

REPUBLIC OF SOUTH AFRICA

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# **WATER SERVICES AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 53459 of  
1 October 2025)  
(The English text is the official text of the Bill)*

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(MINISTER OF WATER AND SANITATION)

1. Section 1 of the Water Services Act, 1998 (Act No.108 of 1998) (hereinafter referred to as the “principal Act”), is hereby amended—
- (a) by the insertion after the definition of “approve” of the following definition:  
“**‘authorised person’** means a person appointed in terms of section 80A;”;
- (b) by the insertion after the definition of “basic water supply” of the following definitions, respectively:  
“**‘Board’** means the Board of a water board appointed in terms of section 35B;  
**‘bulk water services infrastructure’** means infrastructure on a macro or sub-regional scale, covering large areas and providing services to more than one water services authority;”;
- (c) by the substitution for the definition of “consumer” of the following definition:  
“**‘consumer’** means any [end user who receives water services from a water services institution, including an end user in an informal settlement] person who receives water services within a water services authority’s area of jurisdiction, including any person in an informal settlement;”;
- (d) by the insertion after the definition of “development plan” of the following definition:  
“**‘Director-General’** means the head and accounting officer of the Department of Water and Sanitation;”;

- (e) by the substitution for the definition of “disposal of industrial effluent” of the following definition:  
     “**‘disposal of industrial effluent’** means the collection, removal[,] or disposal **[or]** into municipal collection systems for treatment of effluent emanating from industrial use of water, in terms of the relevant norms and standards and by-laws;”;
- (f) by the substitution for the definition of “emergency situation” of the following definition:  
     “**‘emergency situation’** means [any situation declared as such in terms of a law and which is likely to cause injury or loss of life] an unexpected sudden occurrence leading to a potential or serious danger to the public, including injury or loss of life, or the loss of property or infrastructure;”;
- (g) by the insertion after the definition of “industrial use” of the following definitions, respectively:  
     “**‘licence’** means a water services licence issued by the licensing authority in terms of section 22D;  
     **‘licensing authority’** means the Director-General or a person, or unit in the Department delegated or assigned by the Director-General to implement the licensing system;  
     **‘licensing system’** means the system under Chapter IV pertaining to water services licensing;”;
- (h) by the substitution for the definition of “Minister” of the following definition:  
     “**‘Minister’** means the [Minister of Water Affairs and Forestry] Cabinet member responsible for water and sanitation;”;
- (i) by the insertion after the definition of “Minister” of the following definitions, respectively:  
     “**‘municipal service delivery mechanism’** means an internal or external municipal service delivery mechanism contemplated in section 76 of the Municipal Systems Act delivering water services;  
     **‘Municipal Systems Act’** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);”;
- (j) by the insertion after the definition of “Province” of the following definition:  
     “**‘Public Finance Management Act’** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
- (k) by the substitution for the definition of “water services authority” of the following definition:  
     “**‘water services authority’** means any municipality[, including a district or rural council as defined in the Local Government Transition Act, 1993 (Act No. 209 of 1993), responsible for ensuring access to water services] that has the legislative and executive authority in respect of water services within its area of jurisdiction in terms of section 156 and Part B of Schedule 4 to the Constitution of the Republic of South Africa, 1996, read with section 84 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and section 11 of the Municipal Systems Act;”;
- (l) by the substitution for the definition of “water supply services” of the following definition:  
     “**‘water supply services’** means the abstraction from a water resource, conveyance, treatment and distribution of potable water, water intended to be converted to potable water or water for commercial use, but not water for industrial use.”.

## Amendment of section 2 of Act 108 of 1997

### 2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (f) of the following paragraph:  
     “(f) the monitoring **[of water services]** and enforcement of obligations under this Act and intervention by the Minister and by the relevant Province to ensure compliance with this Act;”;
- (b) by the substitution for paragraph (i) of the following paragraph:  
     “(i) the accountability of water services **[providers]** institutions; **[and]**”;

- (c) by the substitution for the full stop at the end of paragraph (j) of the expression “; and” and the addition of the following paragraph:  
“(k) licensing of water services providers operating or intending to operate as municipal service delivery mechanisms.”.

#### **Amendment of section 4 of Act 108 of 1997**

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3. Section 4 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Water services must be provided in accordance with this Act and in terms of conditions set by the water services provider.”.

#### **Amendment of section 9 of Act 108 of 1997**

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4. Section 9 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) at the end of paragraph (e) of “and” and the addition after paragraph (f) of the following paragraphs, respectively:

“(g) requirements for the registration of persons who install and operate water services works process controllers; and  
 (h) quality and management of potable or drinking water.”; and

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- (b) by the deletion in subsection (2) of “and” at the end of paragraph (a), the substitution for the fullstop at the end of paragraph (b) of the expression “; and” and the addition of the following paragraph:

“(c) different water services providers.”.

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#### **Amendment of section 10 of Act 108 of 1997**

5. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (4) of the following subsection:

“(4) No water services institution may use a charge or tariff which is [substantially different from any] inconsistent with any prescribed norms and standards.”; and

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- (b) by the addition of the following subsection:

“(5) The Minister may request any water services institution or water services intermediary providing water services in terms of this Act to submit their water services charge or tariff to the Minister for review.”.

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#### **Amendment of section 19 of Act 108 of 1997**

6. Section 19 of the principal Act is hereby amended—

- (a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“(5) The Minister may, after consultation with the Minister [for Provincial Affairs and Constitutional Development] responsible for local government, prescribe—”;

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- (b) by the insertion in subsection (5) of the following paragraph after paragraph (a):

“(aA) the manner in which a municipal service delivery mechanism may be regulated by the water services authority;”;

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- (c) by the substitution in subsection (5) for paragraph (b) of the following paragraph:

“(b) compulsory provisions to be included in such contract relating to the technical, financial and governance requirements of water services providers and their functions, including but not limited to—

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- (i) water services systems operations and maintenance;
- (ii) water services works asset management, including rehabilitation, replacement and investment in existing and new infrastructure;
- (iii) water services funding, billing and revenue management and associated activities;
- (iv) management and administrative activities and accountability, including, without limitation, water services planning,

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- water services infrastructure planning, budgeting, procurement, human resources management, fleet management and other corporate and support services necessary for water services; and
- (v) accountability, disclosure and reporting; and".

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#### **Substitution of section 20 of Act 108 of 1997**

7. The following section is hereby substituted for section 20 of the principal Act:

##### **“Water services authority acting as water services provider**

**20.** (1) When performing the functions of an internal municipal service delivery mechanism, a water services authority must—

(a) manage and account separately for those functions;

(b) set performance requirements; and

(c) undertake performance management of the internal municipal service delivery mechanism in terms of a performance management agreement with senior management of the water services provider and in compliance with the regulations issued in terms of section 19.”.

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#### **Amendment of section 22 of Act 108 of 1997**

8. Section 22 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

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- “(2) Any approval granted by the water services authority in terms of subsection (1)—
- (a) must be for a limited period; **[and]**
- (b) may be granted subject to conditions that require progressive, efficient and sustainable improvement in water services;
- (c) must take into account the financial and environmental sustainability of the water services provider;
- (d) must comply with Part 2 of Chapter 8 of the Municipal Systems Act;
- (e) must comply with section 19; and
- (f) must require compliance with the licensing system.”.

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#### **Insertion of sections 22A to 22F in Act 108 of 1997**

9. The following sections are hereby inserted after section 22 of the principal Act:

##### **“Water services licensing system and licensing authority**

**22A.** (1) In order to ensure efficient, effective and safe water services in the Republic and to capacitate water services authorities to do so, there is a water services licensing system as contemplated in this Chapter.

