

NATIONAL WATER ACT 36 OF 1998

[ASSENTED TO 20 AUGUST 1998]

[DATE OF COMMENCEMENT: 1 OCTOBER 1998]
(Unless otherwise indicated)

(English text signed by the President)

as amended by

National Water Amendment Act 45 of 1999

Regulations under this Act

WATER USE REGISTRATION REGULATIONS

ACT

To provide for fundamental reform of the law relating to water resources; to repeal certain laws; and to provide for matters connected therewith.

Preamble

Recognising that water is a scarce and unevenly distributed national resource which occurs in many different forms which are all part of a unitary, inter-dependent cycle;

Recognising that while water is a natural resource that belongs to all people, the discriminatory laws and practices of the past have prevented equal access to water, and use of water resources;

Acknowledging the National Government's overall responsibility for and authority over the nation's water resources and their use, including the equitable allocation of water for beneficial use, the redistribution of water, and international water matters;

Recognising that the ultimate aim of water resource management is to achieve the sustainable use of water for the benefit of all users;

Recognising that the protection of the quality of water resources is necessary to ensure sustainability of the nation's water resources in the interests of all water users; and

Recognising the need for the integrated management of all aspects of water resources and, where appropriate, the delegation of management functions to a regional or catchment level so as to enable everyone to participate;

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

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CHAPTER 1
INTERPRETATION AND FUNDAMENTAL PRINCIPLES (ss 1-4)

This Chapter sets out the fundamental principles of the Act. Sustainability and equity are identified as central guiding principles in the protection, use, development, conservation, management and control of water resources. These guiding principles recognize the basic human needs of present and future generations, the need to protect water resources, the need to share some water resources with other countries, the need to promote social and economic development through the use of water and the need to establish suitable institutions in order to achieve the purpose of the Act. National Government, acting through the Minister, is responsible for the achievement of these fundamental principles in accordance with the Constitutional mandate for water reform. Being empowered to act on behalf of the nation, the Minister has the ultimate responsibility to fulfill certain obligations relating to the use, allocation and protection of and access to water resources.

This Chapter also contains definitions explaining the meaning of certain words used in the Act as well as provisions regarding the interpretation of the Act.

1 Definitions and interpretation

(1) In this Act, unless the context shows that another meaning is intended-

'aquifer' means a geological formation which has structures or textures that hold water or permit appreciable water movement through them;

'borehole' includes a well, excavation or any artificially constructed or improved underground cavity which can be used for the purpose of-

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

'catchment', in relation to a watercourse(s) or part of a watercourse, means the area from which any rainfall will drain into the watercourse or watercourses or part of a watercourse, through surface flow to a common point or common points;

'charge' includes a fee, price or tariff imposed under this Act;

'conservation' in relation to a water resource means the efficient use and saving of water, achieved through measures such as water saving devices, water-efficient processes, water demand management and water rationing;

'Department' means the Department of Water Affairs and Forestry;

'Director-General' means the Director-General of the Department;

'entitlement': a right to use water in terms of any provision of this Act or in terms of an instrument issued under the Act

'estuary' means a partially or fully enclosed body of water-

- (a) which is open to the sea permanently or periodically;
- (b) within which the sea water can be diluted, to an extent that is measurable, with fresh water drained from land;

'government waterwork' means a waterwork owned / controlled by the Minister and includes the land on which it is situated

'instream habitat' includes the physical structure of a watercourse and the associated vegetation in relation to the bed of the watercourse;

'Minister' means the Minister of Water Affairs and Forestry;

'organ of state' has the meaning set out in section 239* of the Constitution;

'person' includes a natural person, a juristic person, an unincorporated body, an association, an organ of state and the Minister;

'pollution' means the direct or indirect alteration of the physical, chemical or biological properties of a water resource so as to make it-

- (a) less fit for any beneficial purpose for which it may reasonably be expected to be used;

(b) harmful or potentially harmful-

(aa) to the welfare, health or safety of human beings;

(bb) to any aquatic or non-aquatic organisms;

(cc) to the resource quality; or

(dd) to property;

'prescribe' means prescribe by regulation;

'protection', in relation to a water resource, means-

(a) maintenance of the quality of the water resource to the extent that the water resource may be used in an ecologically sustainable way;

(b) prevention of the degradation of the water resource; and

(c) the rehabilitation of the water resource;

'Reserve' means the quantity and quality of water required-

(a) to satisfy basic human needs by securing a basic water supply, as prescribed under the Water Services Act, 1997 (Act 108 of 1997), for people who are now or who will, in the reasonably near future, be-

(i) relying upon;

(ii) taking water from; or

(iii) being supplied from the relevant water resource; and

(b) to protect aquatic ecosystems in order to secure ecologically sustainable development and use of the relevant water resource;

'resource quality' means the quality of all the aspects of a water resource including-

(a) the quantity, pattern, timing, water level and assurance of instream flow;

(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; and

(d) the characteristics, condition and distribution of the aquatic biota;

'responsible authority', in relation to a specific power or duty in respect of water uses, means-

(a) if that power or duty has been assigned by the Minister to a catchment management agency, that catchment management agency; or

(b) if that power or duty has not been so assigned, the Minister;

'riparian habitat' includes the physical structure and associated vegetation of the areas associated with a watercourse which are commonly characterised by alluvial soils, and which are inundated or flooded to an extent and with a frequency sufficient to support vegetation of species with a composition and physical structure distinct from those of adjacent land areas;

'this Act' includes any regulations made under this Act;

'waste' includes any solid material or material that is suspended, dissolved or transported in water (including sediment) and which is spilled or deposited on land or into a water resource in such volume, composition or manner as to cause, or to be reasonably likely to cause, the water resource to be polluted;

'watercourse' means-

- (a) a river or spring;
- (b) a natural channel in which water flows regularly or intermittently;
- (c) a wetland, lake or dam into which, or from which, water flows; and
- (d) any collection of water which the Minister may, by notice in the *Gazette*, declare to be a watercourse, and a reference to a watercourse includes, where relevant, its bed and banks;

'water management area' is an area established as a management unit in the national water resource strategy within which a catchment management agency will conduct the protection, use, development, conservation, management and control of water resources;

'water management institution' means a catchment management agency, a water user association, a body responsible for international water management or any person who fulfils the functions of a water management institution in terms of this Act;

'water resource' includes a watercourse, surface water, estuary, or aquifer;

'waterwork' includes any borehole, structure, earthwork or equipment installed or used for or in connection with water use;

'wetland' means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

(2) In this Act, where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have, unless the contrary intention appears from the relevant provisions, corresponding meanings.

(3) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the purpose of this Act as stated in section 2, must be preferred over any alternative interpretation which is inconsistent with that purpose.

(4) Explanatory notes, printed in bold italics, at the commencement of Chapters and Parts must not be used in the interpretation of any provision of this Act.

(5) Any directive or notice given in terms of this Act must be in writing, unless otherwise specified in this Act.

2 Purpose of Act

The purpose of this Act is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors-

- (a) meeting the basic human needs of present and future generations;
- (b) promoting equitable access to water;
- (c) redressing the results of past racial and gender discrimination;

- (d) promoting the efficient, sustainable and beneficial use of water in the public interest;
- (e) facilitating social and economic development;
- (f) providing for growing demand for water use;
- (g) protecting aquatic and associated ecosystems and their biological diversity;
- (h) reducing and preventing pollution and degradation of water resources;
- (i) meeting international obligations;
- (j) promoting dam safety;
- (k) managing floods and droughts, and for achieving this purpose, to establish suitable institutions and to ensure that they have appropriate community, racial and gender representation.

3 Public trusteeship of nation's water resources

- (1) As the public trustee of the nation's water resources the National Government, acting through the Minister, must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate.
- (2) Without limiting subsection (1), the Minister is ultimately responsible to ensure that water is allocated equitably and used beneficially in the public interest, while promoting environmental values.
- (3) The National Government, acting through the Minister, has the power to regulate the use, flow and control of all water in the Republic.

4 Entitlement to water use

- (1) A person may use water in or from a water resource for purposes such as reasonable domestic use, domestic gardening, animal watering, fire fighting and recreational use, as set out in Schedule 1.
- (2) A person may continue with an existing lawful water use in accordance with section 34.
- (3) A person may use water in terms of a general authorisation or licence under this Act.
- (4) Any entitlement granted to a person by or under this Act replaces any right to use water which that person might otherwise have been able to enjoy or enforce under any other law-
 - (a) to take or use water;
 - (b) to obstruct or divert a flow of water;
 - (c) to affect the quality of any water;
 - (d) to receive any particular flow of water;
 - (e) to receive a flow of water of any particular quality; or
 - (f) to construct, operate or maintain any waterwork.

CHAPTER 2 WATER MANAGEMENT STRATEGIES (ss 5-11)

This Chapter deals with the development of strategies to facilitate the proper management of water resources.

Part 1 National water resource strategy (ss 5-7)

Part 1 requires the progressive development, by the Minister, after consultation with society at large, of a national water resource strategy. The national water resource strategy provides the framework for the protection, use, development, conservation, management and control of water resources for the country as a whole. It also provides the framework within which water will be managed at regional or catchment level, in defined water management areas. The national water resource strategy, which must be formally reviewed from time to time, is binding on all authorities and institutions exercising powers or performing duties under this Act.

5 Establishment of national water resource strategy

- (1) Subject to subsection (4), the Minister must, as soon as reasonably practicable, by notice in the *Gazette*, establish a national water resource strategy.
- (2) The notice must state the address where the strategy may be inspected.
- (3) The water resources of the Republic must be protected, used, developed, conserved, managed and controlled in accordance with the national water resource strategy.
- (4) A national water resource strategy-
 - (a) may be established in a phased and progressive manner and in separate components over time; and
 - (b) must be reviewed at intervals of not more than five years.
- (5) Before establishing a national water resource strategy or any component of that strategy in terms of subsection (1), the Minister must-
 - (a) publish a notice in the *Gazette*-
 - (i) setting out a summary of the proposed strategy or the component in question;
 - (ii) stating the address where the proposed strategy or the component in question is available for inspection; and
 - (iii) inviting written comments to be submitted on the proposed strategy or the component in question, specifying an address to which and a date before which comments must be submitted, which date may not be earlier than 90 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in paragraph (a) (iii).

6 Contents of national water resource strategy

- (1) The national water resource strategy must, subject to section 5 (4) (a)-
 - (a) set out the strategies, objectives, plans, guidelines and procedures of the Minister and institutional arrangements relating to the protection, use, development, conservation, management and control of water resources within the framework of existing relevant government policy in order to achieve-
 - (i) the purpose of this Act; and
 - (ii) any compulsory national standards prescribed under section 9 (1) of the Water Services Act, 1997 (Act 108 of 1997);

- (b) provide for at least-
 - (i) the requirements of the Reserve and identify, where appropriate, water resources from which particular requirements must be met;
 - (ii) international rights and obligations;
 - (iii) actions to be taken to meet projected future water needs; and
 - (iv) water use of strategic importance;
 - (c) establish water management areas and determine their boundaries;
 - (d) contain estimates of present and future water requirements;
 - (e) state the total quantity of water available within each water management area;
 - (f) state water management area surpluses or deficits;
 - (g) provide for inter-catchment water transfers between surplus water management areas and deficit water management areas;
 - (h) set out principles relating to water conservation and water demand management;
 - (i) state the objectives in respect of water quality to be achieved through the classification system for water resources provided for in this Act;
 - (j) contain objectives for the establishment of institutions to undertake water resource management;
 - (k) determine the inter-relationship between institutions involved in water resource management; and
 - (l) promote the management of catchments within a water management area in a holistic and integrated manner.
- (2) In determining a water management area in terms of subsection (1) (c), the Minister must take into account-
- (a) watercourse catchment boundaries;
 - (b) social and economic development patterns;
 - (c) efficiency considerations; and
 - (d) communal interests within the area in question.

7 Giving effect to national water resource strategy

The Minister, the Director-General, an organ of state and a water management institution must give effect to the national water resource strategy when exercising any power or performing any duty in terms of this Act.

Part 2 Catchment management strategies (ss 8-11)

Part 2 requires every catchment management agency to progressively develop a catchment management strategy for the water resources within its water management area. Catchment management strategies must be in harmony with the national water resource strategy. In the process of developing this strategy, a catchment management agency must seek co-operation and agreement on water-related matters from the various stakeholders and interested persons. The catchment management strategy, which must be reviewed from time to time, will include a water allocation plan. A catchment management strategy must set principles for allocating water to existing and prospective users, taking into account all matters relevant to the protection, use, development, conservation, management and control of water resources.

8 Establishment of catchment management strategies

(1) A catchment management agency contemplated in Chapter 7 must, by notice in the *Gazette*, establish a catchment management strategy for the protection, use, development, conservation, management and control of water resources within its water management area.

(2) The notice must state the address where the strategy may be inspected.

(3) A catchment management strategy-

(a) may be established in a phased and progressive manner and in separate components over time; and

(b) must be reviewed at intervals of not more than five years.

(4) A catchment management strategy or any component of that strategy may only be established with the written consent of the Minister.

(5) Before establishing a catchment management strategy or any component of that strategy in terms of subsection (1), a catchment management agency must-

(a) publish a notice in the *Gazette*-

(i) setting out a summary of the proposed catchment management strategy or the component in question;

(ii) stating the address where the proposed strategy or the component in question is available for inspection; and

(iii) inviting written comments to be submitted on the proposed strategy or the component in question, specifying an address to which and a date before which comments must be submitted, which date may not be earlier than 90 days after publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the catchment management agency considers to be appropriate; and

(c) consider all comments received on or before the date specified in paragraph (a) (iii).

9 Contents of catchment management strategy

A catchment management strategy must-

(a) take into account the class of water resources and resource quality objectives contemplated in Chapter 3, the requirements of the Reserve and, where applicable, international obligations;

(b) not be in conflict with the national water resource strategy;

(c) set out the strategies, objectives, plans, guidelines and procedures of the catchment management agency for the protection, use, development, conservation, management and control of water resources within its water management area;

(d) take into account the geology, demography, land use, climate, vegetation and waterworks within its water management area;

(e) contain water allocation plans which are subject to section 23, and which must set out principles for allocating water, taking into account the factors mentioned in section 27 (1);

- (f) take account of any relevant national or regional plans prepared in terms of any other law, including any development plan adopted in terms of the Water Services Act, 1997 (Act 108 of 1997);
- (g) enable the public to participate in managing the water resources within its water management area;
- (h) take into account the needs and expectations of existing and potential water users; and
- (i) set out the institutions to be established.

10 Guidelines for and consultation on catchment management strategies

- (1) The Minister may establish guidelines for the preparation of catchment management strategies.
- (2) In developing a catchment management strategy, a catchment management agency must consult with
 - (a) the Minister;
 - (b) any organ of state which has an interest in the content, effect or implementation of the catchment management strategy; and
 - (c) any persons, or their representative organisations-
 - (i) whose activities affect or might affect water resources within its water management area; and
 - (ii) who have an interest in the content, effect or implementation of the catchment management strategy.
- (3) A catchment management agency must, before the publication of a notice in terms of section 8 (5) (a), refer to the Minister for consideration and determination, any proposed component of a catchment management strategy which in the opinion of the catchment management agency-
 - (a) raises a material question of policy; or
 - (b) raises a question concerning-
 - (i) the relationship between the Department and other organs of state; or
 - (ii) the relationship between organs of state and their respective roles in developing or implementing a catchment management strategy.

11 Giving effect to catchment management strategies

The Minister and the catchment management agency concerned must give effect to any catchment management strategy established under this Part when exercising any power or performing any duty in terms of this Act.

