



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 23 December 2004

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 284 2004

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 24 of 2004: Water Resources Management Act, 2004.

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## ACT

To provide for the management, development, protection, conservation, and use of water resources; to establish the Water Advisory Council, the Water Regulatory Board and the Water Tribunal; and to provide for incidental matters.

*(Signed by the President on 8 December 2004)*

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SCHEDULE

**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:

PART I

PRELIMINARY PROVISIONS

**Definitions**

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

“abstract” means the diversion, pumping or impounding of water from a water source;

“aquifer” means an underground geological formation that contains water;

“base flow” means the subsurface flow of an intermittent watercourse;

“basin” means the area from which rainfall drains into a common terminus;

“basin management committee” means a committee established under section 12;

“Board” means the Water Regulatory Board established by section 85;

“borehole” means a hole in the ground drilled to abstract groundwater or to recharge an aquifer or to make measurements in an aquifer;

“communal land” means the land inhabited by a traditional community;

“customary rights and practices” means such rights and practices in relation to water resources management and utilisation as have been exercised and practiced by any given community for years;

“dam” means a structure that can impound water or effluent;

“dam with a safety risk” means a dam that poses risk to life, property or environment;

“Deeds Registries Act” means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“domestic use” means the household use of water for drinking, cooking, washing, watering a household garden and animals, but does not include the watering of crops or livestock for commercial purposes;

“efficient water management practices” means the water management practices developed in accordance with section 75;

“effluent” means any liquid discharged as a result of domestic, commercial, industrial or agricultural activities;

“effluent treatment facility” means works constructed for the containment, treatment, evaporation or storage of effluent;

“groundwater” means any water resource found under the surface of the ground;

“internationally shared water resource” means a water resource that is shared by Namibia and its neighbouring states and other riparian states;

“licensee” means a person who holds a licence to abstract and use water issued under section 34;

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

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

“local water user association” means an association registered under section 21;

“Master Plan” means the National Water Master Plan referred to in section 23;

“meteoric water” means water that occurs or is delivered from the atmosphere;

“Minister” means the Minister responsible for water;

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

“owner of a dam,” includes the person in control of the dam;

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

“prescribed” means prescribed by a regulation, and ‘prescribe’ has the same meaning;

“private sewerage installation” means a privately constructed sewerage installation;

“professional engineer” means a person registered in terms of the law governing the registration of professional engineers;

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

“Registration of Deeds in Rehoboth Act” means the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976);

“resource quality” means the quality of all the aspects of a water resource including -

- (a) the quantity, pattern, timing, water level and assurance of stream flow;
- (b) the water quality, including the physical, chemical and biological characteristics of the water;
- (c) the character and condition of the stream and riparian habitat; and
- (d) the characteristics, condition and distribution of the aquatic biota;

“return flow” means water that drains away after having been used;

“servitude of abutment” means the right to occupy by means of waterworks the bed or banks of a stream or another person’s land adjacent to the stream;

“servitude of aqueduct” means the right to occupy another person’s land by means of waterworks for abstracting or leading water or disposing of effluents;

“servitude of submersion” means the right to occupy another person’s land by submerging it with water;

“sewer” means a pipe or conduit which is used for the conveyance of sewage or industrial effluents;

“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.

“this Act” includes a regulation made under section 133;

“traditional authority” means a traditional authority for a traditional community;

“traditional community” means an indigenous homogeneous, endogamous grouping of persons comprising of families deriving from exogamous clans which share a common ancestry, language, cultural heritage, customs and traditions, who recognizes a common traditional authority and inhabits a common area;

“waste”, includes any solid material or material that is suspended, dissolved or transported in water, including sediment;

“wastage of water” means the excessive use of water or the failure to beneficially use abstracted water, and includes water spilled from conveyors or installations due to breakage or poor maintenance;

“Water Advisory Council” means the Water Advisory Council established by section 11;

“watercourse” means -

- (a) a river or spring, and includes the base flow of an ephemeral river at the time of no visible surface flow;
- (b) a natural channel in which water flows regularly or intermittently;
- (c) an estuary, wetland, lake or dam into which, or from which, water flows;
- (d) any collection of water which the Minister declares under section 5(2)(i) to be a watercourse,

and includes, where applicable, its bed and banks;



“water management area” means an area declared a water management area under section 72;

“water management institution” means a basin management committee, water point user association, local water user association, irrigation board or river basin organisation;

“water point” means the waterworks, including a part of the communal land in the immediate vicinity of the waterworks;

“water point committee” means a committee elected under section 16(2);

“water point user association” means an association registered under section 21;

“water related emergency” means an unexpected event involving water or the lack of water that poses a threat to human beings, property, a water resource or the environment so urgent that immediate corrective action is required;

“water resource,” includes a watercourse, an aquifer and the sea and meteoric water;

“water source” means water from a watercourse, an aquifer or the sea, and includes meteoric water;

“waterworks”, includes any borehole, well, structure, earthwork, equipment, or part thereof, installed or used for or in connection with water supply or treatment, or sewage or effluent treatment;

“well” means an artificial hole in the ground that is not made by drilling, through which water is obtained from subterranean sources.