(2) No person may operate as a municipal service delivery mechanism unless that person is licensed under this Act.

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##### **Licensing authority, powers and functions**

**22B.** (1) There is a licensing authority which must ensure that the licensing system contemplated in section 22A is given effect to.

(2) The licensing authority must—

(a) issue licences to water services providers operating or intending to operate as municipal service delivery mechanisms;

(b) determine the minimum competency for the municipal service delivery mechanism, with reference to appropriate technical, financial and governance requirements; and

(c) determine and apply application criteria with reference to paragraph (b) and may distinguish between different—

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- (i) categories of applicants for a licence taking into account whether the applicant is an existing municipal service delivery mechanism or not; and
- (ii) classes of licences and conditions for such licences.
- (3) The licensing authority—
  - (a) may, from time to time, develop guidelines that are designed to implement the licensing system;
  - (b) may, from time to time, publish in the *Gazette*, the application criteria that distinguish between categories of applicants and classes of licences;
  - (c) must consider applications for licences made in terms of this Act;
  - (d) may require reporting from the licensee; and
  - (e) may publish information on compliance with the licensing system.
- (4) The licensing authority may delegate to an official of the Department any of its powers and functions listed in this Act.

### Application for water services licence

- 22C.** (1) Any person who intends to operate as a municipal service delivery mechanism must apply to the licensing authority for a licence in accordance with the manner and form prescribed by the licensing authority.
- (2) The application must be accompanied by the prescribed fee.
  - (3) The applicant must provide the following information:
    - (a) The name and details of the applicant;
    - (b) the water services authority in whose jurisdiction the applicant intends to operate;
    - (c) the operational scope of the applicant, not limited to technical, financial and governance information relevant to the application criteria; and
    - (d) such other related information as may be required.

### Issuing of water service licence

- 22D.** (1) The licensing authority must—
- (a) within 60 days of receiving an application contemplated in section 22C, assess and decide on the application;
  - (b) issue a licence if the applicant meets the prescribed minimum score required for the category of licence applied for; and
  - (c) provide the applicant with a copy of its decision and, where the application is declined, provide the applicant with reasons for that decision.
- (2) A licence must include the following information:
- (a) The class of the licence;
  - (b) the conditions of the licence;
  - (c) the process for the review of the licence;
  - (d) the reporting required from the licensee;
  - (e) the right of the licensing authority to monitor and enforce licence conditions; and
  - (f) the right of the licensing authority to publish information on the performance of the licensee.

### Compliance and rectification

- 22E.** (1) A licensee that contravenes any licence conditions imposed in terms of that licence is subject to section 62A.
- (2) The licensing authority must in respect of a licensee contemplated in subsection (1)—
- (a) direct the licensee to comply with the conditions and requirements of the licence; or
  - (b) where applicable, direct the licensee to rectify, within a reasonable time as specified by the licensing authority, any state of affairs that resulted from the non-compliance.

### Suspension and revocation of licence

- 22F.** (1) The licensing authority may suspend a licence—
- (a) if the licensee no longer meets the minimum requirements for a category of a licence; or
  - (b) if, after the conclusion of the investigation by the licensing authority, it is discovered that the licence was obtained by mistake, fraud, undue influence or misrepresentation.
- (2) The licensing authority must, within a reasonable period and subject to subsection (3), revoke a licence—
- (a) if the licensee has persistently refused, failed or neglected to provide the services for which that licensee has been appointed by the water services authority;
  - (b) if the licensee becomes insolvent or is declared bankrupt by a court of law; or
  - (c) if the licensee has been directed to take specified steps to rectify the failure within a specified period and the licensee concerned has failed to do so to the satisfaction of the licensing authority.
- (3) Before the licensing authority revokes a licence, the licensing authority must, within a reasonable period—
- (a) notify—
    - (i) the licensee;
    - (ii) the water services authority;
    - (iii) the department responsible for local government; and
    - (iv) the national and relevant provincial treasury,
 of its intention to revoke the licence;
  - (b) provide the licensee and the institution referred to in paragraph (a) an opportunity to make representations, within a specified period, on any proposed revocation of the licence; and
  - (c) require the water services authority—
    - (i) to make interim arrangements to ensure the continuity of water services delivery;
    - (ii) to report to the licensing authority and the department responsible for local government on the interim measures that are in place between the water services authority and the municipal services delivery mechanism whose licence is to be revoked; and
    - (iii) to follow the process in Part 2 of Chapter 8 of the Municipal Systems Act to decide on the municipal service delivery mechanism for its area of jurisdiction.
- (4) A water services authority remains responsible in terms of Part 2 of Chapter 8 of the Municipal Systems Act to decide upon and approve any municipal service delivery mechanism.
- (5) Revocation of a licence under this section does not relieve a water services authority from performing its water services functions in a manner provided for in this Act and any relevant law, and may require a water services authority to ensure continuity of water services with an interim service delivery arrangement in compliance with this Act.”.

### Substitution of section 35 of Act 108 of 1997

10. The following section is hereby substituted for section 35 of the principal Act:

- “Board of water board**
- 35.** (1) A water board is governed and controlled by a Board.
- (2) The Board must oversee and exercise general control over the performance of the water board to ensure that the water board exercises its powers and performs its activities, functions and duties.
- (3) The Board is accountable to the Minister and to Parliament for its own actions and performance, as well as those of the water board.

- (4) The Board and individual Board members must conduct themselves in accordance with the highest applicable standards of ethics and governance as provided for in the Public Finance Management Act, the Companies Act, 2008 (Act No. 71 of 2008), and the principles in the governance codes of best practice, including the King reports. 5
- (5) Individual board members—
- (a) may not—
- (i) represent or promote specific interests or stakeholders within the water services environment;
  - (ii) act in a way that is inconsistent with the responsibilities assigned to the board; or
  - (iii) use their position, privileges or confidential information obtained as a board member for personal gain or to improperly benefit another person; and
- (b) must, subject to this Act and other applicable law— 10
- (i) act independently and with unfettered discretion;
  - (ii) exercise independent judgment; and
  - (iii) take decisions in the best interests of the public.”. 15

#### Insertion of sections 35A to 35J in Act 108 of 1997

11. The following sections are hereby inserted in the principal Act after section 35: 20

#### “Powers and functions of Board

- 35A.** (1) The Board—
- (a) is the accounting authority of the water board;
  - (b) is responsible for the governance and strategic direction of the affairs of the water board. 25
- (2) The Board must—
- (a) retain adequate and effective control over the water board;
  - (b) give consideration to and, where appropriate, approve the strategic plan, policy and systems of the water board in order to achieve the objects of the water board; 30
  - (c) monitor and evaluate the implementation of strategy, policy and corporate plans;
  - (d) implement and monitor performance management systems for employees of the water board;
  - (e) ensure a transparent and effective communication and stakeholder engagement policy; 35
  - (f) provide effective and transparent corporate governance; and
  - (g) report to the Minister on the activities of the Board or such matters reasonably required by the Minister.