CHAPTER 3 PROTECTION OF WATER RESOURCES (ss 12-20)

The protection of water resources is fundamentally related to their use, development, conservation, management and control. Parts 1, 2 and 3 of this Chapter lay down a series of measures which are together intended to ensure the comprehensive protection of all water resources. These measures are to be developed progressively within the contexts of the national water resource strategy and the catchment management strategies provided for in Chapter 2. Parts 4 and 5 deal with measures to prevent the pollution of water resources and measures to remedy the effects of pollution of water resources.

Part 1
Classification system for water resources (s 12)

Part 1 provides for the first stage in the protection process, which is the development by the Minister of a system to classify the nation's water resources. The system provides guidelines and procedures for determining different classes of water resources.

12 Prescription of classification system

- (1) As soon as is reasonably practicable, the Minister must prescribe a system for classifying water resources.
- (2) The system for classifying water resources may-
- (a) establish guidelines and procedures for determining different classes of water resources;
 - (b) in respect of each class of water resource-
 - (i) establish procedures for determining the Reserve;
 - (ii) establish procedures which are designed to satisfy the water quality requirements of water users as far as is reasonably possible, without significantly altering the natural water quality characteristics of the resource;
 - (iii) set out water uses for instream or land-based activities which activities must be regulated or prohibited in order to protect the water resource; and
 - (c) provide for such other matters relating to the protection, use, development, conservation, management and control of water resources, as the Minister considers necessary.

Part 2
Classification of water resources and resource quality objectives (ss 13-15)

Under Part 2 the Minister is required to use the classification system established in Part 1 to determine the class and resource quality objectives of all or part of water resources considered to be significant. The purpose of the resource quality objectives is to establish clear goals relating to the quality of the relevant water resources. In determining resource quality objectives a balance must be sought between the need to protect and sustain water resources on the one hand, and the need to develop and use them on the other. Provision is made for preliminary determinations of the class and resource quality objectives of water resources before the formal classification system is established. Once the class of a water resource and the resource quality objectives have been determined they are binding on all authorities and institutions when exercising any power or performing any duty under this Act.

13 Determination of class of water resources and resource quality objectives

- (1) As soon as reasonably practicable after the Minister has prescribed a system for classifying water resources the Minister must, subject to subsection (4), by notice in the *Gazette*, determine for all or part of every significant water resource-
- (a) a class in accordance with the prescribed classification system; and
 - (b) resource quality objectives based on the class determined in terms of paragraph (a).
- (2) A notice in terms of subsection (1) must state the geographical area in respect of which the resource quality objectives will apply, the requirements for achieving the objectives, and the dates from which the objectives will apply.

(3) The objectives determined in terms of subsection (1) may relate to-

- (a) the Reserve;
- (b) the instream flow;
- (c) the water level;
- (d) the presence and concentration of particular substances in the water;
- (e) the characteristics and quality of the water resource and the instream and riparian habitat;
- (f) the characteristics and distribution of aquatic biota;
- (g) the regulation or prohibition of instream or land-based activities which may affect the quantity of water in or quality of the water resource; and
- (h) any other characteristic, of the water resource in question.

(4) Before determining a class or the resource quality objectives in terms of subsection (1), the Minister must in respect of each water resource-

(a) publish a notice in the *Gazette*-

(i) setting out-

- (aa) the proposed class;
- (bb) the proposed resource quality objectives;
- (cc) the geographical area in respect of which the objectives will apply;
- (dd) the dates from which specific objectives will apply; and
- (ee) the requirements for complying with the objectives; and

(ii) inviting written comments to be submitted on the proposed class or proposed resource quality objectives (as the case may be), specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

(c) consider all comments received on or before the date specified in paragraph (a) (ii).

14 Preliminary determination of class or resource quality objectives

(1) Until-

(a) a system for classifying water resources has been prescribed; or

(b) a class of a water resource or resource quality objectives has been determined, the Minister may, for all or part of a water resource make a preliminary determination of the class or resource quality objectives.

(2) A determination in terms of section 13 supersedes a preliminary determination.

15 Giving effect to determination of class of water resource and resource quality objectives

The Minister, the Director-General, an organ of state and a water management institution, when exercising any power or performing any duty in terms of this Act, must give effect to any determination of a class of a water resource and the resource quality objectives as determined in terms of this Part and any requirements for complying with the resource quality objectives.

Part 3 **The Reserve (ss 16-18)**

Part 3 deals with the Reserve, which consists of two parts - the basic human needs reserve and the ecological reserve. The basic human needs reserve provides for the essential needs of individuals served by the water resource in question and includes water for drinking, for food preparation and for personal hygiene. The ecological reserve relates to the water required to protect the aquatic ecosystems of the water resource. The Reserve refers to both the quantity and quality of the water in the resource, and will vary depending on the class of the resource. The Minister is required to determine the Reserve for all or part of any significant water resource. If a resource has not yet been classified, a preliminary determination of the Reserve may be made and later superseded by a new one. Once the Reserve is determined for a water resource it is binding in the same way as the class and the resource quality objectives.

16 Determination of Reserve

(1) As soon as reasonably practicable after the class of all or part of a water resource has been determined, the Minister must, by notice in the *Gazette*, determine the Reserve for all or part of that water resource.

(2) A determination of the Reserve must-

- (a) be in accordance with the class of the water resource as determined in terms of section 13; and
- (b) ensure that adequate allowance is made for each component of the Reserve.

(3) Before determining the Reserve in terms of subsection (1), the Minister must-

- (a) publish a notice in the *Gazette*-
 - (i) setting out the proposed Reserve; and
 - (ii) inviting written comments to be submitted on the proposed Reserve, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a) (ii).

17 Preliminary determinations of Reserve

(1) Until a system for classifying water resources has been prescribed or a class of a water resource has been determined, the Minister-

- (a) may, for all or part of a water resource; and
- (b) must, before authorising the use of water under section 22 (5), make a preliminary determination of the Reserve.

(2) A determination in terms of section 16 (1) supersedes a preliminary determination.

18 Giving effect to Reserve

The Minister, the Director-General, an organ of state and a water management institution, must give effect to the Reserve as determined in terms of this Part when exercising any power or performing any duty in terms of this Act.

Part 4 **Pollution prevention (s 19)**

Part 4 deals with pollution prevention, and in particular the situation where pollution of a water resource occurs or might occur as a result of activities on land. The person who owns, controls, occupies or uses the land in question is responsible for taking measures to prevent pollution of water resources. If these measures are not taken, the catchment management agency concerned may itself do whatever is necessary to prevent the pollution or to remedy its effects, and to recover all reasonable costs from the persons responsible for the pollution.

19 Prevention and remedying effects of pollution

(1) An owner of land, a person in control of land or a person who occupies or uses the land on which-

(a) any activity or process is or was performed or undertaken; or

(b) any other situation exists, which causes, has caused or is likely to cause pollution of a water resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.

(2) The measures referred to in subsection (1) may include measures to-

(a) cease, modify or control any act or process causing the pollution;

(b) comply with any prescribed waste standard or management practice;

(c) contain or prevent the movement of pollutants;

(d) eliminate any source of the pollution;

(e) remedy the effects of the pollution; and

(f) remedy the effects of any disturbance to the bed and banks of a watercourse.

(3) A catchment management agency may direct any person who fails to take the measures required under subsection (1) to-

(a) commence taking specific measures before a given date;

(b) diligently continue with those measures; and

(c) complete them before a given date.

(4) Should a person fail to comply, or comply inadequately with a directive given under subsection (3), the catchment management agency may take the measures it considers necessary to remedy the situation.

(5) Subject to subsection (6), a catchment management agency may recover all costs incurred as a result of it acting under subsection (4) jointly and severally from the following persons:

(a) Any person who is / was responsible for, or who directly / indirectly contributed to, the pollution or the potential pollution;

(b) the owner of the land at the time of the pollution / potential for pollution, or that owner's successor-in-title;

(c) the person in control of the land or any person who has a right to use the land at the time when-

(i) the activity or the process is or was performed or undertaken; or

(ii) the situation came about; or

(d) any person who negligently failed to prevent-

(i) the activity or the process being performed or undertaken; or

(ii) the situation from coming about.

(6) The catchment management agency may in respect of the recovery of costs under subsection (5), claim from any other person who, in the opinion of the catchment management agency, benefitted from the measures undertaken under subsection (4), to the extent of such benefit.

(7) The costs claimed under subsection (5) must be reasonable and may include, without being limited to, labour, administrative and overhead costs.

(8) If more than one person is liable in terms of subsection (5), the catchment management agency must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

Part 5 **Emergency incidents (s 20)**

Part 5 deals with pollution of water resources following an emergency incident, such as the accidental spillage of a harmful substance that may find its way into a water resource. The responsibility for remedying the situation rests with the person responsible for the incident or the substance involved. If there is a failure to act, the relevant catchment management agency may take steps necessary to recover the costs from the responsible party

20 Control of emergency incidents

(1) In this section 'incident' includes any incident or accident in which a substance-

(a) pollutes or has the potential to pollute a water resource; or

(b) has, or is likely to have, a detrimental effect on a water resource.

(2) In this section, 'responsible person' includes any person who-

(a) is responsible for the incident;

(b) owns the substance involved in the incident; or

(c) was in control of the substance involved in the incident at the time of the incident.

(3) The responsible person, any other person involved in the incident or any other person with knowledge of the incident must, as soon as reasonably practicable after obtaining knowledge of the incident, report to-

(a) the Department;

(b) the South African Police Service or the relevant fire department; or

(c) the relevant catchment management agency.

(4) A responsible person must-

(a) take all reasonable measures to contain and minimise the effects of the incident;

(b) undertake clean-up procedures;

(c) remedy the effects of the incident; and

(d) take such measures as the catchment management agency may either verbally or in writing direct within the time specified by such institution.

(5) A verbal directive must be confirmed in writing within 14 days, failing which it will be deemed to have been withdrawn.

(6) Should-

(a) the responsible person fail to comply, or inadequately comply with a directive; or

(b) it not be possible to give the directive to the responsible person timeously, the catchment management agency may take the measures it considers necessary to-

(i) contain and minimise the effects of the incident;

(ii) undertake clean-up procedures; and

(iii) remedy the effects of the incident.

7) The catchment management agency may recover all reasonable costs incurred by it from every responsible person jointly and severally.

(8) The costs claimed under subsection (7) may include, without being limited to, labour, administration & overhead costs

(9) If more than one person is liable in terms of subsection (7), the catchment management agency must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

CHAPTER 4 USE OF WATER (ss 21-55)

As this Act is founded on the principle that National Government has overall responsibility for and authority over water resource management, including the equitable allocation and beneficial use of water in the public interest, a person can only be entitled to use water if the use is permissible under the Act. This Chapter is therefore of central significance to the Act, as it lays the basis for regulating water use. The various types of licensed and unlicensed entitlements to use water are dealt with in detail.

Part 1 General Principles (ss 21-26)

This Part sets out general principles for regulating water use. Water use is defined broadly, and includes taking and storing water, activities which reduce stream flow, waste discharges and disposals, controlled activities (activities which impact detrimentally on a water resource), altering a watercourse, removing water found underground for certain purposes, and recreation. In general a water use must be licensed unless it is listed in Schedule I, is an existing lawful use, is permissible under a general authorisation, or if a responsible authority waives the need for a licence. The Minister may limit the amount of water which a responsible authority may allocate. In making regulations the Minister may differentiate between different water resources, classes of water resources and geographical areas.

21 Water use

For the purposes of this Act, water use includes-

- (a) taking water from a water resource;
- (b) storing water;
- (c) impeding or diverting the flow of water in a watercourse;
- (d) engaging in a stream flow reduction activity contemplated in section 36;
- (e) engaging in a controlled activity identified as such in section 37 (1) or declared under section 38 (1);
- (f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- (g) disposing of waste in a manner which may detrimentally impact on a water resource;
- (h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process;
- (i) altering the bed, banks, course or characteristics of a watercourse;
- (j) removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; and
- (k) using water for recreational purposes.

22 Permissible water use

(1) A person may only use water-

- (a) without a licence-
 - (i) if that water use is permissible under Schedule 1;
 - (ii) if that water use is permissible as a continuation of an existing lawful use; or
 - (iii) if that water use is permissible in terms of a general authorisation issued under section 39;
- (b) if the water use is authorised by a licence under this Act; or
- (c) if the responsible authority has dispensed with a licence requirement under subsection (3).

(2) A person who uses water as contemplated in subsection (1)-

- (a) must use the water subject to any condition of the relevant authorisation for that use;
- (b) is subject to any limitation, restriction or prohibition in terms of this Act or any other applicable law;
- (c) in the case of the discharge or disposal of waste or water containing waste contemplated in section 21 (f), (g), (h) or (j), must comply with any applicable waste standards or management practices prescribed under section 26 (1) (h) and (i), unless the conditions of the relevant authorisation provide otherwise;

(d) may not waste that water; and

(e) must return any seepage, run-off or water containing waste which emanates from that use, to the water resource from which the water was taken, unless the responsible authority directs otherwise or the relevant authorisation provides otherwise.

(3) A responsible authority may dispense with the requirement for a licence for water use if it is satisfied that the purpose of this Act will be met by the grant of a licence, permit or other authorisation under any other law.

(4) In the interests of co-operative governance, a responsible authority may promote arrangements with other organs of state to combine their respective licence requirements into a single licence requirement.

(5) A responsible authority may, subject to section 17, authorise the use of water before-

(a) a national water resource strategy has been established;

(b) a catchment management strategy in respect of the water resource in question has been established;

(c) a classification system for water resources has been established;

(d) the class and resource quality objectives for the water resource in question have been determined; or

(e) the Reserve for the water resource in question has been finally determined.

(6) Any person who has applied for a licence in terms of section 43 in respect of an existing lawful water use as contemplated in section 32, and whose application has been refused or who has been granted a licence for a lesser use than the existing lawful water use, resulting in severe prejudice to the economic viability of an undertaking in respect of which the water was beneficially used, may, subject to subsections (7) and (8), claim compensation for any financial loss suffered in consequence.

(7) The amount of any compensation payable must be determined-

(a) in accordance with section 25 (3) of the Constitution; and

(b) by disregarding any reduction in the existing lawful water use made in order to-

(i) provide for the Reserve;

(ii) rectify an over-allocation of water use from the resource in question; or

(iii) rectify an unfair or disproportionate water use.

(8) A claim for compensation must be lodged with the Water Tribunal within six months of the relevant decision of the responsible authority.

(9) The Water Tribunal has jurisdiction to determine liability for compensation and the amount of compensation payable in terms of this section.

(10) After the Water Tribunal has decided that compensation is payable and determined the amount of compensation, the responsible authority may enter into negotiations with the claimant and, within 30 days after the decision of the Water Tribunal, offer an allocation of water instead of compensation.

23 Determination of quantity of water which may be allocated by responsible authority

- (1) Subject to the national water resource strategy the Minister may determine the quantity of water in respect of which a responsible authority may issue a general authorisation and a licence from water resources in its water management area.
- (2) Until a national water resource strategy has been established, the Minister may make a preliminary determination of the quantity of water in respect of which a responsible authority may issue a general authorisation and licence.
- (3) A preliminary determination must be replaced by a determination under subsection (1) once the national water resource strategy has been established.
- (4) A responsible authority must comply with any determination made under subsection (1) or (2).
- (5) In making a determination under subsections (1) and (2) the Minister must take account of the water available in the resource.

24 Licences for use of water found underground on property of another person

A licence may be granted to use water found underground on land not owned by the applicant if the owner of the land consents or if there is good reason to do so.