### **Objective of Act**

2. The objective of this Act is to ensure that Namibia’s water resources are managed, developed, protected, conserved and used in ways which are consistent with or conducive to the fundamental principles set out in section 3.

### **Fundamental principles**

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

- (a) equitable access to water resources by every citizen, in support of a healthy and productive life;
- (b) access by every citizen, within a reasonable distance from their place of abode, to a quantity of water sufficient to maintain life, health and productive activities;
- (c) essentiality of water in life, and safe drinking water a basic human right;
- (d) harmonisation of human needs with environmental ecosystems and the species that depend upon them, while recognising that those ecosystems must be protected to the maximum extent;
- (e) integrated planning and management of surface and underground water resources, in ways which incorporate the planning process, economic, environmental and social dimensions;
- (f) openness and transparency, by making available water resources information accessible to the public;

- (g) management of water resources so as to promote sustainable development;
- (h) recognition of the economic value of water resources and of the need for their development to be cost-effective;
- (i) furthering a process of human resources development and building of competency in water resources decision-making;
- (j) facilitating and encouraging awareness programmes and participation of interested persons in decision-making;
- (k) consistency of water resources decisions with firm and specific mandates from Government that separate policy making from operational and regulatory roles;
- (l) prevention of water pollution, and the polluter's duty of care and liability to make good;
- (m) meeting Namibia's international obligations and promoting respect for Namibia's rights with regard to internationally shared water resources and, in particular, to the abstraction of water for beneficial use and the discharge of polluting effluents; and
- (n) regional diversity and decentralisation to the lowest possible level of government consistent with available capacity at such level.

#### **Ownership and management of water resources**

- 4. Subject to this Act -
  - (a) ownership of water resources in Namibia below and above the surface of the land belongs to the State; and
  - (b) the State must ensure that water resources are managed and used to the benefit of all people in furtherance of the objective referred to in section 2 and compatible with the fundamental principles referred to in section 3.

### PART II

#### GENERAL FUNCTIONS AND POWERS OF MINISTER

#### **General functions and powers of Minister**

- 5. (1) To achieve the objective of this Act, the functions of the Minister are -
  - (a) to determine water resources management policies on the advice of the Water Advisory Council;
  - (b) to conduct water resources management planning;
  - (c) to participate in consultations and negotiations regarding shared water resources;
  - (d) to ensure adequate supply of water for domestic use;
  - (e) to develop and implement efficient water management practices contemplated in section 75;

- (f) to compile, analyse and disseminate information for water resources management;
  - (g) to ensure that water resources management operates in accordance with the principles of environmental sustainability;
  - (h) to supervise the water management institutions;
  - (i) to examine and enquire into plans, specifications, estimates of costs and reports which may be submitted to him or her in connection with any proposed utilisation of water for any purpose, and to furnish advice in connection with any such plans, specifications, estimates or reports;
  - (j) to obtain and record information as to the extent of any land under irrigation, the quantity of water used or required for irrigation of such land, and the extent, nature or value of the crops raised thereby;
  - (k) to obtain and record information as to the extent of any land which could be brought under irrigation;
  - (l) to co-ordinate water resources management at national level;
  - (m) to co-ordinate and harmonise the administration and management of water resources among the local authorities; and
  - (n) to provide such training programmes as are necessary to implement this Act.
- (2) Subject to this Act, the Minister has power to -
- (a) to acquire, construct, extend, alter, maintain, repair, control and dispose of waterworks or such other works as he or she may consider necessary in the exercise of his or her powers or the performance of his or her functions in terms of or under this Act;
  - (b) to drill a borehole or sink a well to obtain supplies of water from underground sources, and conserve water so obtained and supply or deliver it to any person for use for any purpose without payment or upon payment of charges;
  - (c) to drill a borehole or sink a well for any person on the application of such person;
  - (d) to establish or maintain hydrologic and hydrographic stations and works and record the observations obtained thereby, and generally to obtain and record information and statistics as to hydrographic and hydrologic conditions;
  - (e) to inspect any waterworks and in writing to require any local authority or any other person responsible for the works to do such acts or execute such repairs or alterations the Minister may consider necessary for the protection of life or the public safety or protection of property, which in his or her opinion is or may be endangered by the existence of such works and, in default of compliance with such requirements within a reasonable time specified in the order, himself or herself to do acts or execute such repairs or alterations and to recover the cost thereof from the local authority or such person;
  - (f) to establish any water management institution and prescribe its powers and functions and other necessary matters connected thereto for its proper functioning;