#### Composition of and appointment of Board 40

- 35B.** (1) The Board consists of not fewer than 10 and not more than 12 members appointed by the Minister in terms of this section.
- (2) The Minister must, by notice in the *Gazette*, one provincial newspaper and at least two newspapers that have general circulation throughout the Republic of South Africa, invite nominations for persons to be appointed as members of the Board. 45
- (3) The Minister must establish a committee to make recommendations to the Minister for the appointment of members of the Board from the nominations received pursuant to the invitation contemplated in subsection (2). 50
- (4) In establishing a committee, the Minister must ensure that the committee consists of persons who are fit and proper, suitably qualified and experienced, have relevant expertise, are broadly representative and include previously disadvantaged groups not limited to race, gender, disability and geographical location. 55
- (5) The committee, in making recommendations to the Minister, must consider—

- (a) the proven skills, knowledge, experience and professional qualifications of an applicant in—
- (i) governance, audit, legal or risk management;
  - (ii) project finance, treasury management or financial management;
  - (iii) bulk water management;
  - (iv) social development and poverty eradication;
  - (v) economic management and development;
  - (vi) corporate governance compliance;
  - (vii) operation and maintenance of bulk water services infrastructure;
  - (viii) human resource management; and
  - (ix) transformation, diversity and equity, necessary for the efficient and effective execution by the Board of its powers and duties; and
- (b) the need for representation by previously disadvantaged persons due to past racial, gender, disability and any other forms of discrimination.
- (6) The committee, in making its recommendations, must include members with at least 10 years' experience each, as—
- (a) a chief financial officer;
  - (b) a professional registered engineer in a management position in the water sector;
  - (c) an attorney or advocate of the High Court of South Africa with experience in commercial law and the law governing public entities; and
  - (d) persons with public interest in water services and related fields, not limited to organised business and civil society.
- (7) The committee, in making recommendations to the Minister, must recommend no less than 50% more than the prospective number of board members required.
- (8) The majority of the members of the Board are non-executive members provided that the Chief Executive Officer and the Chief Financial Officer are executive members of the Board by virtue of their appointment and may not be the chairperson or the deputy chairperson of the Board or of any committee constituted under section 35I.
- (9) The Board may co-opt one or more advisers for their technical skill to advise the Board, including a senior officer of the National Treasury nominated by the Minister of Finance, but such adviser is not a member of the Board and has no voting rights.
- (10) The Minister may call for further nominations in the manner set out in subsection (2) if—
- (a) an unsuitable person is nominated; or
  - (b) the required number of persons is not nominated.
- (11) The Minister must, within 30 days after the appointment of the members of the Board, publish by notice in the *Gazette*, the names of members and the date of commencement of their terms of office.

### **Chairperson and deputy chairperson**

- 35C.** (1) The Minister must designate, from the members appointed to the Board, the chairperson and deputy chairperson of the Board.
- (2) The chairperson presides at meetings of the Board.
- (3)(a) If the chairperson of the Board is absent or unable to perform any function of the chairperson, the deputy chairperson acts in the chairperson's place.
- (b) If both the chairperson and deputy chairperson of the Board are absent, or unable to perform any function of the chairperson at any time other than at expiry of the term of office, the Board may designate any other member contemplated in section 35(3), excluding the Chief Executive Officer and the Chief Financial Officer, to act as chairperson during such absence or inability until—

- (i) the chairperson or deputy chairperson, as the case may be, is able to act in that position; or
  - (ii) a new chairperson or deputy chairperson, as the case may be, has been designated by the Minister.
- (4) The chairperson or deputy chairperson may vacate his or her office without terminating his or her membership of the Board. 5

#### **Term of office and conditions of appointment of Board members**

- 35D.** (1) A non-executive member contemplated in section 35B(1)—
- (a) holds office for a term not exceeding four years;
  - (b) may be recommended for reappointment for a term, but may not serve for more than two consecutive terms;
  - (c) is appointed upon such terms and conditions as the Minister may determine;
  - (d) must be paid from the funds of the water board such remuneration and allowances as approved by the Minister in consultation with the Minister of Finance;
  - (e) may, notwithstanding paragraph (a), with the approval of the Minister, remain in office after completion of his or her term of office until his or her successor takes office; and
  - (f) whose extended term of office contemplated in paragraph (e) may not exceed six months.
- (2) Executive members serve in accordance with the term specified by their respective employers. 10 15 20

#### **Removal and disqualification of Board member**

- 35E.** (1) A person may not be appointed or remain as a member of the Board, as the case may be, if that person—
- (a) has committed misconduct, or has been found to be incompetent to perform his or her task, or has an incapacity which prevents him or her from executing the duties of a Board member;
  - (b) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;
  - (c) has been declared by a competent court to be mentally ill;
  - (d) has been convicted, in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
  - (e) has been convicted of any other offence, whether in the Republic or elsewhere, committed after the Interim Constitution of the Republic of South Africa, 1993, took effect, and sentenced to imprisonment without the option of a fine;
  - (f) has been, or is, removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
  - (g) is otherwise disqualified from serving as a member of a board in terms of the Companies Act, 2008;
  - (h) has, or acquires, an interest in a business or enterprise which may be in conflict with or interfere with the proper performance of his or her functions as a member of the board; or
  - (i) is removed from office in terms of subsection (3).
- (2) A Board member, including the chairperson and deputy chairperson, must give 30 days' written notice of resignation to the Minister.
- (3) The Minister may, after following a fair process, remove a Board member from office on sound and compelling grounds, in addition to the grounds listed in subsection (1). 25 30 35 40 45 50

#### **Vacancies on Board**

- 35F.** If the office of a member of the Board becomes vacant before the expiration of the period for which he or she was appointed, the Minister may, subject to sections 35B and 35D, appoint any other person as a member for the remainder of that period. 55

### Shareholder's compact

- 35G.** (1) The Minister and the Board must conclude an annual shareholder's compact before the beginning of the financial year of the water board.
- (2) The shareholder's compact must—
- (a) include the operation and performance indicators against which the performance of the water board must be measured;
  - (b) give direction with regard to the utilisation of any surplus revenue;
  - (c) set procedures for reporting to the Minister;
  - (d) contain such other detail as the Minister may require, including matters to be referred to the Minister for approval; and
  - (e) provide for the relationship between the Minister and the water board.
- (3) The Minister must table in Parliament the Corporate Plan of the water board and its subsidiaries.

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### Establishment of committees

- 35H.** (1) The Board must establish at least the following committees to support the effective functioning of the Board:
- (a) Social and Ethics Committee;
  - (b) Audit and Risk Committee; and
  - (c) Remuneration Committee.
- (2) The Board must—
- (a) assign members of the Board to serve on a committee, based on their knowledge and skills;
  - (b) determine the—
    - (i) terms of reference of a committee;
    - (ii) composition of members of a committee;
    - (iii) tenure of members of a committee;
    - (iv) reporting mechanisms for a committee to the Board; and
    - (v) removal of any member appointed to a committee; and
  - (c) designate a non-executive member as chairperson of a committee.
- (3) Non-executive members must be in the majority on any committee.
- (4) The Board may procure specialists for technical support to a committee.
- (5) A committee has no decision-making powers and may only make recommendations for consideration by the Board, unless decision-making powers are granted to the committee, by means of a decision of a special majority of the Board in favour of such decision-making powers.
- (6) A committee must meet at least six times annually to perform its functions and in accordance with such procedure as the committee may decide.

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### Fiduciary duties of Board members

- 35I.** A Board member must act in compliance with the provisions of the Companies Act, 2008, and at all times exercise the utmost duty of care and diligence in performing his or her functions, and in furtherance of this duty.

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### Meetings of Board

- 35J.** (1) The Board may determine its own operational proceedings for meetings but must hold at least six meetings in any financial year.
- (2)(a) The chairperson or, if he or she is absent, the deputy chairperson, must preside at all meetings of the Board.
- (b) In the event that both the chairperson and the deputy chairperson are absent from a meeting of the Board, the members present must elect a person from among themselves to preside at that meeting.