25 Transfer of water use authorisations

- (1) A water management institution may, at the request of a person authorised to use water for irrigation under this Act, allow that person on a temporary basis and on such conditions as the water management institution may determine, to use some or all of that water for a different purpose, or to allow the use of some or all of that water on another property in the same vicinity for the same or a similar purpose.
- (2) A person holding an entitlement to use water from a water resource in respect of any land may surrender that entitlement or part of that entitlement-
 - (a) in order to facilitate a particular licence application under section 41 for the use of water from the same resource in respect of other land; and
 - (b) on condition that the surrender only becomes effective if and when such application is granted.
- (3) The annual report of a water management institution or a responsible authority, as the case may be, must, in addition to any other information required under this Act, contain details in respect of every permission granted under subsection (1) or every application granted under subsection (2).

26 Regulations on use of water

- (1) Subject to subsection (4), the Minister may make regulations-
 - (a) limiting or restricting the purpose, manner or extent of water use;
 - (b) requiring that the use of water from a water resource be monitored, measured and recorded;
 - (c) requiring that any water use be registered with the responsible authority;
 - (d) prescribing the outcome or effect which must be achieved by the installation and operation of any waterwork;
 - (e) regulating the design, construction, installation, operation and maintenance of any waterwork, where it is necessary or desirable to monitor any water use or to protect a water resource;
 - (f) requiring qualifications for and registration of persons authorised to design, construct, install, operate and maintain any waterwork, in order to protect the public and to safeguard human life and property;

(g) regulating or prohibiting any activity in order to protect a water resource or instream or riparian habitat;

(h) prescribing waste standards which specify the quantity, quality and temperature of waste which may be discharged or deposited into or allowed to enter a water resource;

(i) prescribing the outcome or effect which must be achieved through management practices for the treatment of waste, or any class of waste, before it is discharged or deposited into or allowed to enter a water resource;

(j) requiring that waste discharged or deposited into or allowed to enter a water resource be monitored and analysed, and prescribing methods for such monitoring and analysis;

(k) prescribing procedural requirements for licence applications;

(l) relating to transactions in respect of authorisations to use water, including but not limited to-

(i) the circumstances under which a transaction may be permitted;

(ii) the conditions subject to which a transaction may take place; and

(iii) the procedure to deal with a transaction;

(m) prescribing methods for making a volumetric determination of water to be ascribed to a stream flow reduction activity for purposes of water use allocation and the imposition of charges;

(n) prescribing procedures for the allocation of water by means of public tender or auction; and

(o) prescribing-

(i) procedures for obtaining; and

(ii) the required contents of, assessments of the likely effect which any proposed licence may have on the quality of the water resource in question.

(2) Regulations made under subsection (1) may-

(a) differentiate between different water resources and different classes of water resources;

(b) differentiate between different geographical areas; and

(c) create offences and prescribe penalties.

(3) Regulations made under subsection (1) (h), (i) and (j) may contain-

(a) general provisions applicable to all waste; and

(b) specific provisions applicable to waste with specific characteristics.

(4) When making regulations, the Minister must take into account all relevant considerations, including the need to-

(a) promote the economic and sustainable use of water;

(b) conserve and protect water resources or, instream and riparian habitat;

(c) prevent wasteful water use;

- (d) facilitate the management of water use and waterworks;
- (e) facilitate the monitoring of water use and water resources; and
- (f) facilitate the imposition and recovery of charges.

Part 2

Considerations, conditions and essential requirements of general authorisations and licences (ss 27-31)

This Part deals with matters relevant to all general authorisations and licences issued under the Act. It guides responsible authorities in the exercise of their discretion to issue and to attach conditions to general authorisations and licences. It also sets out the essential features of licences, such as effective periods, purposes and places for which they may be issued, and the nature of conditions that may be attached to them. The granting of a licence does not imply any guarantee regarding the availability or quality of water which it covers.

27 Considerations for issue of general authorisations and licences

- (1) In issuing a general authorisation or licence a responsible authority must take into account all relevant factors, including-
- (a) existing lawful water uses;
 - (b) the need to redress the results of past racial and gender discrimination;
 - (c) efficient and beneficial use of water in the public interest;
 - (d) the socio-economic impact-
 - (i) of the water use or uses if authorised; or
 - (ii) of the failure to authorise the water use or uses;
 - (e) any catchment management strategy applicable to the relevant water resource;
 - (f) the likely effect of the water use to be authorised on the water resource and on other water users;
 - (g) the class and the resource quality objectives of the water resource;
 - (h) investments already made and to be made by the water user in respect of the water use in question;
 - (i) the strategic importance of the water use to be authorised;
 - (j) the quality of water in the water resource which may be required for the Reserve and for meeting international obligations; and
 - (k) the probable duration of any undertaking for which a water use is to be authorised.
- (2) A responsible authority may not issue a licence to itself without the written approval of the Minister.

28 Essential requirements of licences

- (1) A licence contemplated in this Chapter must specify-
- (a) the water use or uses for which it is issued;
 - (b) the property or area in respect of which it is issued;

- (c) the person to whom it is issued;
- (d) the conditions subject to which it is issued;
- (e) the licence period, which may not exceed forty years; and
- (f) the review periods during which the licence may be reviewed under section 49, which must be at intervals of not more than five years.

(2) Subject to subsection (3), restriction, suspension or termination in terms of this Act and review under section 49, a licence remains in force until the end of the licence period, when it expires.

(3) Subject to subsection (4) and notwithstanding section 49 (2), a responsible authority may extend the licence period of a licence if this is done as part of a general review of licences carried out in terms of section 49.

(4) An extension of a licence period contemplated in subsection (3) may only be made after the responsible authority has considered the factors specified in section 49 (2) and all other relevant factors, including new applications for water use and has concluded that there are no substantial grounds not to grant an extension.

(5) An extension of a licence period in terms of subsection (3) may only be given for a single review period at a time as stipulated in subsection (1) (f).

(6) If the licence period of a licence is extended in terms of subsection (3), the licence may, in respect of the period for which it is extended, be issued subject to different conditions which may include a lesser permitted water use.

29 Conditions for issue of general authorisations and licences

(1) A responsible authority may attach conditions to every general authorisation or licence-

(a) relating to the protection of-

- (i) the water resource in question;
- (ii) the stream flow regime; and
- (iii) other existing and potential water users;

(b) relating to water management by-

- (i) specifying management practices and general requirements for any water use, including water conservation measures;
- (ii) requiring the monitoring and analysis of and reporting on every water use and imposing a duty to measure and record aspects of water use, specifying measuring and recording devices to be used;
- (iii) requiring the preparation and approval of and adherence to, a water management plan;
- (iv) requiring the payment of charges for water use as provided for in Chapter 5;
- (v) requiring the licensee to provide or make water available to a person specified in the licence; and
- (vi) in the case of a general authorisation, requiring the registration of the water use with the responsible authority and the payment of a registration fee as a pre-condition of that use;

(c) relating to return flow and discharge or disposal of waste, by-

- (i) specifying a water resource to which it must be returned or other manner in which it must be disposed of;
- (ii) specifying permissible levels for some or all of its chemical and physical components;
- (iii) specifying treatment to which it must be subjected, before it is discharged; and
- (iv) specifying the volume which may be returned;

(d) in the case of a controlled activity-

- (i) specifying the waste treatment, pollution control and monitoring equipment to be installed, maintained and operated; and
- (ii) specifying the management practices to be followed to prevent the pollution of any water resource;

(e) in the case of taking or storage of water-

- (i) setting out the specific quantity of water or percentage of flow which may be taken;
- (ii) setting out the rate of abstraction;
- (iii) specifying the method of construction of a borehole and the method of abstraction from the borehole;
- (iv) specifying the place from where water may be taken;
- (v) specifying the times when water may be taken;
- (vi) identifying or limiting the area of land on which any water taken from a resource may be used;
- (vii) limiting the quantity of water which may be stored;
- (viii) specifying locations where water may be stored; and
- (ix) requiring the licensee to become a member of a water user association before water may be taken;

(f) in the case of a stream flow reduction activity-

- (i) specifying practices to be followed to limit stream flow reduction and other detrimental impacts on the water resource; and
- (ii) setting or prescribing a method for determining the extent of the stream flow reduction caused by the authorised activity;

(g) which are necessary or desirable to achieve the purpose for which the licence was issued;

(h) which are necessary or desirable to ensure compliance with the provisions of this Act; and

(i) in the case of a licence-

- (i) specifying times when water may or may not be used;

(ii) containing provisions for its termination if an authorised use of water is not implemented or not fully implemented;

(iii) designating water for future or contingent use; or

(iv) which have been agreed to by the licensee.

(2) If a licensee has agreed to pay compensation to another person in terms of any arrangement to use water, the responsible authority may make the obligation to pay compensation a condition of the licence.

30 Security by applicant

(1) A responsible authority may, if it is necessary for the protection of the water resource or property, require the applicant to give security in respect of any obligation or potential obligation arising from a licence to be issued under this Act.

(2) The security referred to in subsection (1) may include any of the following:

(i) A letter of credit from a bank;

(ii) a surety or a bank guarantee;

(iii) a bond;

(iv) an insurance policy; or

(v) any other appropriate form of security.

(3) The responsible authority must determine the type, extent and duration of any security required.

(4) The duration of the security may extend beyond the time period specified in the licence in question.

(5) If the responsible authority requires security in the form of an insurance policy, it may require that it be jointly insured under or be a beneficiary of the insurance policy and where appropriate, the responsible authority must be regarded as having an insurable interest in the subject matter of the insurance policy.

(6) A person may apply in writing to the responsible authority to have any security given by that person in terms of this section amended or discharged at any time, which application may not be unreasonably refused.

31 Issue of licence no guarantee of supply

The issue of a licence to use water does not imply a guarantee relating to-

(a) the statistical probability of supply;

(b) the availability of water; or

(c) the quality of water.

Part 3

Existing lawful water uses (ss 32-35)

This Part permits the continuation under certain conditions of an existing water use derived from a law repealed by this Act. An existing lawful water use, with any conditions attached, is recognised but may continue only to the extent that it is not limited, prohibited or terminated by this Act. No licence is required to continue with an existing lawful water use until a responsible authority requires a person claiming such an entitlement to apply for a licence. If a licence is issued it becomes the source of authority for the water use. If a licence is not granted the use is no longer permissible.

32 Definition of existing lawful water use

(1) An existing lawful water use means a water use-

(a) which has taken place at any time during a period of two years immediately before the date of commencement of this Act and which-

(i) was authorised by or under any law which was in force immediately before the date of commencement of this Act;

(ii) is a stream flow reduction activity contemplated in section 36 (1); or

(iii) is a controlled activity contemplated in section 37 (1); or

(b) which has been declared an existing lawful water use under section 33.

[Sub-s. (1) substituted by s. 1 of Act 45 of 1999.]

(2) In the case of-

(a) a stream flow reduction activity declared under section 36 (1); or

(b) a controlled activity declared under section 38, existing lawful water use means a water use which has taken place at any time during a period of two years immediately before the date of the declaration.

33 Declaration of water use as existing lawful water use

(1) A person may apply to a responsible authority to have a water use which is not one contemplated in section 32 (1)

(a), declared to be an existing lawful water use.

[Sub-s. (1) substituted by s. 2 of Act 45 of 1999.]

[Date of commencement of sub-s. (1): 1 January 1999.]

(2) A responsible authority may, on its own initiative, declare a water use which is not one contemplated in section 32

(1) (a), to be an existing lawful water use.

[Sub-s. (2) substituted by s. 2 of Act 45 of 1999.]

[Date of commencement of sub-s. (2): 1 January 1999.]

(3) A responsible authority may only make a declaration under subsections (1) and (2) if it is satisfied that the water use-

(a) took place lawfully more than two years before the date of commencement of this Act and was discontinued for good reason; or

(b) had not yet taken place at any time before the date of commencement of this Act but-

(i) would have been lawful had it so taken place; and

(ii) steps towards effecting the use had been taken in good faith before the date of commencement of this Act.

[Sub-s. (3) substituted by s. 2 of Act 45 of 1999.]

[Date of commencement of sub-s. (3): 1 January 1999.]

(4) Section 41 applies to an application in terms of this section as if the application had been made in terms of that section.

[Date of commencement of sub-s. (4): 1 October 1999.]

34 Authority to continue with existing lawful water use

(1) A person, or that person's successor-in-title, may continue with an existing lawful water use, subject to-

- (a) any existing conditions or obligations attaching to that use;
- (b) its replacement by a licence in terms of this Act; or
- (c) any other limitation or prohibition by or under this Act.

(2) A responsible authority may, subject to any regulation made under section 26 (1) (c), require the registration of an existing lawful water use.

35 Verification of existing water uses

(1) The responsible authority may, in order to verify the lawfulness or extent of an existing water use, by written notice require any person claiming an entitlement to that water use to apply for a verification of that use.

(2) A notice under subsection (1) must-

- (a) have a suitable application form annexed to it;
- (b) specify a date before which the application must be submitted;
- (c) inform the person concerned that any entitlement to continue with the water use may lapse if an application is not made on or before the specified date; and
- (d) be delivered personally or sent by registered mail to the person concerned.

(3) A responsible authority-

- (a) may require the applicant, at the applicant's expense, to obtain and provide it with other information, in addition to the information contained in the application;
- (b) may conduct its own investigation into the veracity and the lawfulness of the water use in question;
- (c) may invite written comments from any person who has an interest in the matter; and
- (d) must afford the applicant an opportunity to make representations on any aspect of the application.

(4) A responsible authority may determine the extent and lawfulness of a water use pursuant to an application under this section, and such determination limits the extent of any existing lawful water use contemplated in section 32 (1).

(5) No person who has been required to apply for verification under subsection (1) in respect of an existing lawful water use may exercise that water use-

- (a) after the closing date specified in the notice, if that person has not applied for verification; or
- (b) after the verification application has been refused, if that person applied for verification.

(6) A responsible authority may, for good reason, condone a late application and charge a reasonable additional fee for processing the late application.

Part 4
Stream flow reduction activities (s 36)

This Part allows the Minister, after public consultation, to regulate land-based activities which reduce stream flow, by declaring such activities to be stream flow reduction activities. Whether or not an activity is declared to be a stream flow reduction activity depends on various factors, such as the extent of stream flow reduction, its duration, and its impact on any relevant water resource and on other water users. The control of forestry for its impact on water resources, currently exercised in terms of the Forest Act, is now exercised under this Part.

36 Declaration of stream flow reduction activities

(1) The following are stream flow reduction activities:

- (a) the use of land for afforestation which has been or is being established for commercial purposes; and
- (b) an activity which has been declared as such under subsection (2).

(2) The Minister may, by notice in the *Gazette*, in relation to a particular area specified in that notice, declare any activity (including the cultivation of any particular crop or other vegetation) to be a stream flow reduction activity if that activity is likely to reduce the availability of water in a watercourse to the Reserve, to meet international obligations, or to other water users significantly.

(3) In making a declaration under subsection (2), the Minister must consider-

- (a) the extent to which the activity significantly reduces the water availability in the watercourse;
- (b) the effect of the stream flow reduction on the water resource in terms of its class and the Reserve;
- (c) the probable duration of the activity;
- (d) any national water resource strategy established under section 5; and
- (e) any catchment management strategy established under section 8.

(4) Before making a declaration under subsection (2), the Minister must-

- (a) publish a notice in the *Gazette*-
 - (i) setting out the activity proposed to be declared a stream flow reduction activity; and
 - (ii) inviting written comments to be submitted on the proposed declaration, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a) (ii).

(5) Every notice published in terms of subsection (4) (a) must contain a schedule in which must be listed all stream flow reduction activities set out in subsection (1) and those which have, up to the date of the notice, been declared to be stream flow reduction activities under subsection (2).