- (g) conduct such research as is necessary to implement any provision of this Act;
- (h) provide financial and technical support to water management institutions; or
- (i) by notice in the *Gazette*, declare any collection of water to be a watercourse.

**Power of Minister to establish executive agency**

6. For the purpose of assisting the Minister in performing the functions entrusted upon the Minister by this Act, the Minister may -

- (a) establish any executive agency to perform any of such duties as the Minister may assign to it, and must appoint such persons as is necessary to perform the duties of such agency and prescribe their terms and conditions of service; or
- (b) at any time, dissolve any agency established under this section.

**Minister to establish Water Resources Management Agency**

7. (1) The Minister must establish an executive agency under section 6 to be known as the Water Resources Management Agency.

- (2) The functions of the Water Resources Management Agency, include -
  - (a) the integrated management of water resources in Namibia;
  - (b) technical analysis of applications for licences to abstract and use water and permits to discharge effluent or to construct an effluent treatment facility or disposal site, including applications for renewal of such licences and permits;
  - (c) the collection, analysis and sharing of data concerning the conservation and management of water resources in Namibia;
  - (d) the monitoring and review of water usage by all water users and effluent discharges to assess compliance with this Act;
  - (e) technical analysis of the need for water management areas, including recommendations regarding the establishment of such areas, their geographical boundaries and any limitations to be imposed on such areas;
  - (f) guiding, assisting and coordinating the basin management committees; and
  - (g) the collection and analysis of information necessary for the development of the Master Plan and the information concerning internationally shared water resources.

**Power of Minister to declare irrigation areas and establish irrigation boards**

8. The Minister has power to declare an area as an irrigation area, and to establish an irrigation board for such area, and to prescribe its powers, functions, constitution, qualification of candidates for election or appointment as members, term of office of members, vacation and filling of vacancies, provisions relating to accounts, supervision, jurisdiction, procedure at meetings and elections, allowances or remunerations, making of rules by such board, assessment and payment and recovery of rates and charges, and any other matters connected and incidental thereto by notice in the *Gazette*.

**Directives to water management institution**

9. The Minister may give a written directive to a water management institution regarding the exercise of any of the institution's powers or the performance of any of the institution's functions.

**Delegation of powers and assignment of functions by Minister**

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

- (a) a staff member of the Ministry or any other ministry;
- (b) the holder of an office in the Ministry or any other ministry;
- (c) the Water Resources Management Agency;
- (d) a water management institution; or
- (e) a regional council.

(2) The Minister may not delegate the power -

- (a) to make regulations;
- (b) to appoint a member of the Water Tribunal; and
- (c) to authorise a water management institution to use temporarily any property for public purposes under section 126.

(3) The Minister is not divested of any power or function delegated or assigned under subsection (2), and may at any time -

- (a) withdraw any delegation or assignment made under that subsection; or
- (b) vary or set aside any decision made under such delegation.

(4) Before delegating or assigning a power or duty to a water management institution under subsection (1)(d), the Minister must consider the capacity of the institution to exercise a power or perform a function that is to be so delegated or assigned.

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

**PART III****WATER ADVISORY COUNCIL****Water Advisory Council**

11. (1) There is established a council to be known as the Water Advisory Council to advise the Minister on matters referred to in subsection (3).

(2) The Water Advisory Council consists of -

- (a) a representative from each basin management committee;

- (b) a representative from each regional council; and
- (c) such representatives from water management institutions and other community based organisations,

as the Minister, having due regard to gender balance, may appoint.

- (3) The Water Advisory Council must advise the Minister on -

- (a) any matter on water policy development or review, water resources management, water abstraction and use and any other matters relating to water referred to it by the Minister or upon its own initiative; and
- (b) water resource matters raised by any basin management committee and which the Council considers it proper to be taken up for advice.