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- (3)(a) The decision by a majority of the members of the board present at a meeting of the Board constitutes a decision of the Board.
- (b) In the event of an equality of votes in respect of any matter, the person presiding at the meeting in question has a casting vote, in addition to his or her deliberative vote. 5
- (4) A quorum for Board meetings is two thirds of the members of the Board.
- (5) The Board and any committee of the Board must prepare and keep minutes of the proceedings of their respective meetings and decisions and must have copies of the minutes of the meetings circulated to their respective members.”. 10

### **Substitution of section 36 of Act 108 of 1997**

12. The following section is hereby substituted for section 36 of the principal Act:

#### **“Chief Executive Officer**

- 36.** (1)(a) The Board must recommend to the Minister, no fewer than 15  
two persons for appointment as Chief Executive Officer.
- (b) The Minister must, after considering the recommendations of the Board, appoint a Chief Executive Officer.
- (c) The Minister may call for further recommendations from the Board— 20
- (i) if the recruitment process did not meet the requirements set out in subsection (2)(a); or
- (ii) if the persons recommended by the Board are not suitable for appointment.
- (2) The Chief Executive Officer must— 25
- (a) be appointed after an open and transparent recruitment process;
- (b) be a fit and proper person with appropriate qualifications and experience to carry out the functions of Chief Executive Officer; and
- (c) not be disqualified in terms of the Companies Act for appointment as a director. 30
- (3) The Chief Executive Officer must, with the approval of the Board, appoint a Chief Financial Officer.”.

### **Insertion of sections 36A to 36D in Act 108 of 1997**

13. The following sections are hereby inserted in the principal Act after section 36: 35

#### **“Functions of Chief Executive Officer**

- 36A.** The Chief Executive Officer must—
- (a) manage the affairs and day-to-day business of the water board;
- (b) implement the policies and strategies and carry out the decisions of the Board; 40
- (c) recruit and manage the employees of the water board;
- (d) develop an efficient and cost-effective administration; and
- (e) act subject to the instructions and directives that the Board may issue.

#### **Term of office and conditions of appointment of Chief Executive Officer 45**

- 36B.** (1) The Chief Executive Officer is accountable to the Board.
- (2) The Chief Executive Officer is appointed for a term not exceeding five years.
- (3) The Chief Executive Officer may be re-appointed by the Minister, on the recommendation of the Board. 50

(4) The Chief Executive Officer holds office on the terms and conditions, including those relating to remuneration and allowances, as the Board determines, subject to the approval of the Minister.

(5) The Board must enter into an annual performance agreement with the Chief Executive Officer, stipulating measurable objectives relating to the performance of that officer's functions under this Act, that are aligned with the Key Performance Indicators included in the shareholder's compact.

#### **Termination of office of Chief Executive Officer**

**36C.** (1) The Minister may, on recommendation of the Board, terminate the services of the Chief Executive Officer—

(a) for any sound and compelling reasons, including—

(i) the irretrievable breakdown of trust or working relationship between the executive member and the Board;

(ii) refusal to execute lawful instructions issued by the Board;

(iii) if he or she repeatedly fails to efficiently perform his or her duties;

(iv) if, due to any physical or mental illness or disability, he or she becomes incapable of performing the functions of that office or performs them inefficiently;

(v) misconduct; or

(vi) in terms of his or her contract; and

(b) after having followed the due process of the law, including considering any representation by the Chief Executive Officer.

(2) If the Chief Executive Officer is absent for any reason or if there is a vacancy in the office of the Chief Executive Officer for a period of more than two months, the Board may, with the approval of the Minister, appoint a person, who is fit and proper with appropriate qualifications and experience, to act in the position of the Chief Executive Officer until the Chief Executive Officer is able to resume those functions or until the vacant position of Chief Executive Officer is filled.

#### **Delegation by Chief Executive Officer**

**36D.** (1) The Chief Executive Officer may delegate to an employee of the water board any function entrusted to that office under this Act.

(2) A delegation contemplated in subsection (1)—

(a) must be in writing;

(b) does not prohibit the holder of the office that made the delegation from performing that function; and

(c) may at any time be withdrawn or amended, in writing.”.

#### **Substitution of section 37 of Act 108 of 1997**

14. The following section is hereby substituted for section 37 of the principal Act:

#### **“Delegation of powers and assignment of functions by Board**

**37.** (1) Subject to subsections (2) and (3), the Board may, by special resolution, assign or delegate any power or function entrusted to it under this Act to—

(a) the Chief Executive Officer;

(b) a Board member; or

(c) a committee established under section 17.

(2) Any power or function assigned or delegated must be exercised or performed subject to such conditions as the Board considers necessary.

(3) The Board may not assign or delegate—

(a) any power conferred in terms of section 66(3) of the Public Finance Management Act to borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind

- |                                                                                                               |    |
|---------------------------------------------------------------------------------------------------------------|----|
| the water board to any future financial commitment without the authority of the Minister of Finance;          |    |
| (b) the power to appoint an adviser to the Board;                                                             |    |
| (c) the power to recommend the Chief Executive Officer;                                                       |    |
| (d) the power to approve the appointment of the Chief Financial Officer;                                      | 5  |
| (e) the conclusion of the shareholder's compact; and                                                          |    |
| (f) the adoption of the water board's corporate plan.                                                         |    |
| (4) A delegation by the Board—                                                                                |    |
| (a) must be in writing; and                                                                                   | 10 |
| (b) does not prohibit the Board from exercising the power or <u>performing the duty that is delegated.</u> ”. |    |

### Repeal of section 38 of Act 108 of 1997

15. Section 38 is hereby repealed.

### Amendment of section 41 of Act 108 of 1997

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16. Section 41 of the principal Act is hereby amended by the addition of the following subsections:

- |                                                                                                                                                                                                        |    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| “(3) If a water board—                                                                                                                                                                                 |    |
| (a) is in financial difficulties or is otherwise mismanaged;                                                                                                                                           |    |
| (b) has acted unfairly or in a discriminatory or inequitable way towards any person within its service area;                                                                                           | 20 |
| (c) has failed to comply with any directive given by the Minister under this Act;                                                                                                                      |    |
| (d) has obstructed the Minister 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;                                                                               | 25 |
| (f) has failed to comply with this Act; or                                                                                                                                                             |    |
| (g) has become redundant or ineffective,                                                                                                                                                               |    |
| the Minister may—                                                                                                                                                                                      |    |
| (i) direct the Board to take any action specified by the Minister; or                                                                                                                                  | 30 |
| (ii) withhold any financial assistance which might otherwise be available to the water board, if any financial irregularity is taking place or is suspected to be taking place within the water board. |    |
| (4) A directive contemplated in subsection (3) must state—                                                                                                                                             |    |
| (a) the nature of the deficiency;                                                                                                                                                                      | 35 |
| (b) the steps which must be taken to remedy the situation; and                                                                                                                                         |    |
| (c) a reasonable period within which those steps must be taken.                                                                                                                                        |    |
| (5) The Minister may, if the Board fails to take the steps contemplated in subsection (4)(b), act in terms of subsection (3) only after—                                                               |    |
| (a) giving that Board a reasonable opportunity to be heard; and                                                                                                                                        | 40 |
| (b) <u>considering the Board's representation, if any.</u> ”.                                                                                                                                          |    |

### Substitution of section 43 of Act 108 of 1997

17. The following section is hereby substituted for section 43 of the principal Act:

#### “Funding and financial matters of water board

- |                                                                                                                                            |    |
|--------------------------------------------------------------------------------------------------------------------------------------------|----|
| 43. (1) The funds of a water board consist of—                                                                                             | 45 |
| (a) money appropriated by Parliament;                                                                                                      |    |
| (b) water use charges;                                                                                                                     |    |
| (c) funding from the Department to exercise any directive issued by the Minister;                                                          |    |
| (d) money obtained from any other lawful source for the purpose of exercising its powers and carrying out its duties in terms of this Act; | 50 |
| (e) income derived from the performance of its functions;                                                                                  |    |
| (f) loans raised by it in terms of the Public Finance Management Act;                                                                      |    |
| (g) income derived by it from investments;                                                                                                 |    |