Part 5
Controlled activities (ss 37-38)

[Date of commencement of Part 5: 1 October 1999.]

This Part allows the Minister to regulate activities having a detrimental impact on water resources by declaring them to be controlled activities. Four such activities - irrigation using waste or water containing waste from certain sources, modification of atmospheric precipitation, altering the flow regime of a water resource as a result of power generation, and aquifer recharge using waste or water containing waste - are identified in the Act as controlled activities. Provision is made for the Minister to declare other controlled activities as the need arises, but in these cases public consultation is required. Following the identification or declaration of a controlled activity an authorization for that particular category of activity is required under this Act.

37 Controlled activity

(1) The following are controlled activities:

- (a) irrigation of any land with waste / water containing waste generated through any industrial activity or by a waterwork;
- (b) an activity aimed at the modification of atmospheric precipitation;
- (c) a power generation activity which alters the flow regime of a water resource;
- (d) intentional recharging of an aquifer with any waste or water containing waste; and
- (e) an activity which has been declared as such under section 38.

(2) No person may undertake a controlled activity unless such person is authorised to do so by or under this Act.

[Date of commencement of s. 37: 1 October 1999.]

38 Declaration of certain activities as controlled activities

(1) The Minister may, by notice in the *Gazette*, in general or specifically, declare an activity to be a controlled activity.

(2) Before declaring an activity to be a controlled activity the Minister must be satisfied that the activity in question is likely to impact detrimentally on a water resource.

(3) Before making a declaration under subsection (1) the Minister-

(a) must publish a notice in the *Gazette*-

(i) setting out the activity or category of activities proposed to be declared; and

(ii) inviting written comments to be submitted on the proposed declaration, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice; and

(b) may, in the case of a specific activity on a specific site, make the notice known by delivering or sending a copy to the owner or the person in control of the site in question, and to every organ of state which, and every person who, has an interest in the matter;

(c) must consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

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

(4) Every notice published in terms of subsection (1) must contain a schedule on which must be listed all controlled activities set out in section 37 (1) (a) to (d) and those which have, up to the date of the notice, been declared to be controlled activities under subsection (1).

[Date of commencement of s. 38: 1 October 1999.]

Part 6
General authorisations (s 39)

This Part establishes a procedure to enable a responsible authority, after public consultation, to permit the use of water by publishing general authorisations in the Gazette. A general authorisation may be restricted to a particular water resource, a particular category of persons, a defined geographical area or a period of time, and requires conformity with other relevant laws. The use of water under a general authorisation does not require a licence until the general authorisation is revoked, in which case licensing will be necessary. A general authorisation does not replace or limit an entitlement to use water, such as an existing lawful water use or a licence, which a person may otherwise have under this Act.

39 General authorisations to use water

(1) A responsible authority may, subject to Schedule 1, by notice in the *Gazette*-

(a) generally;

(b) in relation to a specific water resource; or

(c) within an area specified in the notice, authorise all or any category of persons to use water, subject to any regulation made under section 26 and any conditions imposed under section 29.

(2) The notice must state the geographical area in respect of which the general authorisation will apply, and the date upon which the general authorisation will come into force, and may state the date on which the general authorisation will lapse.

(3) A water use may be authorised under subsection (1) on condition that the user obtains any permission or authority required by any other specified law.

(4) Before issuing a general authorisation, the responsible authority must-

(a) publish a notice in the *Gazette*-

(i) setting out the proposed general authorisation; and

(ii) inviting written comments to be submitted on the proposed general authorisation, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the responsible authority considers to be appropriate; and

(c) consider all comments received on or before the date specified in paragraph (a) (ii).

(5) An authorisation to use water under this section does not replace or limit any entitlement to use water which a person may otherwise have under this Act.

Part 7
Individual applications for licences (ss 40-42)

[Date of commencement of Part 7: 1 October 1999.]

This Part sets out the procedures which apply in all cases where a licence is required to use water, but where no general invitation to apply for licences has been issued under Part 8. Water users who are not required to license their use, but who wish to convert the use to licensed use, may also use the procedure set out in this Part, but the responsible authority may decline to grant a licence when the applicant is entitled to the use of

water under an existing lawful use or by a general authorisation. In considering an application a responsible authority may require additional information from the applicant, and may also require the applicant to undertake an environmental or other assessment, which assessments may be subject to independent review.

40 Application for licence

- (1) A person who is required or wishes to obtain a licence to use water must apply to the relevant responsible authority for a licence.
- (2) Where a person has made an application for an authorisation to use water under another Act, and that application has not been finalised when this Act takes effect, the application must be regarded as being an application for a water use under this Act.
- (3) A responsible authority may charge a reasonable fee for processing a licence application, which may be waived in deserving cases.
- (4) A responsible authority may decline to consider a licence application for the use of water to which the applicant is already entitled by way of an existing lawful water use or under a general authorisation.

[Date of commencement of s. 40: 1 October 1999.]

41 Procedure for licence applications

- (1) An application for a licence for water use must-
 - (a) be made in the form;
 - (b) contain the information; and
 - (c) be accompanied by the processing fee, determined by the responsible authority.
- (2) A responsible authority-
 - (a) may, to the extent that it is reasonable to do so, require the applicant, at the applicant's expense, to obtain and provide it by a given date with-
 - (i) other information, in addition to the information contained in the application;
 - (ii) an assessment by a competent person of the likely effect of the proposed licence on the resource quality; and
 - (iii) an independent review of the assessment furnished in terms of subparagraph (ii), by a person acceptable to the responsible authority;
 - (b) may conduct its own investigation on the likely effect of the proposed licence on the protection, use, development, conservation, management and control of the water resource;
 - (c) may invite written comments from any organ of state which or person who has an interest in the matter; and
 - (d) must afford the applicant an opportunity to make representations on any aspect of the licence application.
- (3) A responsible authority may direct that any assessment under subsection (2) (a) (ii) must comply with the requirements contained in regulations made under section 26 of the Environment Conservation Act, 1989 (Act 73 of 1989).
- (4) A responsible authority may, at any stage of the application process, require the applicant-

(a) to give suitable notice in newspapers and other media-

(i) describing the licence applied for;

(ii) stating that written objections may be lodged against the application before a specified date, which must be not less than 60 days after the last publication of the notice;

(iii) giving an address where written objections must be lodged; and

(iv) containing such other particulars as the responsible authority may require;

(b) to take such other steps as it may direct to bring the application to the attention of relevant organs of state, interested persons and the general public; and

(c) to satisfy the responsible authority that the interests of any other person having an interest in the land will not be adversely affected.

[Date of commencement of s. 41: 1 October 1999.]

42 Reasons for decisions

After a responsible authority has reached a decision on a licence application, it must promptly-

(a) notify the applicant and any person who has objected to the application; and

(b) at the request of any person contemplated in paragraph (a), give written reasons for its decision.

[Date of commencement of s. 42: 1 October 1999.]

Part 8

Compulsory licences for water use in respect of specific resource (ss 43-48)

This Part establishes a procedure for a responsible authority to undertake compulsory licensing of any aspect of water use in respect of one or more water resources within a specific geographic area. It includes requirements for a responsible authority to prepare schedules for allocating quantities of water to existing and new users. The procedure is intended to be used in areas which are, or are soon likely to be, under 'water stress' (for example, where the demands for water are approaching or exceed the available supply, where water quality problems are imminent or already exist, or where the water resource quality is under threat), or where it is necessary to review prevailing water use to achieve equity of access to water.

In such cases the responsible authority must publish a notice in the Gazette and other appropriate media, requiring people to apply for licences in the designated area. Applicants may be required to submit additional information, and may also be required to undertake an environmental or other assessment, which assessment may be subject to independent review.

In determining the quantities of water to be allocated to users, the responsible authority must consider all applications received, and draw up a schedule detailing how the available water will be allocated among the applicants. In drawing up an allocation schedule the responsible authority must comply with the plans, strategies and criteria set out elsewhere in the Act and must give special consideration to certain categories of applicants. A responsible authority need not allocate all the available water in a water resource, and may reserve some of the water for future needs. Provision is also made for any water still available after the requirements of the Reserve, international obligations and corrective action have been met to be allocated on the basis of public auction or tender. A system of objections and appeals in relation to proposed and preliminary allocation schedules ensures that licences may be issued only after the allocation schedule has been finalised.

Licences issued under this Part replace previous entitlements to any existing lawful water use by the applicant.

43 Compulsory licence applications

(1) If it is desirable that water use in respect of one or more water resources within a specific geographic area be licensed-

(a) to achieve a fair allocation of water from a water resource in accordance with section 45-

(i) which is under water stress; or

(ii) when it is necessary to review prevailing water use to achieve equity in allocations;

(b) to promote beneficial use of water in the public interest;

(c) to facilitate efficient management of the water resource; or

(d) to protect water resource quality, the responsible authority may issue a notice requiring persons to apply for licences for one or more types of water use contemplated in section 21.

(2) A notice in terms of subsection (1) must-

(a) identify the water resource and the water use in question;

(b) state where licence application forms may be obtained;

(c) state the address to which licence applications must be submitted;

(d) state the closing date for licence applications;

(e) state the application fee; and

(f) contain such other information as the responsible authority considers appropriate.

(3) A notice in terms of subsection (1) must be made known by publishing the notice in the *Gazette* at least 60 days before the closing date, giving suitable notice in newspapers and other media and taking other steps to bring the notice to the attention of interested persons.

(4) Section 41 applies to an application in terms of this section as if the application had been made in terms of that section.

44 Late applications

A responsible authority may, for good reason, condone a late application and charge a reasonable additional fee for processing the late application.

45 Proposed allocation schedules

(1) A responsible authority must, after considering-

(a) all applications received in response to the publication of a notice in terms of section 43 (1);

(b) any further information or assessment obtained; and

(c) the factors contemplated in section 27, prepare a proposed allocation schedule specifying how water from the water resource in question will be allocated.

- (2) A proposed allocation schedule must, subject to subsection (3), reflect the quantity of water to be-
- (a) assigned to the Reserve and any relevant international obligations;
 - (b) assigned to meet the requirements of existing licences;
 - (c) allocated to each of the applicants to whom licences ought to be issued in order to redress the results of past racial and gender discrimination in accordance with the constitutional mandate for water reform;
 - (d) allocated to each of the applicants exercising existing lawful water uses to whom the licensing authority determines that licences should be issued;
 - (e) allocated to each of the applicants, taking into account the factors set out in section 27; and
 - (f) allocated to every other applicant by public tender or auction, subject to any regulation made under section 26 (1) (n).
- (3) A responsible authority is under no obligation to allocate all available water.
- (4) After completing a proposed allocation schedule the responsible authority must publish a notice in the *Gazette*-
- (a) containing a copy of the proposed schedule, or stating the address where it may be inspected;
 - (b) inviting written objections to be submitted on the proposed schedule, specifying an address to which the objections are to be submitted and specifying a date before which the objections are to be submitted, which date must be not less than 60 days after the date of publication of the notice; and
 - (c) must consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the responsible authority considers to be appropriate.

46 Preliminary allocation schedules

- (1) After considering all objections received on the proposed allocation schedule on or before the date specified in the notice contemplated in section 45 (4), the responsible authority must prepare a preliminary allocation schedule and publish a notice in the *Gazette*-
- (a) containing a copy of the preliminary allocation schedule, or stating the address where it may be inspected; and
 - (b) stating that an appeal in respect of any unsuccessful objection to the preliminary allocation schedule may be made in accordance with Chapter 15.

- (2) If an appeal under subsection (1) (b) succeeds, the responsible authority must amend the preliminary allocation schedule as directed by the Water Tribunal.

47 Final allocation schedule

- (1) A preliminary allocation schedule becomes a final allocation schedule-
- (a)
 - (i) if no appeal is lodged within the time limit;
 - (ii) if it has been amended following every successful appeal; or
 - (iii) if every appeal lodged is dismissed; and

(b) on publication by the responsible authority of a notice in the *Gazette*-

(i) stating that a preliminary allocation schedule has become final; and

(ii) containing a copy of the final allocation schedule, or stating the address where it may be inspected.

(2) A responsible authority must, as soon as reasonably practicable after a preliminary allocation schedule becomes final, issue licences according to the allocations provided for in it.

48 Licences replace previous entitlements

(1) Any licence issued pursuant to an application contemplated in section 43 (1) replaces any existing lawful water use entitlement of that person in respect of the water use in question.

(2) Notwithstanding the provisions of section 4, no person to whom a general notice to apply for a licence has been directed in terms of section 43 in respect of an existing lawful water use may exercise that water use-

(a) after the closing date stated in the notice if that person did not apply for a licence; or

(b) after the licence application has been finally disposed of, if that person did apply for a licence.

Part 9

Review and renewal of licences, and amendment and substitution of conditions of licences (ss 49-52)

This Part deals with the review and renewal of licences, and the amendment and substitution of their conditions. Review of a licence is by the relevant responsible authority, at periods stipulated in the licence as part of a general review process.

A review of a licence may lead to the amendment or substitution of its conditions, but only if certain requirements are satisfied. If the amendment or substitution of conditions severely prejudices the economic viability of any undertaking in respect of which the licence was issued there is a claim for compensation. Minor amendments to licences (for instance, to correct clerical mistakes, or changes in format), and those agreed to by the licensee may be made outside of the review process. In addition, a licensee may apply to the responsible authority for the renewal or amendment of a licence before it expires. In considering such applications the responsible authority must again consider the matters dealt with in the initial application, and there are limitations to the new conditions to which the licence may be subjected.

49 Review and amendment of licences

(1) A responsible authority may review a licence only at the time periods stipulated for that purpose in the licence.

(2) On reviewing a licence, a responsible authority may amend any condition of the licence, other than the period thereof, if-

(a) it is necessary or desirable to prevent deterioration or further deterioration of the quality of the water resource;

(b) there is insufficient water in the water resource to accommodate all authorised water uses after allowing for the Reserve and international obligations; or

(c) it is necessary or desirable to accommodate demands brought about by changes in socio-economic circumstances, and it is in the public interest to meet those demands.

(3) An amendment contemplated in subsection (2) may only be made if the conditions of other licences for similar water use from the same water resource in the same vicinity, all as determined by the responsible authority, have also been amended in an equitable manner through a general review process.

(4) If an amendment of a licence condition on review severely prejudices the economic viability of any undertaking in respect of which the licence was issued, the provisions of section 22 (6) to (10) apply.

(5) A responsible authority must afford the licensee an opportunity to be heard before amending any licence condition on review.

50 Formal amendment of licences

(1) A responsible authority may amend or substitute a licence condition-

(a) if the licensee or successor-in-title has consented to or requested the amendment or substitution;

(b) to reflect one or more successors-in-title as new licensees; and

(c) to change the description of the property to which the licence applies, if the property described in the licence has been subdivided or consolidated with other property.

(2) The responsible authority may require the licensee-

(a) to obtain the written consent of any affected person before amending or substituting the licence; or

(b) to make a formal application for the amendment or substitution in terms of section 52;

(3) A responsible authority may only amend or substitute a licence condition under this section if it is satisfied that-

(a) the amendment or substitution will not have a significant detrimental impact on the water resource; and

(b) the interests of any other person are not adversely affected, unless that person has consented thereto.

51 Successors-in-title

(1) A responsible authority may, after giving all parties an opportunity to be heard, adjudicate upon conflicting claims between a licensee and a successor-in-title, or between different successors-in-title, in respect of claims for the amendment or substitution of licence conditions.

