 28 and 30 of the repealed Act.

Commentary: Legal Assistance Centre / Mills International Human Rights Clinic, Stanford Law School, *Not coming up dry: regulating the use of Namibia's scarce water resources by mining operations*, 2009, available at www.lac.org.na.

COMMENTARY

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MO Hinz, OC Ruppel & C Mapaire (eds), *Knowledge lives in the lake: Case studies in environmental and customary law from Southern Africa*, Windhoek: Namibia Scientific Society, 2012 (reviewed by Johannes DK Kariseb in *UNAM Law Review*, Volume 1, Issue 2, 2013, available at <http://unamlawreview.info>)

Dietrich Remmert, "Water Governance in Namibia – A Tale of Delayed Implementation, Policy Shortfalls, and Miscommunication", Institute for Public Policy Research, 2016, available at www.ippr.org.na.

See also *Mountain Catchment Areas Act 63 of 1970* (ENVIRONMENT).

See also Geoscience Professions Act 3 of 2012 (hydrogeology) (SCIENCE AND SCIENTIFIC RESEARCH).