- (h) capital grants from the Department for regional bulk infrastructure;  
or
  - (i) capital grants from a water services authority for local infrastructure.
- (2) A water board 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. 5
- (3) The financial year of a water board is from 01 April to 30 March.
- (4) The accounts of a water board must be audited on an annual basis.
- (5) A water board must, after the end of each financial year, submit financial statements to the auditors of the water board for auditing. 10
- (6) A water board must, within five months after the end of each financial year, issue audited financial statements.
- (7) The accounting policy of a water board must be consistent with generally accepted accounting practices.” 15

#### Insertion of section 45A in Act 108 of 1997

18. The following section is hereby inserted in the principal Act after section 45:

##### “Disestablishment of water board

- 45A.** (1) The Minister may, by notice in the *Gazette*, disestablish a water board if the water board is no longer providing water services to the water services institutions either due to reasons of liquidation or governance challenges. 20
- (2) Before disestablishing a water board, the Minister must—
- (a) publish a notice in the *Gazette*—
    - (i) stating the intention to disestablish the water board 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; and
  - (b) consider all comments received.” 30

#### Substitution of section 46 of Act 108 of 1997

19. The following section is hereby substituted for section 46 of the principal Act:

##### “Transfer of assets and liabilities of water board

- 46.** (1) The Minister may direct a water board who had a change to its service area to transfer some or all of its assets and liabilities to any other water board. 35
- (2) Where the Minister disestablishes a water board, the Minister may direct that the assets and liabilities of that water board be transferred to any other water board. 40
- (3) In directing a water board under subsections (1) or (2), the Minister must consider—
- (a) the interests of creditors and water users;
  - (b) the interests of employees of the water board to be disestablished; and
  - (c) any financial contributions directly or indirectly made by the water users towards the infrastructure of the water board. 45
- (4) Where a water board is disestablished and its assets and liabilities are not transferred to another water board, its assets and liabilities vest in the Director-General. 50
- (5) The assets and liabilities of a water board that is transferred in terms of subsection (2), may be further transferred to another water board, as the Minister may direct.”

### Amendment of heading to Chapter VIII of Act 108 of 1997

20. The following heading is hereby substituted for the heading to Chapter VIII of the principal Act:

**“Monitoring and [Intervention] Enforcement”.**

### Amendment of section 62 of Act 108 of 1997

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21. Section 62 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) furnish such information as may be required by the Minister **[after consultation with the Minister for Provincial Affairs and Constitutional Development]** or the relevant Province; and”.

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### Insertion of section 62A in Act 108 of 1997

22. The following section is hereby inserted in the principal Act after section 62:

#### **“Enforcement**

**62A.** (1) The Minister may, by notice in writing to a person who contravenes any provision of this Act, direct that person to take any action specified in the notice, to rectify the contravention. 15

(2) Before issuing a notice in terms of subsection (1), the Minister must—

(a) give advance notice in writing of the intention to issue the notice to the person; and 20

(b) afford the person a reasonable opportunity to make written representations as to why the notice should not be issued.

(3) The notice must state the following:

(a) The nature and extent of contravention of the Act; 25

(b) the effect and impact of the contravention on consumers or works; and

(c) any other matter relevant to the non-compliance.

(4) The notice must require the person to—

(a) comply with the directive within a time frame considered reasonable in the circumstances; and 30

(b) diligently continue with those measures as contained in the notice.

(5) If the action is not taken within the time frame specified in the notice, or any longer period allowed upon representation received, the Minister may act in terms of subsection (6).

(6) If the person to whom the notice is issued persistently fails to comply with the directive or this Act, the Minister may— 35

(a) bring an application before a relevant court to compel that water services institution to comply and the court may grant appropriate relief, taking into account the extent of the non-compliance; or

(b) follow the procedure contemplated in section 63.”. 40

### Insertion of sections 80A to 80D in Act 108 of 1997

23. The following sections are hereby inserted in the principal Act after section 80:

#### **“Appointment of authorised person**

**80A.** (1) The Minister may, in writing, appoint any suitable person as an authorised person to perform the functions contemplated in section 80. 45

(2) An authorised person must be provided with a certificate of appointment in which the nature of the authorised person’s functions is described.

### General powers of authorised person

- 80B.** (1) In the performance of his or her functions under this Act, an authorised person may on the premises of a water services work or at a place where a water service activity is conducted in terms of this Act—
- (a) question any person, about any act or omission that may constitute—
    - (i) an offence in terms this Act; or
    - (ii) a breach of a term or condition of an authorisation or other instrument issued in terms of this Act,
 and such person must answer the questions put to him or her forthwith and in a truthful manner;
  - (b) inspect, or question a person about, any document, book or record or any written or electronic information—
    - (i) which may be relevant for the purpose of paragraph (a); or
    - (ii) to which this Act relates;
  - (c) copy, or make extracts from, any document, book or record or any written or electronic information referred to in paragraph (b), or remove such document, book, record or written or electronic information in order to make copies or extracts;
  - (d) require a person to produce or deliver to a place specified by the authorised person, any document, book or record or any written or electronic information referred to in paragraph (b) for inspection;
  - (e) inspect, question a person about, and if necessary, remove any specimen, article, substance, or other item which, on reasonable suspicion, may have been used in—
    - (i) committing an offence as contemplated in this Act; or
    - (ii) breaching a term or condition of an authorisation or other instrument issued in terms of this Act;
  - (f) dig or bore into the soil;
  - (g) take samples;
  - (h) remove any waste or other matter deposited or discharged in contravention of this Act or a term or condition of an authorisation or other instrument issued in terms of this Act;
  - (i) issue a lawful instruction in the execution of his or her mandate; or
  - (j) carry out any other prescribed duty not inconsistent with this Act.
- (2) A person may, for purposes of subsection (1)(a), be issued with a notice by an authorised person, which notice must correspond substantially with the prescribed format and must require that person to answer specified questions either orally or in writing.
- (3) A person who refuses to answer a question in terms of subsection (1)(a), except if an answer might incriminate him or her, commits an offence provided that if such person does elect to incriminate him or herself, such evidence may not be used in a subsequent criminal trial against him or her.
- (4) An authorised person must—
- (a) provide a receipt for—
    - (i) any document, book, record or written or electronic information removed in terms of subsection (1)(c); or
    - (ii) any specimen, article, substance or other item removed in terms of subsection (1)(e); and
  - (b) return anything removed within a reasonable period or, subject to any forfeiture which may be made, at the conclusion of any relevant criminal proceedings.
- (5) In addition to the powers set out in this section, an authorised person may exercise the powers conferred on a peace officer by the Criminal Procedure Act, 1977 (Act No. 51 of 1977), provided that the authorised person is declared a peace officer in terms of section 334(1) of that Act.