(2) A successor-in-title of any person to whom a licence to use water has been issued-

(a) may, subject to the conditions of the relevant licence and paragraph (b), continue with the water use; and

(b) must promptly inform the responsible authority of the succession, for the substitution of the name of the licensee, for the remainder of the term.

52 Procedure for earlier renewal or amendment of licences

(1) A licensee may, before the expiry date of a licence, apply to the responsible authority for the renewal or amendment of the licence.

(2) Unless an application for the renewal or amendment of a licence is made in terms of section 50, it must-

(a) be made in such form, contain such information and be accompanied by such processing fee as may be determined by the responsible authority; and

(b) be dealt with according to the procedure as set out in section 41.

(3) In considering an application to amend or renew a licence, the responsible authority must have regard to the same matters which it was required to consider when deciding the initial application for that licence.

(4) A responsible authority may amend any condition of a licence by agreement with the licensee.

Part 10
Contravention of or failure to comply with authorisations (ss 53-55)

This Part deals with the consequences of contraventions of licence conditions. These range from the responsible authority requiring the licensee to take remedial action, failing which it may take the necessary action and recover reasonable costs from that person, to the suspension or withdrawal of a licence. Where a licensee offers to surrender a licence the responsible authority is obliged to accept the surrender and cancel the licence unless there is good reason for refusal.

53 Rectification of contraventions

(1) A responsible authority may, by notice in writing to a person who contravenes-

- (a) any provision of this Chapter;
- (b) a requirement set or directive given by the responsible authority under this Chapter; or
- (c) a condition which applies to any authority to use water,

direct that person, or the owner of the property in relation to which the contravention occurs, to take any action specified in the notice to rectify the contravention, within the time (being not less than two working days) specified in the notice or any other longer time allowed by the responsible authority.

(2) If the action is not taken within the time specified in the notice, or any longer time allowed, the responsible authority may-

- (a) carry out any works and take any other action necessary to rectify the contravention and recover its reasonable costs from the person on whom the notice was served; or
- (b) apply to a competent court for appropriate relief.

54 Suspension or withdrawal of entitlements to use water

(1) Subject to subsections (3) and (4), a responsible authority may by notice to any person entitled to use water under this Act suspend or withdraw the entitlement if the person fails-

- (a) to comply with any condition of the entitlement;
- (b) to comply with this Act; or
- (c) to pay a charge which is payable in terms of Chapter 5.

(2) An entitlement may be suspended under subsection (1)-

- (a) for the period specified in the notice of suspension; or
- (b) until the responsible authority is satisfied that the person concerned has rectified the failure which led to the suspension.

(3) A responsible authority may only suspend or withdraw an entitlement under subsection (1) if the responsible authority has directed the person concerned to take specified steps to rectify the failure within a specified period, and the person concerned has failed to do so to the satisfaction of the responsible authority.

(4) The person concerned must be given an opportunity to make representations, within a reasonable period, on any proposed suspension or withdrawal of an entitlement to use water.

(5) A responsible authority may, for good reason, reinstate an entitlement withdrawn under subsection (1).

55 Surrender of licence

(1) A licensee may offer to surrender any licence issued to that licensee under this Chapter, whereupon, unless there is good reason not to do so, the responsible authority must accept the surrender and cancel the licence.

(2) A responsible authority may refund to a licensee any charge or part of any charge paid in respect of a licence surrendered under subsection (1).

CHAPTER 5 FINANCIAL PROVISIONS (ss 56-62)

This Chapter deals with the measures to finance the provision of water resource management services as well as financial and economic measures to support the implementation of strategies aimed at water resource protection, conservation of water and the beneficial use of water.

Part 1 Water use charges (ss 56-60)

[Date of commencement of Part 1: 1 October 1999.]

In terms of Part 1 the Minister may from time to time, after public consultation, establish a pricing strategy which may differentiate among geographical areas, categories of water users or individual water users. The achievement of social equity is one of the considerations in setting differentiated charges. Water use charges are to be used to fund the direct and related costs of water resource management, development and use, and may also be used to achieve an equitable and efficient allocation of water. In addition, they may also be used to ensure compliance with prescribed standards and water management practices according to the user pays and polluter pays principles. Water use charges will be used as a means of encouraging reduction in waste, and provision is made for incentives for effective and efficient water use. Non-payment of water use charges will attract penalties, including the possible restriction or suspension of water supply from a waterwork or of an authorisation to use water.

56 Pricing strategy for water use charges

(1) The Minister may, with the concurrence of the Ministry of Finance, from time to time by notice in the *Gazette*, establish a pricing strategy for charges for any water use within the framework of existing relevant government policy.

(2) The pricing strategy may contain a strategy for setting water use charges-

(a) for funding water resource management, including the related costs of-

- (i) gathering information;
- (ii) monitoring water resources and their use;
- (iii) controlling water resources;
- (iv) water resource protection, including the discharge of waste and the protection of the Reserve; and
- (v) water conservation;

(b) for funding water resource development and use of waterworks, including-

- (i) the costs of investigation and planning;
- (ii) the costs of design and construction;
- (iii) pre-financing of development;

- (iv) the costs of operation and maintenance of waterworks;
- (v) a return on assets; and
- (vi) the costs of water distribution; and

(c) for achieving the equitable and efficient allocation of water.

(3) The pricing strategy may-

(a) differentiate on an equitable basis between-

- (i) different types of geographic areas;
- (ii) different categories of water use; and
- (iii) different water users;

(b) provide for charges to be paid by either-

- (i) an appropriate water management institution; or
- (ii) consumers directly;

(c) provide for the basis of establishing charges;

(d) provide for a rebate for water returned to a water resource; and

(e) provide on an equitable basis for some elements of the charges to be waived in respect of specific users for a specified period of time.

(4) The pricing strategy may differentiate under subsection (3) (a)-

(a) in respect of different geographic areas, on the basis of-

- (i) socio-economic aspects within the area in question;
- (ii) the physical attributes of each area; and
- (iii) the demographic attributes of each area;

(b) in respect of different types of water uses, on the basis of-

- (i) the manner in which the water is taken, supplied, discharged or disposed of;
- (ii) whether the use is consumptive or non-consumptive;
- (iii) the assurance and reliability of supply and water quality;
- (iv) the effect of return flows on a water resource;
- (v) the extent of the benefit to be derived from the development of a new water resource;
- (vi) the class and resource quality objectives of the water resource in question; and
- (vii) the required quality of the water to be used; and

(c) in respect of different water users, on the basis of-

- (i) the extent of their water use;
- (ii) the quantity of water returned by them to a water resource;
- (iii) their economic circumstances; and
- (iv) the statistical probability of the supply of water to them.

- (5) The pricing strategy may provide for a differential rate for waste discharges, taking into account-
- (a) the characteristics of the waste discharged;
 - (b) the amount and quality of the waste discharged;
 - (c) the nature and extent of the impact on a water resource caused by the waste discharged;
 - (d) the extent of permitted deviation from prescribed waste standards or management practices; and
 - (e) the required extent and nature of monitoring the water use.
- (6) In setting a pricing strategy for water use charges, the Minister-
- (a) must consider the class and resource quality objectives for different water resources;
 - (b) may consider incentives and disincentives-
 - (i) to promote the efficient use and beneficial use of water;
 - (ii) to reduce detrimental impacts on water resources; and
 - (iii) to prevent the waste of water; and
 - (c) must consider measures necessary to support the establishment of tariffs by water services authorities in terms of section 10 of the Water Services Act, 1997 (Act 108 of 1997), and the use of lifeline tariffs and progressive block tariffs.
- (7) Before setting a pricing strategy for water use charges under subsection (1), the Minister must-
- (a) publish a notice in the *Gazette*-
 - (i) setting out the proposed pricing strategy; and
 - (ii) inviting written comments to be submitted on the proposed strategy, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 90 days after publication of the notice;
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 - (c) consider all comments received on or before the date specified in the notice.

[Date of commencement of s. 56: 1 October 1999.]

57 Application of pricing strategy

- (1) Water use charges-
- (a) may be made-
 - (i) within a specific water management area; or
 - (ii) on a national or regional basis; and
 - (b) must be made in accordance with the pricing strategy for water use charges set by the Minister.
- (2) Charges made within a specific water management area may be made by and are payable to the relevant water management institution.

(3) Charges made on a national or regional basis-

(a) may be made by the Minister and are payable to the state; and

(b) may be apportioned between different water management areas according to the extent of the specific benefits which each water management area derives or will derive from the water uses for which the charges are made.

(4) Any person liable to pay water charges to a water services institution as defined in the Water Services Act, 1997 (Act 108 of 1997), for water supply services or sanitation services may not be charged for those services in terms of this Act.

(5) No charge made under this Act may be of such a nature as to constitute the imposition of a tax, levy or duty.

[Date of commencement of s. 57: 1 October 1999.]

58 Recovery of water use charges

(1) The Minister may direct any water management institution to recover any charges for water use made by the Minister under section 57 (1) (a) from water users within its water management area or area of operation, as the case may be.

(2) A water management institution which has been directed to recover any such charges may retain such portion of all charges recovered in order to recompense it for expenses and losses, as the Minister may allow.

(3) A water management institution which has been directed to recover any such charges-

(a) is jointly and severally liable to the state with the water users concerned; and

(b) may recover any amounts paid by it in terms of paragraph (a) from the water users concerned.

[Date of commencement of s. 58: 1 October 1999.]

59 Liability for water use charges

(1) Water use charges contemplated in this Chapter-

(a) may only be made in respect of a water use to which a person is voluntarily committed; and

(b) must bear a direct relationship to the water use in question.

(2) Any person registered in terms of a regulation under section 26 or holding a licence to use water must pay all charges imposed under section 57 in respect of that water use.

(3) If a water use charge is not paid-

(a) interest is payable during the period of default at a rate* determined from time to time by the Minister, with the concurrence of the Minister of Finance, by notice in the *Gazette*; and

(b) the supply of water to the water user from a waterwork or the authorisation to use water may be restricted or suspended until the charges, together with interest, have been paid.

(4) A person must be given an opportunity to make representations within a reasonable period on any proposed restriction or suspension before the restriction or suspension is imposed.

(5) Where there is a fixed charge, a restriction or suspension does not relieve a person of the obligation to pay the charges due for the period of the restriction or suspension.

(6) A person whose water use is restricted or suspended for any lawful reason may not later claim the water to which that person would otherwise have been entitled during the period of restriction or suspension.

[Date of commencement of s. 59: 1 October 1999.]

60 Water use charges are charges on land

(1) A charge made in terms of section 57 (1), including any interest, is a charge on the land to which the water use relates and is recoverable from the current owner of the land without releasing any other person who may be liable for the charge.

(2) The Minister or relevant water management institution must-

(a) on written application by any person; and

(b) within 30 days of the application, issue a certificate stating the amount of any unpaid water charges and any interest due in respect of any land.

(3) If a certificate is not issued within the period of 30 days, the provisions of subsection (1) cease to apply to that property, notwithstanding section 66.

[Date of commencement of s. 60: 1 October 1999.]

Part 2 Financial assistance (ss 61-62)

Part 2 deals with financial assistance, which may be granted once certain considerations are taken into account.

61 Financial assistance by Minister

(1) The Minister may, subject to a regulation made under section 62, give financial assistance to any person for the purposes of this Act, including assistance for making licence applications, in the form of grants, loans or subsidies, which may be made subject to such conditions as the Minister may determine.

(2) The financial assistance must be from funds-

(a) appropriated by Parliament; or

(b) which may under this Act or otherwise lawfully be used for the purposes in question.

(3) Before giving any financial assistance, the Minister must take into account all relevant considerations, including-

(a) the need for equity;

(b) the need for transparency;

(c) the need for redressing the results of past racial and gender discrimination;

(d) the purpose of the financial assistance;

(e) the financial position of the recipient; and

(f) the need for water resource protection.

(4) A person who wilfully fails to comply with any obligations imposed by this Act is not eligible for financial assistance under this Act.

62 Regulations on financial assistance

The Minister may make regulations concerning-

- (a) the eligibility for financial assistance;
- (b) the manner in which financial assistance must be applied for; and
- (c) terms and conditions applicable to any financial assistance granted.

CHAPTER 6 GENERAL POWERS AND DUTIES OF MINISTER AND DIRECTOR-GENERAL (ss 63-76)

Part 1 *Delegations, directives, expropriation, condonation and additional powers (ss 63-68)*

Part 1 of this Chapter sets out various powers and duties of the Minister which are of a general nature, such as the powers of delegation and expropriation, and intervention in litigation. More specific powers and duties are dealt with elsewhere in the Act.

63 Delegation of powers and duties by Minister

(1) The Minister may, in writing and subject to conditions, delegate a power and duty vested in the Minister in terms of this Act to-

- (a) an official of the Department by name;
- (b) the holder of an office in the Department;
- (c) a water management institution;
- (d) an advisory committee established under section 99; or
- (e) a water board as defined in section 1 of the Water Services Act, 1997 (Act 108 of 1997).

(2) The Minister may not delegate the power-

- (a) to make a regulation;
- (b) to authorise a water management institution to expropriate under section 64 (1);
- (c) to appoint a member of the governing board of a catchment management agency; or
- (d) to appoint a member of the Water Tribunal.

(3) The Minister may, in writing and subject to conditions, permit a person to whom a power or duty has been delegated to delegate that function to another person.

(4) The Minister may give a directive to the Director-General in relation to the exercise of any of the Director-General's powers or performance of any of the Director-General's duties, including any power delegated to the Director-General.

(5) The Director-General must give effect to a directive in terms of subsection (4).

64 Expropriation of property

- (1) The Minister, or a water management institution authorised by the Minister in writing, may expropriate any property for any purpose contemplated in this Act, if that purpose is a public purpose or is in the public interest.
- (2) Subject to this Act, the Expropriation Act, 1975 (Act 63 of 1975), applies to all expropriations in terms of this Act.
- (3) Where the Minister expropriates any property under this Act, any reference to 'Minister' in the Expropriation Act, 1975, must be construed as being a reference to the Minister.
- (4) Where any water management institution expropriates property under this Act, any reference to 'Minister' and 'State' in the Expropriation Act, 1975, must be regarded as being a reference to that water management institution.

65 Expropriation for rehabilitation and other remedial work

- (1) If a person who is required under this Act to undertake rehabilitation or other remedial work on the land of another, reasonably requires access to that land in order to effect the rehabilitation or remedial work, but is unable to acquire access on reasonable terms, the Minister may-
 - (a) expropriate the necessary rights in respect of that land for the benefit of the person undertaking the rehabilitation or remedial work, who will then be vested with the expropriated rights; and
 - (b) recover all costs incurred in connection with the expropriation, including any compensation payable, from the person for whose benefit the expropriation was effected.
- (2) Where a servitude of abutment, aqueduct or submersion is expropriated under this section, the Minister or water management institution responsible for the expropriation has the same rights as those vesting in the holder of a servitude under section 128.

66 Condonation of failure to comply with time period

The Minister may, in exceptional circumstances and for a good reason, extend a time period or condone a failure to comply with a time period.

67 Dispensing with certain requirements of Act

- (1) In an emergency situation, or in cases of extreme urgency involving the safety of humans or property or the protection of a water resource or the environment, the Minister may-
 - (a) dispense with the requirements of this Act relating to prior publication or to obtaining and considering public comment before any instrument contemplated in section 158 (1) is made or issued;
 - (b) dispense with notice periods or time limits required by or under this Act;
 - (c) authorise a water management institution to dispense with-
 - (i) the requirements of this Act relating to prior publication or to obtaining and considering public comment before any instrument is made or issued; and
 - (ii) notice periods or time limits required by or under this Act.
- (2) Anything done under subsection (1)-
 - (a) must be withdrawn or repealed within a maximum period of two years after the emergency situation or the urgency ceases to exist; and
 - (b) must be mentioned in the Minister's annual report to Parliament.