(4) The Water Advisory Council must meet at least twice a year, and may meet at such other times as the Minister or the chairperson of the Council may determine or a majority of its members may elect to do so.

(5) The Minister must prescribe the term of office of members of the Water Advisory Council and such matters connected and incidental to the proper functioning of the Council.

#### PART IV

#### BASIN MANAGEMENT COMMITTEES

##### **Establishment of basin management committee**

**12.** (1) For the purpose of proper management of the water resources of the basins in Namibia, the Minister, by notice in the *Gazette*, upon his or her own initiative or upon application by interested persons within a basin, may establish a basin management committee and give it a name.

(2) Subject to subsections (3) and (4), the members of a basin management committee must be appointed in the prescribed manner, and the constitution of the committee and other matters necessary for the proper functioning of the committee must be as prescribed.

(3) A regional council must nominate a person for each basin management committee in its region to be appointed as member of such committee.

(4) The Minister must ensure that every basin management committee is broadly representative of all interested persons.

(5) After having established a basin management committee, the Minister must declare a water management area for the committee in accordance with section 72 within which the committee will conduct the protection, use, development, conservation, management and control of water resources.

##### **Functions of basin management committee**

**13.** The functions of a basin management committee are -

- (a) to protect, develop, conserve, manage and control water resources within its water management area;

- (b) to promote community participation in the protection, use, development, conservation, management and control of water resources in its water management area through education and other appropriate activities;
- (c) to prepare a water resources plan for the basin which plan must be submitted to the Minister for consideration when developing the Master Plan in terms of section 23;
- (d) to make recommendations regarding the issuance or cancellation of licences and permits under this Act;
- (e) to promote community self-reliance, including the recovery of costs for the operation and maintenance of waterworks;
- (f) to facilitate the establishment of an operational system and maintenance system of waterworks and the accessing of technical support for water management institutions within its water management area;
- (g) to monitor and report on the effectiveness of policies and action in achieving sustainable management of water resources in its water management area;
- (h) to collect, manage and share such data as are necessary to properly manage the basin in coordination with the Water Resources Management Agency;
- (i) to develop a water research agenda, together with the Water Resources Management Agency, appropriate to the needs of water management institutions and water users within its water management area;
- (j) to help resolve conflicts relating to water resources in its water management area; and
- (k) to perform any such additional functions as the Minister may direct under section 9 or assign under section 10.

**Basin management committee to coordinate with regional planning component in region**

**14.** A basin management committee must co-ordinate with the regional planning component in the regional council concerned to ensure that water resources within the basin and the region are effectively managed in accordance with this Act.

**Dissolution of basin management committee**

**15.** The Minister, by notice in the *Gazette*, may dissolve a basin management committee if, in the Minister's opinion, it is necessary to do so -

- (a) for purposes of re-organising water management institutions in its area of jurisdiction in the interests of effective water resources management; or
- (b) because the circumstances which supported the establishment of the basin management committee no longer exist.

## PART V

## MANAGEMENT OF RURAL WATER SUPPLY

**Formation of water point user associations and local water user associations and election of committees**

16. (1) Any group of rural households using a particular water point for their water supply needs may form a water point user association to maintain the water point and to manage water supply services at the water point.

(2) The members of a water point user association must elect a water point committee to manage the affairs and the day to day activities of the water point user association, including financial matters.

(3) A water point committee must consist of not less than five and not more than seven members elected in accordance with its constitution and rules.

(4) A group of water point user associations and other persons using a particular rural water supply scheme for their water supply needs must form a local water user association to coordinate the activities and management of their water points and to protect the rural water supply scheme against vandalism and other damages.

(5) The members of the local water user association must elect a local water committee to manage the day to day activities of the local water user association, including financial matters.

(6) A local water committee must consist of not less than five and not more than seven members elected in accordance with its constitution and rules.

(7) A water point user association or local water user association is a non-profit making entity.

(8) Despite the provisions of any other law to the contrary, a water point user association or local water user association is not liable to pay any tax or charge on its income, or any transfer duty.

(9) Upon registration in terms of section 21, a water point user association or local water user association becomes a body corporate, a legal person with full capacity to sue and be sued in court, to contract and acquire rights and duties, and to own and dispose properties.

(10) If rural households or water point user associations fail to form in terms of this section a water point user association or local water user association, as the case may be, the Minister may close the water point or the rural water supply scheme concerned.

(11) Before the Minister closes a water point or a rural water supply scheme under subsection (10), the Minister must give rural households or water point user associations an opportunity to make representations on the matter.