### Powers to stop, enter and search vehicles

- 80C.** (1) An authorised person may, on the authority of a warrant, stop, enter and search any vehicle, or any other mechanism of transport on the premises of a water services work or at a place where a water service activity is conducted in terms of this Act, on reasonable suspicion that that vehicle, or other mechanism of transport— 5
- (a) is being or has been used, or contains or conveys anything which is being or has been used, to commit—
    - (i) an offence in terms of this Act;
    - (ii) a contravention of this Act or a term or condition of a licence issued under this Act; or
    - (iii) a contravention of the norms and standards issued in terms of this Act; or
  - (b) contains or conveys a thing which may serve as evidence of such offence or breach. 10 15
- (2) An authorised person may seize a vehicle, or any other mechanism of transport or anything contained in or on such vehicle or other mechanism of transport—
- (a) which is involved in or is on reasonable grounds believed to be involved in the commission of an offence; 20
  - (b) which may provide evidence of the commission or suspected commission of an offence;
  - (c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence; or
  - (d) which, on reasonable grounds, is being utilised in a manner that is likely to cause significant pollution, impact or degradation of the environment. 25
- (3)(a) An authorised person may implement subsection (1), at any time, without a warrant, if the reasonable suspicion contemplated under that subsection arises at the time when that authorised person is on the premises of a water services work or place where activities in terms of this Act are conducted and the driver of the vehicle consents to the stop and search. 30
- (b) If no such consent is given in terms of paragraph (a), and the authorised person is of the opinion, based on reasonable grounds, that a warrant would be issued under subsection (5) and the delay of obtaining the warrant would defeat the purpose of the seizure or removal, the authorised person may— 35
- (i) order the driver of the vehicle to stop; or
  - (ii) if necessary and possible, force the driver to stop. 40
- (4) An authorised person may exercise on or in respect of such vehicle any of the powers mentioned in section 80A.
- (5) A warrant contemplated in subsection (1) may only be issued by a judge or magistrate on written application by an authorised person setting out under oath or affirmation— 45
- (a) that there are reasonable grounds to suspect that this Act has been or is being contravened;
  - (b) the need to stop, enter and search the relevant vehicle;
  - (c) a search of the vehicle is likely to yield information on the alleged contravention; and
  - (d) the search is necessary for the purpose of enforcing the Act. 50
- (6) The warrant contemplated in subsection (1) must—
- (a) identify the vehicle that may be stopped, entered and searched; and
  - (b) specify the parameters within which the authorised person may perform the entry, search or seizure. 55
- (7) The warrant contemplated in subsection (1) may be executed only during the hours of 08h00 and 17h00 of a day, other than a Saturday, Sunday or public holiday, unless the judge or the magistrate who issued the warrant authorises that it may be executed at any time or on any day that is reasonable in the circumstances. 60
- (8) The warrant contemplated in subsection (1) is valid only until—
- (a) it is executed;

- (b) it is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
- (c) the purpose for which it was issued, has elapsed; or
- (d) the expiry of one month after the date when it was issued, whichever occurs first.

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(9) An authorised person may, for purposes of subsection (1), apply to the National or Provincial Commissioner of Police for written authorisation in terms of section 13(8) of the South African Police Service Act, 1995 (Act No. 68 of 1995), to establish a roadblock or a checkpoint.

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(10) Subject to subsection (5) and the relevant approval under subsection (9) and section 80B(5), an authorised person has all the powers of a member of the South African Police Service in terms of section 13(8) of the South African Police Service Act, 1995, when performing a function in terms of this section.

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(11) An authorised person who conducts a search and seizure in terms of this section may be accompanied and assisted by one or more police officers.”.

#### **Amendment of section 82 of Act 108 of 1997**

**24.** Section 82 of the principal Act is hereby amended— 20

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (e), the substitution for the full stop of the expression “; and” at the end of paragraph (f) and the addition of the following paragraph:

“(g) fail to comply with any obligation, instruction or directive under the Act, after being directed to do so.”;

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- (b) by the substitution for subsection (2) of the following subsection:

“(2) A person convicted of an offence in terms of subsection (1)(a), (b), (c), (e), (g) or (h) is liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.”; and

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- (c) by the addition of the following subsection:

“(4) Any person convicted of an offence in terms of subsection (1)(d) or (f) is liable—

- (a) in the case of a first conviction, to a fine not exceeding R1 million or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment; and
- (b) in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.”.

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#### **Insertion of section 82A in Act 108 of 1997**

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**25.** The following section is hereby inserted in the principal Act after section 80:

##### **“Liability of directors**

**82A.** (1) Any person who is or was a director of a business entity at the time of the commission by that firm of an offence under this Act or a person who is or was a municipal manager of a municipality at the time of the commission by that municipality of an offence under this Act is, himself or herself, guilty of such offence and liable on conviction to the penalty specified in the relevant law, including an order under subsection (3), if—

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- (a) that person had knowledge of the commission of the offence by the business entity or municipality; and
- (b) the offence in question resulted from the failure of the director or municipal manager to take all reasonable steps that were necessary to be taken by that director or municipal manager under the circumstances in order to prevent the commission of the offence.

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(2) For the purposes of subsection (1)—

‘director’ means a member of the board, executive committee, or other managing body of a corporate body and, in the case of a close corporation, a member of that close corporation, or in the case of a partnership, a member of that partnership.

(3) Upon the conviction referred to in subsection (1), the court may make the following orders:

- (a) Recovering the amount of loss or damage to rehabilitate or prevent damage; or
- (b) determination of monetary value of any advantage gained as a consequence of the offence in question and recovery thereof.”.

## Repeal of Schedule 1 to Act 108 of 1997

26. Schedule 1 to the principal Act is hereby repealed.

## Amendment of arrangement of sections of Act 108 of 1997

27. The arrangement of sections of the principal Act is hereby amended—

(a) by the insertion after item 22 of the following items: 15

- “22A. Water services licensing system and licensing authority
- 22B. Licensing authority, powers and functions
- 22C. Application for water services licence
- 22D. Issuing of water services licence
- 22E. Compliance and rectification
- 22F. Suspension and revocation of licence”;

(b) by the substitution for item 35 of the following item:

“35. Board of water board”;

(c) by the insertion after item 35 of the following items:

- “35A. Powers and functions of Board
- 35B. Composition and appointment of Board
- 35C. Chairperson and deputy chairperson
- 35D. Term of office and conditions of appointment of Board members
- 35E. Removal and disqualification of Board member
- 35F. Vacancies on Board
- 35G. Shareholder’s compact
- 35H. Establishment of committees
- 35I. Fiduciary duties of Board members
- 35J. Meetings of Board”;

(d) by the substitution for item 36 of the following item: 35

“36. [Chief executive of water board] Chief Executive Officer”;

(e) by the insertion after item 36 of the following items:

- “36A. Functions of Chief Executive Officer
- 36B. Term of office and conditions of appointment of Chief Executive Officer
- 36C. Termination of office of Chief Executive Officer
- 36D. Delegation by Chief Executive Officer”;

(f) by the substitution for item 37 of the following item:

“37. [Delegation of powers] Delegation of powers and assignment of functions by Board”;

(g) by the deletion of item 38;

(h) by the substitution for item 43 of the following item:

“43. [Financial matters and accounts] Funding and financial matters of water board”;

(i) by the insertion after item 45 of the following item: 50

“45A. Disestablishment of water board”;

(j) by the substitution for item 46 of the following item:

“46. [Assets and liabilities upon disestablishment] Transfer of assets and liabilities of water board”;

(k) by the insertion after item 62 of the following item: 55

“62A. Enforcement”;

(l) by the insertion after item 80 of the following item:

“80A. Appointment of authorised person

**80B.** General powers of authorised person

**80C.** Powers to stop, enter and search vehicles”; and

(m) by the insertion after item 82 of the following item:

**“82A.** Liability of directors”.

### **Transitional arrangements**

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**28.** (1) Upon the commencement of this Act, any person operating as a municipal service delivery mechanism must continue to do so until licensed in accordance with subsection (3).

(2) As soon as reasonably practical and after the commencement of this Act, the Minister must publish a notice in the *Gazette* prescribing the procedures of the licensing system, and the requirement to apply. 10

(3) Any person required to be licensed in terms of the principal Act, must apply for a licence within 12 months of the publication of the notice contemplated in subsection (2).