68 Intervention in litigation

The Minister may intervene in litigation before a court or in a hearing before the Water Tribunal with regard to any matter contemplated in this Act.

Part 2 ***General provisions regarding regulations (ss 69-71)***

Part 2 requires the Minister to consult with the public when making regulations under this Act, and also to submit regulations for scrutiny by the National Assembly and by the National Council of Provinces. If the National Assembly rejects a regulation it must be repealed or amended.

69 Making of regulations

(1) The Minister must, before making any regulations under this Act-

(a) publish a notice in the *Gazette*-

(i) setting out the draft regulations; and

(ii) inviting written comments to be submitted on the proposed regulations, specifying an address to which and a date before which the comments must be submitted, which date may not be earlier than 60 days after publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

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

(d) on request by the National Assembly or the National Council of Provinces or a committee of the National Assembly or the National Council of Provinces report the extent to which a specific comment has been taken into account, or if a comment was not taken into account, provide the reason why it was not taken into account.

(2) Any regulation made under this Act may provide that a contravention of or failure to comply with a regulation is an offence and that any person found guilty of the offence is liable to a fine or to imprisonment for a period not exceeding 5 years.

70 Consideration of regulations

(1) The Minister must, within 30 days after making any regulations under this Act, table the regulations in the National Assembly and the National Council of Provinces for consideration.

(2) In considering regulations-

(a) tabled in the National Assembly, a committee of the National Assembly must consider and report to the National Assembly; and

(b) tabled in the National Council of Provinces, a committee of the National Council of Provinces must consider and report to the National Council of Provinces, whether the regulations-

(i) are consistent with the purposes of this Act;

(ii) are within the powers conferred by this Act;

(iii) are consistent with the Constitution; and

(iv) require clarification.

(3) The National Council of Provinces may reject regulations tabled before the National Council of Provinces in terms of subsection (1) within 14 days after the date on which the regulations were so tabled, and should the National Council of Provinces reject any regulation, the rejection must be referred to the National Assembly for consideration.

(4) The National Assembly may, not later than their twentieth sitting day after the date on which the regulations were tabled and after considering any rejection of a regulation by the National Council of Provinces, reject those regulations

(5) If the National Assembly or the National Council of Provinces rejects any regulations, it must state its reasons.

71 Rejected regulations

(1) The Minister must, within 30 days after being informed in writing that the National Assembly has rejected any regulations, repeal or amend those regulations so as to address the matters raised by the National Assembly.

(2) Any regulations rejected by the National Assembly remain in force until repealed or amended.

Part 3

Powers relating to catchment management agencies (ss 72-74)

The Minister has the responsibility to manage and authorise the use of the nation's water resources. This means that the Minister fulfils the functions of a catchment management agency in a water management area for which no catchment management agency is established, or where such an agency has been established but is not functional. The Minister may dispense with certain requirements of this Act for as long as is necessary to deal with an urgent situation or an emergency.

72 Powers and duties of catchment management agencies vest in Minister in certain circumstances

(1) In areas for which a catchment management agency is not established or, if established, is not functional, all powers and duties of a catchment management agency, including those powers and duties described in sections 79 and 80 and in Schedule 3, vest in the Minister.

(2) In areas for which a catchment management agency is established, those powers and duties described in Schedule 3 which have not been assigned by the Minister to the catchment management agency, vest in the Minister.

73 Assignment of powers and duties to catchment management agencies

(1) The Minister may, after consultation with the catchment management agency concerned, by notice in the *Gazette*, assign to that catchment management agency-

(a) a power or duty of a responsible authority; and

(b) any power or duty listed in Schedule 3.

(2) In assigning any power or duty under subsection (1), the Minister may-

(a) limit the area within which an assigned power may be exercised or duty may be performed; and

(b) attach conditions to that assignment.

(3) Before assigning a power or duty to a catchment management agency under subsection (1), the Minister must consider-

(a) the capacity of the catchment management agency to exercise the power or perform the duty; and

(b) the desirability of assigning that power or duty.

(4) The Minister must promote the management of water resources at the catchment management level by assigning powers and duties to catchment management agencies when it is desirable to do so.

74 Directives to water management institutions

- (1) The Minister may give a directive to a water management institution in relation to the exercise of any of the institution's powers or the performance of any of the institution's duties, including any power or duty assigned or delegated to that institution.
- (2) The Minister must give a water management institution not less than 14 days' notice of the Minister's intention to give a directive under subsection (1) if it relates to any assigned power or duty, and must allow the institution an opportunity to comment.
- (3) Every directive, or a summary thereof, given to a water management institution by the Minister and which relates to an assigned power or duty-
- (a) must be published by the Minister in the *Gazette*; and
 - (b) must be included in the annual report of the institution.
- (4) A failure to comply with subsection (3) does not affect the validity of the directive.
- (5) A water management institution must give effect to a directive given to it by the Minister under subsection (1).

Part 4 Powers of Director-General (ss 75-76)

75 Delegation of powers by Director-General

The Director-General may, for the purposes of this Act, in writing and subject to conditions, delegate a power, including a power granted or delegated to the Director-General under this Act, to-

- (a) an official of the Department by name;
- (b) the holder of an office in the Department; or
- (c) a water management institution.

76 Appointment of persons on contract

- (1) The Director-General may, when necessary, appoint employees on contract outside the provisions of the Public Service Act, 1994 (Proclamation 103 of 1994).
- (2) Appointments made under subsection (1) must be limited to persons to perform duties at sites where the Department-
- (a) is engaged in actual construction or investigatory work; or
 - (b) is associated with specific projects relating to actual construction or investigatory work.
- (3) The Director-General must, from time to time, and after consultation with the Department of Public Service and Administration, determine the conditions of employment of such employees.
- (4) Such employees shall be remunerated from money appropriated for that purpose by Parliament.

CHAPTER 7 CATCHMENT MANAGEMENT AGENCIES (ss 77-90)

This Chapter provides for the progressive establishment by the Minister of catchment management agencies. The purpose of establishing these agencies is to delegate water resource management to the regional or catchment level and to involve local communities, within the framework of the national water resource strategy established in terms of Chapter 2. Whilst the ultimate aim is to establish catchment management agencies for all water management areas, the Minister acts as the catchment management agency where one has not been established. Where the necessary capacity does not exist to establish a catchment management agency, an advisory committee may be appointed under Chapter 9 to develop the necessary capacity as a first step towards establishing an agency

Part 1 Establishment and powers of catchment management agencies (ss 77-80)

Under Part 1 a catchment management agency may be established for a specific water management area, after public consultation, on the initiative of the community and stakeholders concerned. In the absence of such a proposal the Minister may establish a catchment management agency on the Minister's own initiative. The provisions of Schedule 4, on institutional and management planning, apply to a catchment management agency.

77 Proposal for establishment of catchment management agency

- (1) A proposal to establish a catchment management agency must contain at least-
- (a) a proposed name and a description of the proposed water management area of the agency;
 - (b) a description of the significant water resources in the proposed water management area, and information about the existing protection, use, development, conservation, management and control of those resources;
 - (c) the proposed functions of the catchment management agency, including functions to be assigned and delegated to it;
 - (d) how the proposed catchment management agency will be funded;
 - (e) the feasibility of the proposed catchment management agency in respect of technical, financial and administrative matters; and
 - (f) an indication whether there has been consultation in developing the proposal and the results of the consultation.
- (2) The Director-General may assist a person to develop such a proposal.

78 Procedure for establishment of catchment management agencies

(1) The Minister may, subject to section 6 (1) (c), on his or her own initiative or after receiving a proposal containing the information required in terms of section 77 (1), by notice in the *Gazette*-

- (a) establish a catchment management agency, give it a name and identify and determine its water management area; or
- (b) amend the name or water management area of an established catchment management agency.

(2) The Minister may-

- (a) require a person who has submitted a proposal contemplated in subsection (1), to provide the Minister with information additional to that required by section 77 (1); and
- (b) instruct the Director-General to conduct an investigation regarding-
 - (i) the establishment of a catchment management agency; or
 - (ii) a proposal submitted in terms of subsection (1).

(3) Before the establishment of a catchment management agency the Minister must-

(a) publish a notice in the *Gazette*-

(i) setting out the proposed establishment of the catchment management agency, the proposed name and the proposed water management area; and

(ii) inviting written comments to be submitted on the proposal specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

(c) consider all comments received on or before the date specified in paragraph (a) (ii).

(4) If the Minister wants to amend the name of a catchment management agency or the water management area of a catchment management agency, the procedure set out in subsection (3) must be followed with any necessary changes: Provided that where an amendment does not affect the rights of any person the procedure set out in subsection (3) need not be followed.

79 General powers and duties of catchment management agencies

(1) A catchment management agency is a body corporate, and has the powers of a natural person of full capacity, except those powers which-

(a) by nature can only attach to natural persons; or

(b) are inconsistent with this Act.

(2) Schedule 4 applies to a catchment management agency, its governing board and committees and the members of the board and committees.

(3) A catchment management agency may perform-

(a) any of its functions; or

(b) any function which is reasonably incidental to any of its functions,

outside its water management area, if this does not-

(i) limit its capacity to perform its functions in its water management area; or

(ii) detrimentally affect another water management institution.

(4) In performing its functions a catchment management agency must-

(a) be mindful of the constitutional imperative to redress the results of past racial and gender discrimination and to achieve equitable access for all to the water resources under its control;

(b) strive towards achieving co-operation and consensus in managing the water resources under its control; and

(c) act prudently in financial matters.

80 Initial functions of catchment management agencies

Subject to Chapter 2 and section 79, upon the establishment of a catchment management agency, the initial functions of a catchment management agency are-

- (a) to investigate and advise interested persons on the protection, use, development, conservation, management and control of the water resources in its water management area;
- (b) to develop a catchment management strategy;
- (c) to co-ordinate the related activities of water users and of the water management institutions within its water management area;
- (d) to promote the co-ordination of its implementation with the implementation of any applicable development plan established in terms of the Water Services Act, 1997 (Act 108 of 1997); and
- (e) to promote community participation in the protection, use, development, conservation, management and control of the water resources in its water management area.

Part 2

Governing board of catchment management agencies (ss 81-83)

Part 2 describes the appointment of members of the governing board of a catchment management agency. The board of a catchment management agency will be constituted in such a way that interests of the various stakeholders are represented or reflected in a balanced manner, and the necessary expertise to operate effectively is provided. Members of the governing board can be elected or nominated by the different water user groups for appointment by the Minister, and the Minister may of his or her own accord appoint further members. The Minister may also remove board members for good reason.

81 Appointment of governing board of catchment management agency

- (1) The members of a governing board of a catchment management agency must be appointed by the Minister who, in making such appointment, must do so with the object of achieving a balance among the interests of water users, potential water users, local and provincial government and environmental interest groups.
- (2) Notwithstanding subsections (3) to (9) the Minister must, from time to time, determine the extent to which relevant local governments should be represented on the governing board of each catchment management agency.
- (3) Before appointing members to the governing board, the Minister must establish an advisory committee contemplated in Chapter 9, to recommend to the Minister-
 - (a) which organs of state and bodies representing different sectors and other interests within the water management area of the catchment management agency should be represented or reflected on the governing board; and
 - (b) the number of persons which each of them should be invited to nominate.
- (4) The committee must consult with the relevant organs of state and interest groups before making its recommendations.
- (5) After receiving the committee's recommendations, the Minister must decide which organs of state and bodies will be invited to nominate representatives for appointment to the governing board, and the number of representatives each may nominate.

(6) The Minister's decision must be communicated to the organs of state and bodies concerned and the Minister must take the necessary steps to obtain nominations from them by a date specified by the Minister.

(7) The Minister must appoint the persons nominated by the organs of state and the bodies concerned in accordance with the invitation, unless-

(a) any such person is not a fit and proper person to serve on the governing board; or

(b) any such organ of state or body has not followed its own internal procedures in making the nomination.

(8) If the Minister does not appoint a nominee, the Minister must-

(a) inform the organ of state or body concerned and state the reasons for not appointing that nominee; and

(b) invite a further nomination from that organ of state or body.

(9) If one or more nominations are still outstanding on the date specified under subsection (6), the Minister may appoint members of the board and fill any vacancy later.

(10) After appointing members to the board the Minister may appoint additional members selected by the Minister in order to-

(a) represent or reflect the interests identified by the advisory committee;

(b) achieve sufficient gender representation;

(c) achieve sufficient demographic representation;

(d) achieve representation of the Department;

(e) achieve representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to water; and

(f) obtain the expertise necessary for the efficient exercise of the board's, powers and performance of its duties.

(11) A member must be appointed for a specified term of office.

(12) The Minister may extend the term of office of a member.

(13) If the term of office of a member expires before the first meeting of a new board takes place, the existing member remains in office until that first meeting takes place.

(14) A member nominated for appointment to the board by an organ of state or body is accountable to that organ of state or body.

82 Chairperson, deputy chairperson, chief executive officer and committees of catchment management agency

(1) The Minister must convene the first meeting of the governing board of a catchment management agency, which must be chaired by an official of the Department or a member of the committee.

(2) At the first meeting of the governing board, the members may recommend one of them for appointment as chairperson and another as deputy chairperson.

(3) The Minister must-

(a) with due regard to any recommendation made by the governing board at its first meeting, appoint one of the members as chairperson; and

(b) appoint any other member as deputy chairperson.

(4) The chief executive officer provided for in Schedule 4 may be a member of the governing board, but may not be its chairperson or deputy chairperson.

(5) A catchment management agency may establish committees, including an executive committee and consultative bodies, to perform any of its functions within a particular area or generally or to advise it, and must determine how they must function.

83 Removal of members from governing board

(1) The Minister may remove a member from a governing board, or remove the chairperson or deputy chairperson from office, if-

(a) there is good reason for doing so;

(b) the person concerned has had an opportunity of making representations to the Minister; and

(c) the Minister has consulted with the governing board.

(2) The Minister must remove a member nominated by an organ of state or body from a governing board if that organ of state or body requests the Minister to do so.

(3) If a person ceases for any reason to be a member of a governing board before that person's term of office expires, the Minister may, for the remainder of the term of office-

(a) if that person was nominated by any organ of state or body, appoint another person nominated by that organ or body; or

(b) if that person was selected by the Minister, appoint another person.

Part 3

Operation of catchment management agencies (ss 84-86)

Part 3 deals with the functions and operation of catchment management agencies. Initial functions, dealt with in Part 2, include the investigation of and advice on water resources, the co-ordination of the related activities of other water management institutions within its water management area, the development of a catchment management strategy and the promotion of community participation in water resource management within its water management area. Additional powers and duties described in Schedule 3 may be assigned or delegated to agencies such as to establish water use rules and management systems, to direct users to terminate illegal uses of water, and to temporarily limit the use of water during periods of shortage.

A catchment management agency may be financed by the state from water use charges made in its water management area or from any other source.

84 Funding of catchment management agencies

(1) A catchment management agency may raise any funds required by it for the purpose of exercising any of its powers and carrying out any of its duties in terms of this Act.

(2) A catchment management agency must be funded by-

(a) money appropriated by Parliament;

(b) water use charges; and

(c) money obtained from any other lawful source for the purpose of exercising its powers and carrying out its duties in terms of this Act.

85 Documents relating to litigation

A catchment management agency must provide the Director-General with copies of all pleadings, affidavits and other documents in the possession of the catchment management agency relating to any proceedings instituted against that catchment management agency.