**Qualification for membership of water point user association and local water user association and termination and suspension of membership**

17. (1) Any rural household which regularly uses a particular water point for water supply needs qualifies for water point user association membership.

(2) A rural household may become a member of more than one water point user association if the household regularly uses more than one water point.



(3) A water point user association whose members, and other persons who, use a particular rural water supply scheme for their water supply needs qualifies for membership in the local water user association concerned.

(4) A water point user association or local water user association may terminate any member's membership or suspend its member by a majority vote of the entire membership of the water point user association or local water user association on the grounds and in the manner provided in its constitution or rules.

(5) A member of a water point user association may terminate his or her membership if such member ceases to receive water supply from the water point concerned.

#### **Functions of water point user association and local water user association**

18. (1) The functions of a water point user association are -
- (a) to manage water supply at its water point; and
  - (b) to maintain its water point and protect it against vandalism and other damages.
- (2) The functions of a local water user association are -
- (a) to coordinate and oversee the activities and management of water supply service by its members so as -
    - (i) to foster a sense of ownership among the users;
    - (ii) to promote economic development; and
    - (iii) to ensure sustainability of such service; and
  - (b) to protect the rural water supply scheme concerned against vandalism and other damages.

#### **Powers of water point user association and local water user association**

19. (1) Subject to this Act, the powers of a water point user association or local water user association, include -

- (a) the powers contained in its constitution;
- (b) the power to make rules for the use of the rural water supply scheme or water point by members and non-members;
- (c) the power to prevent any person who does not comply with the rules or the constitution of a water point user association or local water user association from using such water point;
- (d) the power to adopt measures to prevent the wastage of water by any person; and
- (e) the power to plan and control the use of communal land in the immediate vicinity of the water point in cooperation with the communal land board and the traditional authority concerned.

**Constitution of water point user association or local water user association**

**20.** (1) A constitution establishing a water point user association or local water user association which may not provide anything contrary to this Act must include, among others -

- (a) qualification for membership of such association and provisions on termination or suspension of such membership;
- (b) constitution of a management committee of such association;
- (c) qualification for election as member of management committee of such association;
- (d) term of office of member of management committee of such association;
- (e) procedure and quorum at any meeting and elections;
- (f) opening of banking account and keeping of books of accounts and the maintenance of financial discipline;
- (g) provisions on the dissolution of such association and on what would happen with its assets after the dissolution;
- (h) procedural requirements for appointment of persons as employees of such association, when the necessity to employ such persons arises;
- (i) the financial obligation of members towards such association; and
- (j) powers and functions of such association.

(2) The constitution of a water point user association or local water user association must first be adopted by the members and approved by the Minister before such association is registered under section 21.

(3) A constitution adopted by members of a water point user association or local water user association is binding on all its members.

**Registration of water point user association or local water user association**

**21.** (1) An application for registration as a water point user association or a local water user association must be made in the prescribed manner.

(2) A water point user association or local water user association may not deliver any service in terms of this Act without being registered with the Minister as such.

(3) Only one water point user association or local water user association may be registered for each water point or rural water supply scheme, respectively.

(4) Upon receipt of an application for registration as water point user association or local water user association, the Minister must -

- (a) through the traditional authority concerned, invite interested persons to make written objections, if any, against the application;
- (b) give the applicant an opportunity to make representations, if there is any objections made against the application; and

- (c) register the applicant, if, after considering the application, the Minister is satisfied that the applicant meets the requirements, and publish the registration in the *Gazette*.

#### **Deregistration of water point user association or local water user association**

**22.** (1) The Minister, by notice in the *Gazette*, may deregister a water point user association or local water user association, if the association -

- (a) refuses or fails to comply with this Act or its constitution or rules, and fails to remedy the situation;
- (b) if the association is no longer active or effective; or
- (c) if the association requests for its deregistration on any grounds in its best interest or the public interest.

(2) Before any deregistration of a water point user association or local water user association under subsection (1), the Minister, in writing, must -

- (a) inform the association of his or her intention to deregister the association, and give reasons for the deregistration; and
- (b) call upon the association to show cause within a specified period why the deregistration should not be effected.

### PART VI

#### NATIONAL WATER MASTER PLAN

##### **Development of Master Plan**

**23.** (1) The Minister, in cooperation with regional councils and after consultation with any interested persons, must develop a national master plan on water resources to be known as the National Water Master Plan.