(4) The Minister may extend the period contemplated in subsection (3) for a further period of not longer than six months. 15

(5) Every Board or Committee of a Board established in terms of the principal Act immediately before the commencement of this Act, continues to operate as such until it is replaced by a new Board or Committee, within a period of six months after the commencement of this Act.

(6) The employees of a water board, including the Chief Executive Officer, who were appointed in terms of the principal Act, remain the staff of the water board without interruption of service and on the terms and conditions applying to the relevant employee immediately prior to the commencement of this Act. 20

### **Short title and commencement**

**29.** This Act is called the Water Services Amendment Act, 2025, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*. 25

## **MEMORANDUM ON THE OBJECTS OF THE WATER SERVICES AMENDMENT BILL, 2025**

### **1. BACKGROUND**

- 1.1 In the main the Water Services Amendment Bill (“the Bill”) seeks to provide for the following:
  - (a) Effective service delivery while supporting government’s transformational objectives;
  - (b) the regulation of the water and sanitation sector, and support for water services institutions;
  - (c) the regulation of standards for the quality of drinking water;
  - (d) the governance of water boards in line with the Presidential Review Committee on State-Owned Enterprises and National Guideline for the appointment of persons to Boards and Chief Executive Officers of State-Owned and State-Controlled Institutions;
  - (e) the licensing of water services providers, and support the WSA to ensure its WSP meets national norms and standards relating to the provision of water services;
  - (f) the enhancement of monitoring and enforcement by issuing directives aimed at rectifying the persistent failure of water services institutions to comply with the Act; and
  - (g) further penalties where there is non-compliance with the provisions of the Act.
- 1.2 The Minister of Water and Sanitation (“Minister”), is responsible for the regulation of the water sector. This includes supporting and regulating municipal water and sanitation services delivery by monitoring and enforcing compliance with the Water Services Act, 1997 (Act No. 108 of 1997) (“Water Services Act”), and national norms and standards.
- 1.3 The Department of Water and Sanitation’s (“Department”) mandate is, amongst other things, to facilitate efficient, effective and safe water and sanitation services in the Republic and to enable water services authorities to do so. The Bill is aimed at improving the lives of all South Africans by ensuring that safe and quality water and sanitation services are delivered across the Republic.
- 1.4 The National Development Plan, 2030 (“NDP”), states that water supply and sanitation services depend on adequate management and are a priority for South African communities. Their effective and sustainable management is essential for community health, development and cohesion, and continued economic activity. By 2030, it is envisaged that effective management of water and the services derived from it will support a strong economy and a healthy environment.
- 1.5 The NDP further recommends that the management of water services be strengthened. Mechanisms to strengthen the management of Water Services Providers (WSPs) rest with the Regulator – in this case the Department.
- 1.6 The Department is attending to water services reforms required to address the sustainability challenges of the water sector by introducing additional regulatory tools to assist with supporting and enforcing compliance with national norms and standards regarding water services delivery.
- 1.7 The Department is amending the Water Services Act so as to expand on the objects of the Act by providing for certain definitions, the registration of persons who install and operate water service works; and the standards for the quality of potable or drinking water. The Bill further seeks to provide for the accountability of water services providers in respect of the management, reporting and financial transparency through the issuance of operating licences. The operating licence is introduced through a licensing system for the municipal service delivery mechanism delivering water. The licensing authority is introduced to guide the application process, issuance and

revocation of a licence. The Bill provides for the establishment and governance structures of water boards by aligning the amended provisions with the Presidential Review Committee on State-Owned Enterprises and the National Guideline for the appointment of persons to Boards and Chief Executive Officers of State-Owned and State-Controlled Institutions, as well as the appointment of employees of water boards. The Bill empowers the Minister with the legislative capacity to monitor, and enforce compliance with set rules and standards. An authorised person is designated to perform the enforcement and compliance functions as detailed in the Bill.

## 2. OBJECTS OF BILL

The Bill seeks to bring about an improvement in service delivery relating to water and sanitation supply. It enhances the regulatory powers of the Minister to municipalities designated as water services authorities in line with the constitutional mandate of such municipalities.

2.1 The following five key objects are highlighted in the amendments:

- (i) Introducing a requirement that water services can only be provided by an entity or mechanism that is licensed to do so;
- (ii) strengthening enforcement of compliance with the Water Services Act and national norms and standards;
- (iii) introducing the water services licensing regime which improves on the Water Services Provider functions and to require contracting and performance management, whether an internal or external mechanism is decided by the Water Services Authority (WSA); and
- (iv) strengthening the institutional reform and alignment of water boards.

2.2 The amendment is underpinned by the National Water Policy Review, 2013 and National Sanitation Policy, 2016. The amendment further intended to obviate any interpretative ambiguity that may be found between the Water Services Act and other local government legislation.

2.3 In this context, the amendments to the Water Services Act are aimed at achieving the following objects:

- 2.3.1 To introduce the requirement that the water services function can only be undertaken by a mechanism, whether internal or external to the WSA, that has an operating licence. This is a long-term objective to support professionally managed, capable, efficient and financially viable WSPs, whilst recognising local government's constitutional duty to execute its executive function and ensure service delivery in its area of jurisdiction.
- 2.3.2 To strengthen enforcement of compliance with the Water Services Act and national norms and standards by water services institutions by enabling enforcement through directives (as is done in National Water Act, 1998 (Act No. 36 of 1998)). This will include, as a last resort and after due process, a provision by the Minister requiring interim arrangements while there is persistent failure to comply with obligations under the Water Services Act.
- 2.3.3 Include new offences under the existing section 82, including non-compliance to norms and standards, failure to provide water services without an operating licence and non-implementation of directives as offences.
- 2.3.4 To more clearly define the contracting and performance requirements for a WSA to require of its WSP.
- 2.3.5 To improve the governance of water boards to align with national standards for public entities.

### 3. SUMMARY OF AMENDMENTS

#### 3.1 Clause 1

Clause 1 inserts new definitions and also amends certain definitions, such as—

- (a) “authorised person”;
- (b) “bulk water services infrastructure”;
- (c) “consumer”;
- (d) “Director-General”;
- (e) “disposal of industrial effluent”;
- (f) “emergency situation”;
- (g) “licence”;
- (h) “licensing authority”;
- (i) “licensing system”;
- (j) “Municipal Service Delivery Mechanism”;
- (k) “Promotion of Administrative Justice Act”; and
- (l) “Public Finance Management Act”.

#### 3.2 Clause 2

Clause 2 amends section 2 of the Water Services Act. The objects of the Water Services Act are amended to provide for the monitoring of obligations created in the Bill, and to further provide for licensing of water services providers operating or intending to operate as municipal service delivery mechanisms.

#### 3.3 Clause 4

Clause 4 amends section 9 of the Water Services Act to empower the Minister to prescribe Regulations relating to the requirements and registration for persons who install and operate water services works. The Department currently registers and classifies all process controllers and water services works under the Water Act, 1956 (Act No. 54 of 1956) has already been repealed. The amendment will ensure the alignment of registration with the Energy Sector Education and Training Authority Frameworks & Qualifications; and quality of potable or drinking water. The Minister will prescribe standards of the quality of drinking water so that drinking water is of acceptable standard.

The Minister will prescribe standards for sanitation across the sanitation value chain to ensure safe handling of human excreta and minimize public health risks.

#### 3.4 Clause 5

Clause 5 amends section 10(4) of the Water Services Act by replacing a tariff which is “substantially different from any” with “inconsistent with any prescribed norms and standards”.