86 Delegation of powers by catchment management agency

(1) Subject to subsections (2) and (3), a catchment management agency may delegate any power to-

(a) a member of its governing board;

(b) an employee of any water management institution (including itself), by name, or to the holder of an office in that institution; or

(c) any committee established by the catchment management agency which consists only of members of the governing board or employees of the catchment management agency; and

(d) any other person or body only with the written consent of the Minister.

(2) A catchment management agency may not delegate-

(a) the power of delegation; or

(b) any power to make water use charges.

(3) A catchment management agency may only delegate a power to authorise the use of water, if this power is delegated to a committee consisting of three or more members of its governing board.

Part 4

Intervention, disestablishment or change of water management areas of catchment management agencies (ss 87-90)

Part 4 enables the Minister to disestablish a catchment management agency or make changes to its water management area, for reasons which include the need to reorganise water management institutions for more effective water resource management. An agency may also be disestablished if it does not operate effectively.

87 Intervention by Minister

(1) If a catchment management agency-

(a) is in financial difficulties or is being otherwise mismanaged;

(b) has acted unfairly or in a discriminatory or inequitable way towards any person within its water management area;

(c) has failed to comply with any directive given by the Minister under this Act;

(d) has obstructed the Minister or any other water management institution in exercising a power or performing a duty in terms of this Act;

(e) is unable to exercise its powers or perform its duties effectively due to dissension among the members of the board or water users within its water management area;

(f) has failed to comply with this Act; or

(g) has become redundant or ineffective, the Minister may-

(i) direct the catchment management agency to take any action specified by the Minister; and

(ii) withhold any financial assistance which might otherwise be available to the catchment management agency, until the catchment management agency has complied with such directive.

(2) A directive contemplated in subsection (1) (i) must state-

(a) the nature of the deficiency;

(b) the steps which must be taken to remedy the situation; and

(c) a reasonable period within which those steps must be taken.

(3) If the catchment management agency fails to remedy the situation within the given period, the Minister may-

(a) after having given that catchment management agency a reasonable opportunity to be heard; and

(b) after having afforded the catchment management agency a hearing on any submissions received, take over the relevant power or duty of the catchment management agency.

(4) If the Minister takes over a power or duty of a catchment management agency-

(a) the Minister may do anything which the catchment management agency might otherwise be empowered or required to do by or under this Act, to the exclusion of the catchment management agency;

(b) the board of the catchment management agency may not, while the Minister is responsible for that power or duty, exercise any of its powers or perform any of its duties relating to that power or duty;

(c) an employee or a contractor of the catchment management agency must comply with a directive given by the Minister;

(d) as soon as the Minister is satisfied that the catchment management agency is once more able to exercise its powers or perform its duties effectively, the Minister must cease exercising any such powers and performing any such duties; and

(e) the Minister may recover from the catchment management agency all reasonable costs incurred, including any losses suffered as a result of lawful and reasonable action taken under this section, except to the extent that the loss is caused or contributed to by the negligence of the Minister, or any person under the control of the Minister.

88 Disestablishment of catchment management agency

(1) The Minister may, by notice in the *Gazette*, disestablish a catchment management agency if it is desirable-

- (a) for purposes of re-organising water management institutions in that area in the interests of effective water resource management;
- (b) because the catchment management agency cannot or does not operate effectively; or
- (c) because there is no longer a need for the catchment management agency.

(2) Before disestablishing a catchment management agency the Minister must-

(a) publish a notice in the *Gazette*-

(i) stating the intention to disestablish the catchment management agency and the reasons therefor; and

(ii) inviting written comments on the proposed disestablishment and giving a specified address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

(c) consider all comments received on or before the specified date.

89 Transfer of assets and liabilities after change of water management area or disestablishment

(1) If the Minister changes the water management area of a catchment management agency under section 78 or disestablishes a catchment management agency under section 88, the Minister may direct the catchment management agency to transfer some or all of its assets and liabilities to another water management institution.

(2) A catchment management agency must do everything in its power to give effect to a directive under subsection (1).

(3) In issuing a directive under subsection (1) the Minister must consider-

(a) the interests of creditors and users of water; and

(b) any financial contributions directly or indirectly made by the users of water resources towards the infrastructure of the catchment management agency.

(4) Where a catchment management agency is disestablished and its assets and liabilities are not transferred to another water management institution its assets and liabilities vest in the Minister and the Minister must wind up its affairs and assume the powers and duties of the catchment management agency for the period of winding up.

(5) No transfer duty, other tax or duty is payable in respect of the transfer of any assets in terms of this section.

90 Regulations on catchment management agencies

(1) Subject to subsection (2), the Minister may make regulations-

(a) prescribing a maximum and a minimum number of members of a governing board;

(b) requiring the establishment of consultative forums and determining their composition and functions;

(c) determining, in consultation with the Minister of Finance, the basis and extent of remuneration and payment of expenses of members of governing boards and committees; and

(d) on any other matter which is necessary or desirable for the efficient functioning of catchment management agencies and their governing boards and committees.

(2) In making regulations, the Minister must take into account all relevant considerations, including the need to-

(a) achieve adequate representation of and consultation with organs of state, bodies representing different sectors and other interests within the areas of jurisdiction of catchment management agencies; and

(b) secure the efficient and cost effective functioning of catchment management agencies and their management structures.

CHAPTER 8 WATER USER ASSOCIATIONS (ss 91-98)

This Chapter deals with the establishment, powers and disestablishment of water user associations. Although water user associations are water management institutions their primary purpose, unlike catchment management agencies, is not water management. They operate at a restricted localised level, and are in effect co-operative associations of individual water users who wish to undertake water-related activities for their mutual benefit. A water user association may exercise management powers and duties only if and to the extent these have been assigned or delegated to it. The Minister establishes and disestablishes water user associations according to procedures set out in the Chapter. A water user association for a particular purpose would usually be established following a proposal to the Minister by an interested person, but such an association may also be established on the Minister's initiative. The functions of a water user association depend on its approved constitution, which can be expected to conform to a large extent to the model constitution in Schedule 5. This Schedule also makes detailed provisions for the management and operation of water user associations. Although water user associations must operate within the framework of national policy and standards, particularly the national water resource strategy, the Minister may exercise control over them by giving them directives or by temporarily taking over their functions under particular circumstances.

Existing irrigation boards, subterranean water control boards and water boards established for stock watering purposes will continue in operation until they are restructured as water user associations.

91 Proposal for establishment of water user association

(1) A proposal to establish a water user association must contain at least-

(a) the reasons for making the proposal;

(b) a proposed name and area of operation for the association;

(c) the proposed activities of the association;

(d) a description of any existing or proposed waterwork within the proposed area of operation which is relevant to the proposed activities of the association;

(e) a description of the water use licences or any other authorisations which the proposed members hold or intend applying for;

(f) the proposed constitution of the association, together with an explanation for any provisions which differ from those of the model constitution contained in Schedule 5;

(g) a list of the proposed members or categories of members of the association; and

(h) an indication whether there has been consultation in developing the proposal and the results of the consultation.

(2) The Director-General may assist a person to develop such a proposal.

92 Procedure for establishment of water user association

(1) The Minister may on his or her own initiative or after receiving a proposal containing the information required in terms of section 91 (1), by notice in the *Gazette*-

(a) establish a water user association, give it a name, determine its area of operation and approve its constitution subject to section 93 (2); or

(b) amend the name, area of operation or approve an amendment to the constitution of an established water user association.

(2) The Minister may-

(a) require a person who has submitted a proposal in terms of subsection (1) to provide the Minister with additional information to that required by section 91 (1); and

(b) instruct the Director-General to conduct an investigation regarding-

(i) the establishment of a water user association; or

(ii) a proposal submitted in terms of subsection (1).

(3) Before the establishment of a water user association the Minister must-

(a) publish a notice in the *Gazette*-

(i) setting out the proposed establishment of the water user association, the proposed name and the proposed area of operation; and

(ii) inviting written comments to be submitted on the proposals, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

(c) consider any comments received on or before the date specified in paragraph (a) (ii).

(4) The Minister need not fulfil all the requirements of subsection (3), if there has been sufficient consultation on a proposal submitted in terms of section 91.

(5) The Minister may-

(a) recover the cost of complying with subsection (3) from the water user association once it has been established; or

(b) require the person proposing the establishment of the water user association to pay the costs in advance.

93 Constitution of water user association

(1) Schedule 5 contains a model constitution which may be used as a basis for drawing up and proposing a constitution for a proposed water user association.

(2) The constitution of a water user association must contain at least-

(a) details of the principal and ancillary functions of the association;

(b) the procedures and requirements for admitting new members to the association;

- (c) the voting powers of members;
- (d) procedures for terminating membership;
- (e) procedures for electing the management committee of the association;
- (f) procedural requirements for appointment of employees of the association;
- (g) procedural requirements for obtaining loans; and
- (h) the financial obligations of members towards the association.

(3) A constitution must also incorporate such other provisions as the Minister may reasonably require and must be adopted by the members of the association and approved by the Minister before it can exercise any powers or perform any duties.

(4) A constitution adopted by a water user association is binding on all its members.

94 Powers of water user association

(1) A water user association is a body corporate and has the powers of a natural person of full capacity, except those powers which-

- (a) by nature can only attach to natural persons; or
- (b) are inconsistent with this Act.

(2) Schedule 4 (excluding item 4 (3) of Part 1 of that Schedule) applies to a water user association as if-

- (a) the water user association were an institution; and
- (b) a member of the management committee were a director, within the meaning of that Schedule, except to the extent that the Minister may otherwise direct.

95 Directives to water user association

(1) The Minister may, after consulting with a water user association, direct that a person be admitted as a member of the association on such conditions as are fair and equitable.

(2) A water user association must comply with a directive given under subsection (1).

(3) If a water user association-

- (a) is in financial difficulties or is being otherwise mismanaged;
- (b) has acted unfairly or in a discriminatory or inequitable way towards any member of the association;
- (c) has failed to admit persons to membership unfairly or on discriminatory grounds;
- (d) has failed to comply with any directive given by the Minister under this Act;
- (e) has obstructed the Minister or any other water management institution in exercising a power or performing a duty in terms of this Act;
- (f) is unable to exercise its powers or perform its duties effectively due to dissension among the management committee or its members;
- (g) has failed to comply with its constitution or this Act; or
- (h) has become redundant or ineffective, the Minister may-
 - (i) direct the association to take any action specified by the Minister;

(ii) withhold any financial assistance which might otherwise be available to the water user association until the association has complied with such directive; or

(iii) by notice addressed to the association and the member concerned, terminate the office of that member of the management committee and arrange for the resulting vacancy on the management committee to be filled.

(4) A directive contemplated in subsection (3) (i) must state-

(a) the nature of the deficiency;

(b) the steps which must be taken to remedy the situation; and

(c) a reasonable period within which those steps must be taken.

(5) If the water user association fails to remedy the situation within the given period, the Minister may-

(a) after having given that association a reasonable opportunity to be heard; and

(b) after having afforded the association a hearing on any submissions received, take over the relevant function of the association, or appoint a suitable person to take over the power or duty.

(6) If the Minister, or a person appointed by the Minister, takes over a power or duty of a water user association-

(a) the Minister or the appointee may do anything which the association might otherwise be empowered or required to do in terms of its constitution or by or under this Act, to the exclusion of the association;

(b) the management committee of the association may not, while the Minister or the appointee is responsible for that power or duty, exercise any of its powers or perform any of its duties relating to that power or duty;

(c) an employee or a contractor of the association must comply with a directive given by the Minister or the appointee;

(d) as soon as the Minister is satisfied that the association is once more able to exercise its powers and perform its duties effectively, the Minister or the appointee, as the case may be, must cease exercising such powers and performing such duties; and

(e) the Minister may recover from the association all reasonable costs incurred by the Minister or the appointee, including-

(i) the reasonable fees or disbursements of the appointee; and

(ii) any losses suffered as a result of lawful and reasonable action taken under this section, except to the extent that the loss is caused or contributed to by the negligence of the Minister or the appointee or any person under their control.

96 Disestablishment of water user association

(1) The Minister may, by notice in the *Gazette*, disestablish an association-

(a) in circumstances provided for in the constitution of the association;

(b) if the functions of the association are, by agreement with another water management institution, to be combined with, or taken over by that water management institution;

(c) if it is in the best interests of the association or its members;

(d) if an investigation of its affairs or financial position reveals that disestablishment is appropriate;

(e) if the Minister has taken over a power or duty of the association as a result of dissensions among the management committee or its members; or

(f) if the association is no longer active or effective.

(2) Before disestablishing a water user association the Minister must-

(a) publish a notice in the *Gazette*-

(i) stating the intention to disestablish the water user association;

(ii) setting out the reasons for disestablishing the water user association; and

(iii) inviting written comments on the proposal, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

(c) consider all comments received on or before the specified date.

97 Winding up affairs of disestablished water user association

(1) When a water user association is disestablished, its affairs must be wound up-

(a) as provided for in its constitution; or

(b) by a person appointed by the Minister in accordance with directives given by the Minister if the constitution does not provide for winding up.

(2) The costs of winding up a water user association are a cost against the estate of the association.

(3) Creditors of a water user association must be paid according to the order of preference established by the Insolvency Act, 1936 (Act 24 of 1936).

(4) If the affairs of a water user association are wound up, the Minister may direct that an amount equivalent to any financial contributions with interest made to the association from public funds be reimbursed, before assets are distributed among the members of the association.

(5) No transfer duty, other tax or duty is payable in respect of the transfer of any assets under subsection (4).

98 Transitional provisions for certain existing organisations

(1) This section applies to-

(a) any irrigation board or subterranean water control board established by or deemed to be an irrigation board in terms of any law in force immediately before the commencement of this Act;

(b) the Kalahari West Water Board, established by Government Notice 143 of 13 August 1982;

(c) the Karos-Geelkoppan Water Board, established by Government Notice 145 of 7 October 1983; and

(d) the Kalahari East Water Board, established by Government Notice 2233 of 4 November 1988, each of which is a board for the purposes of this section.

(2) A board continues to exist until it is declared to be a water user association in terms of subsection (6) or until it is disestablished in terms of the law by or under which it was established, which law must, for the purpose of such disestablishment, be regarded as not having been repealed by this Act.

(3) Subject to subsection (4)-

(a) the name, area of operation, management, property, rights, liabilities, obligations, powers and duties of a board remain the same as immediately before the commencement of this Act;

(b) this section does not affect the continuity, status, operation or effect of any act or omission of a board, or of any by-law made by a board, before the commencement of this Act;

(c) any person holding office with a board when this Act commences continues in office for the term of that person's appointment; and

(d) if a position becomes vacant prior to the declaration of the board as a water user association, the board may fill the vacancy according to the procedures laid down by or under the law which applied to that board immediately before the commencement of this Act.

(4) Within six months of the commencement of this Act, a board must prepare and submit to the Minister a proposal, prepared according to section 91, to transform the board into a water user association.

(5) The Minister may accept the proposal contemplated in subsection (4), with or without amendments, or reject it.

(6) If the Minister accepts the proposal, the Minister must by notice in the *Gazette*-

(a) declare the board to be a water user association;

(b) give it a name;

(c) determine its area of operation; and

(d) approve its constitution.

(7) Upon the publication of a notice under subsection (6), every property, right and liability of the board becomes a property, right and liability of the relevant water user association.

CHAPTER 9 ADVISORY COMMITTEES (ss 99-101)

This Chapter empowers the Minister to establish advisory committees. Each advisory committee will be established for a particular purpose, and it is therefore possible for a variety of advisory committees to be established with different purposes and functions. Although primarily advisory in nature, such committees may exercise powers which are delegated to them. The Minister may amend the functions of an advisory committee, or disestablish it. Certain existing advisory committees will continue to function as though they were advisory committees established under this Act.

99 Establishment of advisory committees

(1) The Minister may-

(a) establish an advisory committee;

(b) give it a name or change its name;

(c) determine its purpose and functions or effect amendments thereto;

(d) make appointments to the committee, including the chairperson and deputy chairperson;

- (e) remove persons from the committee; and
- (f) disestablish an advisory committee.

(2) Officials of the Department may be members of an advisory committee.

(3) A member of a committee may be remunerated as directed by the Minister, with the concurrence of the Minister of Finance.

(4) An act performed in good faith by a committee is valid, despite any failure to comply with a formal procedural requirement.

(5) The Department may supply administrative support services to a committee.

(6) An official of the Department who is not a member of the committee, if so directed by the Director-General, may attend a meeting of a committee, but may not vote at the meeting.

(7) The Minister in appointing a member of a committee, must consider-

- (a) the powers and duties of the committee;
- (b) the need for the committee to represent various relevant interests; and
- (c) the expertise necessary for the committee to exercise its powers and perform its duties effectively.

100 Regulations regarding advisory committees

The Minister may by regulation establish terms of reference and any other rules concerning the membership, powers and duties and operation of a committee.

101 Transitional provisions relating to advisory committees

(1) The National Water Advisory Council established by section 3A of the Water Act, 1956 (Act 54 of 1956), the Advisory Committee on Safety of Dams established by section 9C (5) (a) (i) of the Water Act, 1956, and any advisory committee established under section 68 (1) of the Water Act, 1956, must be regarded as being an advisory committee contemplated in this Act.

(2) Subject to the Minister's powers under section 99-

- (a) the name, powers and duties of a committee or body referred to in subsection (1) remain the same as they were immediately before the commencement of this Act;
- (b) any provision of the Water Act, 1956, or a regulation or notice issued under that Act regulating any matter contemplated in section 99, continues to apply as if it were a regulation made under section 100; and
- (c) any person holding office in a committee or body referred to in subsection (1) immediately before the commencement of this Act continues in office until the expiration of that person's term of appointment or until the committee or body is disestablished, whichever happens sooner.

CHAPTER 10 INTERNATIONAL WATER MANAGEMENT (ss 102-108)

Under this Chapter the Minister may establish bodies to implement international agreements in respect of the management and development of water resources shared with neighbouring countries, and on regional co-operation over water resources. The governance, powers and duties of these bodies are determined by the Minister in accordance with the relevant international agreement, but they may also be given additional functions, and they may perform their functions outside the Republic. Certain existing international bodies are deemed to be bodies established under this Act.

102 Establishment of bodies to implement international agreements

The Minister may, in consultation with the Cabinet, by notice in the *Gazette*, establish a body to implement any international agreement entered into by the South African Government and a foreign government relating to-

- (a) investigating, managing, monitoring and protecting water resources;
- (b) regional co-operation on water resources;
- (c) acquiring, constructing, altering, operating or maintaining a waterwork; or
- (d) the allocation, use and supply of water.

103 Governance and functions of bodies

(1) A notice contemplated in section 102 must, with due regard to the relevant international agreement, give details of-

- (a) the governance of the body;
- (b) the functions of the body;
- (c) the financing of the body;
- (d) mechanisms for controlling and supervising the affairs of the body;
- (e) which items of Schedule 4, if any, apply to the body;
- (f) the disestablishment of the body and the winding-up of the body's affairs; and
- (g) any other matter necessary to give effect to the agreement.

(2) If the Minister is satisfied that it will not prejudice the capacity of a body to perform the functions for which it was established, the Minister may direct a body established under section 102 to perform additional functions which may include, but are not limited to, providing water management institutions with-

- (a) management services;
- (b) financial services;
- (c) training; and
- (d) other support services.

(3) The body may perform its functions outside the Republic.

104 Powers of bodies

A body established under section 102 is a body corporate and has the powers of a natural person of full capacity, except those powers which-

- (a) by their nature can attach only to natural persons; or
- (b) are excluded by or are inconsistent with this Act or the relevant international agreement.

105 Bodies must manage different functions as separate units

- (1) If given additional functions under section 103 (2), a body must manage each of its functions separately, and must account for them separately.
- (2) A body must apply accounting practices consistent with generally accepted accounting practices.

106 Reports on performance of functions

- (1) Unless the international agreement provides otherwise, a body must report on the performance of its functions within three months after the end of its financial year.
- (2) The report must-
 - (a) be accompanied by the body's audited financial statements for that financial year; and
 - (b) be submitted to the Minister and such other party as may be required by the international agreement.
- (3) The report must contain sufficient information to allow the Minister to assess the performance of the body in respect of all its functions against the objectives set out in the relevant agreement.
- (4) The Director-General must send a copy of the report to the Secretary to Parliament.

107 Investigation of affairs or financial position of bodies

- (1) The Minister may, with the consent of the other parties to the agreement, or if the agreement so provides, appoint a person to investigate the affairs or financial position of a body and that person may for this purpose attend any meeting of the body.
- (2) A body must, subject to subsection (1), on request, provide the Minister's appointee with such-
 - (a) information on the affairs and financial position of the body;
 - (b) access to all books, accounts, documents and assets of the body; and
 - (c) information and data on water resources, as may be required by the Minister or the Minister's appointee.
- (3) The Minister may recover from the body concerned the reasonable fees and disbursements of any person appointed under subsection (1).

108 Transitional provisions relating to existing bodies

The Trans-Caledon Tunnel Authority established by Government Notice 2631 of 12-12-1986, the Komati Basin Water Authority established by an agreement dated 13-03-1992 with the Kingdom of Swaziland and the Vioolsdrift Noordoewer Joint Irrigation Authority established by an agreement dated 14-09-1992 with the Government of Namibia, must be regarded as being bodies contemplated in this Chapter until disestablished by the Minister by notice in the *Gazette*.

CHAPTER 11 GOVERNMENT WATERWORKS (ss 109-116)

This Chapter gives the Minister the power to establish and operate government waterworks in the public interest out of funds allocated by Parliament or from other sources. Examples of such waterworks include water storage dams, water transfer schemes and flood attenuation works. The Minister must satisfy certain procedural requirements before constructing a government waterwork, including a duty to obtain an environmental impact assessment and invite public comment, except for emergency, temporary or insignificant waterworks. Water from a government waterwork may be made available for allocation to water users and charges fixed for this water. Water in a government waterwork may also be made available for recreational purposes, subject to controls determined by the Minister and regulations made by the Minister. Existing government waterworks are subject to this Chapter.

109 Acquisition, construction, alteration, repair, operation and control of government waterworks

The Minister may acquire, construct, alter, repair, operate or control government waterworks in order to protect, use, develop, conserve, manage and control the nation's water resources in the public interest.

110 Consultation and environmental impact assessment

(1) Before constructing a waterwork, the Minister must-

(a) prepare an environmental impact assessment relating to the proposed waterwork which must, where the Minister considers it appropriate, comply with the requirements contained in regulations made under section 26 of the Environment Conservation Act, 1989 (Act 73 of 1989);

(b) publish a notice in the *Gazette*-

(i) setting out the proposal to construct the waterwork;

(ii) containing a summary of the environmental impact assessment; and

(iii) inviting written comments to be submitted, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;

(c) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

(d) consider-

(i) all comments received on or before the date specified in paragraph (b) (iii); and

(ii) the environmental impact assessment.

(2) Subsection (1) does not apply-

(a) to a waterwork which is constructed in emergency circumstances;

(b) to a temporary waterwork in operation for a period of less than five years; or

(c) if the waterwork is a minor one.

(3) Within two years after the completion of any waterwork contemplated in subsection (2) (a), the Minister must decide either-

(a) to demolish the waterwork; or

(b) after complying with subsection (1) to the appropriate extent, to retain the waterwork.

111 Financing of government waterworks

The Minister may finance the acquisition, construction, alteration, repair, operation and control of government waterworks from funds appropriated by Parliament or obtained from any other source.

112 Water from government waterworks

(1) The Minister may make water from a government waterwork available for allocation in accordance with Chapter 4.

(2) The Minister may in accordance with Chapter 5 fix a charge for water allocated from a government waterwork.

113 Access to and use of government waterworks for recreational purposes

(1) The water of a government waterwork and the surrounding state-owned land may be made available for recreational purposes, either generally or for a specific purpose, on the conditions and to the persons determined by the Minister.

(2) The Minister may-

(a) control or prohibit access to any government waterwork; and

(b) subject to this Act, make reasonable charges for-

(i) the use of;

(ii) entry into; and

(iii) the use of any water surface or land associated with, any government waterwork for recreational purposes.

(3) Nothing done under this section exempts any person from complying with other provisions of this Act and with any other applicable law.

114 Government waterworks constructed before commencement of Act

This Act also applies to government waterworks constructed before the commencement of this Act.

115 Disposal of government waterworks

(1) The Minister may transfer, sell or otherwise dispose of any government waterworks to any person.

(2) No government waterwork referred to in subsection (1) may be transferred, sold or disposed of without the approval of the national executive, if its value exceeds an amount specified from time to time by the Minister in concurrence with the Minister of Finance.

(3) Where a government waterwork is disposed of or transferred to a water management institution, the Minister of Finance may direct that no transfer duty, other tax or duty is payable.

116 Regulations regarding government waterworks

(1) The Minister may, with regard to a government waterwork, make regulations providing for-

(a) the management of and control over government waterworks and surrounding state-owned land;

(b) the use of the water of a government waterwork and the surrounding state-owned land; and

(c) charges for-

(i) entrance to;

(ii) use of facilities at; and

(iii) the private development of, a government waterwork.

(2) In making the regulations, the Minister must take into account all relevant considerations, including-

(a) the safety and protection of government waterworks;

(b) the need for control of the use of government waterworks;

(c) the safety and security of persons using government waterworks for recreational purposes; and

(d) the cost of protecting and controlling government waterworks and the recovery of these costs.

CHAPTER 12 SAFETY OF DAMS (ss 117-123)

This Chapter contains measures aimed at improving the safety of new and existing dams with a safety risk so as to reduce the potential for harm to the public, damage to property or to resource quality. To reduce the risk of a dam failure, control measures require an owner to comply with certain directives and regulations, such as to submit a report on the safety of a dam, to repair or alter a dam, or to appoint an approved professional person to undertake these tasks. These measures are in addition to the owners' common law responsibility to ensure the safety of their dams. An approved professional person has a statutory duty of care towards the State and the general public and must fulfil, amongst other things, defined responsibilities when acting under this Chapter. Not all dams are subject to regulation under this Chapter, and the Minister may exempt certain persons from its requirements. Only dams of a defined size, dams which have been declared to be dams with a safety risk, or dams falling into a prescribed category are affected. All dams with a safety risk must be registered. Compliance with any directive or regulation under this Chapter does not exempt an owner from complying with any other provision of this Act, such as the requirement for a licence or other authorisation for water use in respect of the dam.

117 Definitions

In this Chapter-

section

(a) 'approved professional person' means a person registered in terms of the Engineering Profession of South Africa Act, 1990 (Act 114 of 1990), and approved by the Minister after consultation with the Engineering Council of South Africa (established by section 2 of that Act);

(b) 'dam' includes any existing or proposed structure which is capable of containing, storing or impounding water (including temporary impoundment or storage), whether that water contains any substance or not;

(c) 'dam with a safety risk' means any dam-

(i) which can contain, store or dam more than 50 000 cubic metres of water, whether that water contains any substance or not, and which has a wall of a vertical height of more than five metres, measured as the vertical difference between the lowest downstream ground elevation on the outside of the dam wall and the non-overspill crest level or the general top level of the dam wall;

(ii) belonging to a category of dams declared under section 118 (2) to be dams with a safety risk; or

(iii) declared under section 118 (3) (a) to be a dam with a safety risk;

(d) 'owner of a dam' or 'owner of a dam with a safety risk' includes the person in control of that dam; and

(e) 'task' includes a task relating to designing, constructing, altering, repairing, impounding water in, operating, evaluating the safety of, maintaining, monitoring or abandoning a dam with a safety risk.

118 Control measures for dam with safety risk

(1) The owner of a dam must-

(a) within the period specified, provide the Minister with any information, drawings, specifications, design assumptions, calculations, documents and test results requested by the Minister; or

(b) give any person authorised by the Minister access to that dam, to enable the Minister to determine whether-

(i) that dam is a dam with a safety risk;

- (ii) that dam should be declared to be a dam with a safety risk;
 - (iii) a directive should be issued for specific repairs or alterations to that dam; or
 - (iv) the owner has complied with any provisions of this Act applicable to that dam.
- (2) The Minister may by notice in the *Gazette* declare a category of dams to be dams with a safety risk.
- (3) The Minister may-
- (a) by written notice to the owner of a dam, declare that dam to be a dam with a safety risk;
 - (b) direct the owner of a dam with a safety risk to submit, at the owner's cost, and within a period specified by the Minister, a report by an approved professional person regarding the safety of that dam; or
 - (c) direct the owner of a dam with a safety risk to undertake, at the owner's cost, and within a period specified by the Minister, any specific repairs or alterations to that dam which are necessary to protect the public, property or the resource quality from a risk of failure of the dam.
- (4) If the owner of the dam fails to comply with the directive contemplated in subsection (3) (c) within the period specified, the Minister may undertake the repairs or alterations and recover the costs from the owner.
- (5) Before issuing a directive, the Minister must-
- (a) be satisfied that the repairs or alterations directed are 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 if the dam fails.

119 Responsibilities of approved professional persons

- (1) When carrying out a task in terms of this Chapter, an approved professional person also has a duty of care towards the State and the general public.
- (2) An approved professional person appointed to carry out a task on a dam must-
- (a) ensure that the task is carried out according to acceptable dam engineering practices;
 - (b) keep the prescribed records;
 - (c) compile the prescribed reports; and
 - (d) where the task includes constructing, altering or repairing a dam, issue a completion certificate to the owner of the dam to the effect that the task on that dam has been carried out according to the applicable design, drawings and specifications.
- (3) An approved professional person appointed to carry out a dam safety evaluation must-
- (a) consider whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam satisfy acceptable dam engineering practices; and
 - (b) compile a report on the matters contemplated in paragraph (a) according to the prescribed requirements and submit the signed and dated report to the owner of the dam within the prescribed period.

120 Registration of dam with safety risk

- (1) The owner of a dam with a safety risk must register that dam.
- (2) An application for registration must be made within 120 days-
 - (a) after the date on which the dam with a safety risk becomes capable of containing, storing or impounding water;
 - (b) after the date on which an already completed dam is declared to be a dam with a safety risk; or
 - (c) after publication of a notice declaring a category of dams to be dams with a safety risk,as the case may be.
- (3) A successor-in-title to an owner of a dam with a safety risk must promptly inform the Director-General of the succession, for the substitution of the name of the owner.

121 Factors to be considered in declaring dam or category of dams with safety risk

In declaring a category of dams or a dam to be a category of dams or a dam with a safety risk, the Minister must consider-

- (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 if such a dam fails; and
- (e) in the case of a particular dam, also-
 - (i) the manner in which that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned;
 - (ii) the person by whom that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned; and
 - (iii) the manner in which the water is contained, stored or impounded in that dam.

122 Exemptions

- (1) The Minister may exempt owners of dams belonging to certain categories, by notice in the *Gazette*, from compliance with any provision of this Chapter or any regulation made under this Chapter, on conditions determined by the Minister.
- (2) The Minister may in writing exempt an owner of a dam belonging to a certain category from compliance with any provision of this Chapter on conditions determined