#### 3.5 Clauses 6 and 7

Clauses 6 and 7 respectively amend sections 19 and 20 of the Water Services Act, in order to provide for the manner in which a municipal service delivery mechanism may be regulated by a water services authority and for circumstances where a water services authority itself acts as a water services provider.

#### 3.6 Clauses 8 and 9

Clauses 8 and 9 amend section 22 and insert sections 22A to 22F in the Water Services Act. The amendment to section 22 provides for national conditions for a water services authority to ensure when appointing its water services provider. Sections 22A to 22F have been inserted to provide for the licensing regime system, licensing authority, and matters prescribing for the issuance of

a licence, types and categories of licences, class and associated conditions of a licence, compliance and rectification and suspension and revocation of a water services licence.

### 3.7 **Clauses 10 and 11**

Clause 10 amends section 35 of the Water Services Act in order to provide for the Board of a water board (“Board”) and its governance.

Clause 11 inserts sections 35A to 35J, which provide for the powers and functions and composition of the Board. The sections further set out the role and principles guiding the Board and appointments to the Board. The chairperson and deputy chairperson of the Board is designated, as well as the term of office and conditions of appointment of non-executive board members. Furthermore, the sections provide for the removal and disqualification of individual board members, filling of vacancies, a shareholder’s compact, establishment of committees, fiduciary duties of board members and meetings of board. The insertion of these provisions is guided by the National Guideline for the appointment of persons to boards and Chief Executive Officers of State-Owned and State-Controlled Institutions, which seek to achieve the following objectives:

- (a) To provide guiding principles for appointing persons to boards and explain the fiduciary duties of board members;
- (b) to provide qualifying principles for appointing persons to boards and limit multiple memberships to boards;
- (c) to specify the roles and responsibilities of role players involved in the appointment process;
- (d) to integrate the disclosure of interests of board members into the appointment process to ensure that possible direct or indirect conflict of interest is identified and managed upfront before board members are appointed;
- (e) to specify pre-appointment information systems to guide the appointment process and to develop succession management plans;
- (f) to provide guidance on each step of the appointment process that the Executive Authority can deal with and which appointments requires concurrence of the Executive; and
- (g) includes governance principles and practices that apply in the broader public administration.

### 3.8 **Clauses 12, 13 and 14**

Clauses 12, 13 and 14 respectively amend section 36, insert sections 36A to 36D and substitute section 37 of the Water Services Act, in order to provide for the appointment, functions and term of office of the Chief Executive Officer. It further provides for the designation of the interim chief executive officer and the suspension of the Chief Executive Officer.

### 3.9 **Clauses 16**

Clause 16 amends section 41 of the Water Services Act to provide for the directive by the Minister where the water board is in financial difficulties or is being otherwise mismanaged; and has acted unfairly or in an inequitable way towards any person within its boundary. The Minister will direct the water board to remedy the situation or act as directed by the Minister.

### 3.10 **Clause 17**

Clause 17 amends section 43 of the Water Services Act to provide for the funding and all other financial matters of the water board. The funds of the water boards consist of money appropriated by Parliament, water charges, and income derived from the performance of its functions.

### **3.11 Clauses 18 and 19**

Clause 18 inserts section 45A in the Water Services Act to provide for the process for the disestablishment of the water board. The Minister will disestablish a water board if the water board is no longer providing water services to the water services institutions.

Clause 19 amends section 46 to provide for the transfer of assets upon disestablishment. Where the Minister changes the boundaries of a water board under this section, the Minister may direct the board of any water board affected by the changes to its boundaries to transfer some or all of its assets and liabilities to any other water board.

### **3.12 Clauses 22 to 23**

Clause 22 inserts section 62A in the Water Services Act to enhance the enforcement of compliance with the Water Services Act by water services institutions by the Minister issuing directives and requiring rectification, where a water services institution has not effectively performed any function imposed on it by or in terms of the Water Services Act.

Clause 23 inserts sections 80A to 80C to provide for the appointment of an authorised person to enforce compliance with the Water Services Act. The general powers of an authorised person includes the power to stop, enter and search vehicles on authority of a warrant where there is suspicion of the commission of an offence in terms of the Water Services Act.

### **3.13 Clauses 24 and 25**

Clauses 24 and 25 provide for additional offences in terms of the Water Services Act and the liability of directors and municipal managers in respect of offences.

## **4. DEPARTMENTS/BODIES/PERSONS CONSULTED**

The following Departments and Entities were consulted: National Treasury; Department of Health; Department of Cooperative Governance and Traditional Affairs; Department of Energy; Department of Forestry, Fisheries and the Environment; Department of Mineral Resources; Department of Basic Education; Department of Higher Education; Department of Human Settlements; Department of Rural Development and Land Reform; Water Boards; Catchment Management Areas; and SALGA.

## **5. IMPLICATIONS FOR PROVINCES**

There is no implication for Provinces.

## **6. FINANCIAL IMPLICATIONS FOR STATE**

The Bill does not create new financial obligations for the Department. All the activities in the Bill will be accommodated within the existing budget.

## **7. PARLIAMENTARY PROCEDURE**

7.1 The State Law Advisers and the Department are of the opinion that the Bill must be dealt with in accordance with the procedure established in section 76 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”).

7.2 Chapter 4 of the Constitution specifies the manner in which legislation must be enacted by Parliament. It prescribes different procedures for Bills, including ordinary Bills not affecting provinces (section 75 procedure), and ordinary Bills affecting provinces (section 76 procedure). The determination of the procedure to be followed in processing the Bill is referred to as tagging.

- 7.3 In terms of section 76(3) of the Constitution, a Bill must be dealt with in accordance with section 76 if it falls within a functional area listed in Schedule 4. Schedule 4 to the Constitution lists functional areas of concurrent national and provincial legislative competence. In the Constitutional Court judgment of *Ex-Parte President of the Republic of South Africa In Re: Constitutionality of the Liquor Bill*<sup>1</sup> (“*Liquor Bill* judgment”), Cameron AJ held the following:

“[27] It must be borne in mind that section 76 is headed ‘ordinary Bills affecting provinces’. This is my view, a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 be dealt with under section 76.

...

[29] Once a Bill falls within a functional area listed in Schedule 4, it must be dealt with not in terms of section 75, but by either the section 76 (1) or the section 76(2) procedure. . .”.

- 7.4 Following the *Liquor Bill* judgment, the Constitutional Court in the judgment of *Tongoane and Others vs Minister for Agriculture and Land Affairs and Others*<sup>2</sup> (“*Tongoane* judgment”) confirmed the following:

“[59] . . . the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.”.

- 7.5 Furthermore, the Constitutional Court held that—

“[66] . . . procedural safeguards are designed to give more weight to the voice of the provinces in legislation substantially affecting them. . .they are fundamental to the role of the NCOP in ensuring that provincial interests are taken into account in the national sphere of government. . .”.

- 7.6 As the Court held in the *Tongoane* judgment, a Bill must be tagged as a section 76 Bill if its provisions in substantial measure deal with a Schedule 4 functional area. The State Law Advisers and the Department are therefore of the view that the Bill should be classified as a section 76 Bill, which is an ordinary Bill affecting provinces, as its provisions fall within a functional area listed in Schedule 4 to the Constitution, namely “water and sanitation services limited to potable water supply systems and domestic waste water and sewage disposal systems”.

- 7.7 The State Law Advisers are also of the opinion that it is necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders, in terms of section 39 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it seems to affect matters contemplated in section 154(2) of the Constitution.

1. (CCT/12/99) [1999] ZACC 15.

2. 2010 (8) BCLR 741 (CC).

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