(2) The Master Plan must be based upon the water resources plans prepared and submitted to the Minister by basin management committees in terms of section 13, and must include, among others -

- (a) a water balance for each basin of Namibia that compares forecasted water demand with data and information regarding water availability;
- (b) proposed options for meeting forecasted demand for each basin in which forecasted water demand exceeds available supply, which options may include -
  - (i) water demand management programmes;
  - (ii) necessary infrastructure construction;
  - (iii) desirable institutional initiatives;
  - (iv) inter-basin transfers of water; and
  - (v) any other measure, including appropriate legal reforms, which is considered necessary in achieving the objectives of the Master Plan; and
- (c) the protection of water resources.

(3) Any conflict between or among the water resources plans referred to in subsection (2) must be resolved by the Minister after consultation with the basin management committees whose plans are in conflict with one another.

(4) After the draft Master Plan is completed, the Minister must submit it to the Cabinet for approval, and then table it in the National Assembly.

### **Review of Master Plan**

24. The Minister must review the Master Plan at least once in each successive five year period for necessary amendments, and section 23 applies to the review of the Master Plan.

## **PART VII**

### **WATER SUPPLY, ABSTRACTION AND USE**

#### **Safety of water supply**

25. (1) Without derogating from the provisions of any law relating to public health, the Minister responsible for health must ensure that the water supply is healthy and safe for all Namibians.

(2) For the purposes of health and safe water supply under this Act, the Minister must assist the Minister responsible for health in -

- (a) the development of standards of healthy and safe water supply, including maximum levels of concentration of waterborne contaminants;
- (b) the development and maintenance of the capacity to test, monitor and verify the quality of any water supply;
- (c) the establishment and maintenance of such laboratories as are necessary to assure the quality of any water supply, including the development of certification and licensing requirements for water laboratory technicians; and
- (d) the development of criteria for the quality of recycled water which ensure that such water is safe and suitable for its intended use.

#### **Reliability of water supply**

26. (1) The Minister must ensure that all Namibians are provided with an affordable and a reliable water supply that is adequate for basic human needs.

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

- (a) develop reliable standards of performance and facilities that are applicable to any person who supplies water for domestic, commercial, industrial or agricultural use;
- (b) periodically review the performance of every person who supplies water for domestic, commercial, industrial or agricultural use to evaluate compliance with the standards of performance developed pursuant to subparagraph (a);
- (c) take corrective action with regard to any water supplier who fails to meet a standard of performance, that may include -

- (i) the secondment of managerial or technical personnel;
  - (ii) the repair or replacement of water supply works; or
  - (iii) the amendment, suspension or cancellation of any relevant licence to abstract and use water, and
- (d) establish an administrative mechanism that will enable water users to be heard regarding the adequacy and reliability of their water supply.
- (3) If the Minister incurs any expense in taking any corrective action under subsection (2)(c), the Minister may recover any loss from the water supplier.

#### **Reservation of water resources**

**27.** (1) The Minister, with the concurrence of the regional councils concerned, may in the prescribed manner reserve part or all of the flow of a watercourse, including any groundwater resource and the water stored in a public reservoir to -

- (a) meet the domestic use of the water users concerned; and
  - (b) reasonably protect aquatic and wetland ecosystems, including their biological diversity, and to maintain essential ecosystem functions.
- (2) Any water resource reserved under subsection (1) must be taken into account in -

- (a) the licensing of water abstractions under sections 34; and
  - (b) the permitting of effluent discharges under section 60;
- (3) The Minister may allow the use of a reserved water resource if such use is compatible with the purposes of the reserve.

#### **Abstraction of water for domestic use**

**28.** (1) Subject to subsection (3), a person who abstracts water from a water resource for domestic use is exempted from the acquisition of a licence to abstract and use water.

(2) A person may abstract and use water for domestic use, subject only to such public health limitations and environmental limitations, and limitations imposed from time to time for purposes of efficient water management practices.

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

#### **Hand-dug well for abstraction of water for domestic use**

**29.** A person who digs a well by hand outside a local authority area or water management area to abstract water for domestic use is exempted from the licence requirements of this Act.

#### **Use of water supplied by bulk water supplier or local authority**

**30.** A person who receives water from a bulk water supplier or a local authority acting under a licence issued under this Act may use such water without a licence.

**Right to collect meteoric water**

31. A person has the right to collect meteoric water collected on his or her own land or the communal land for domestic use.

## PART VIII

## LICENCE TO ABSTRACT AND USE WATER

**Prohibition to abstract or use water without licence**

32. (1) Unless this Act provides otherwise, a person may not abstract or use water, except in accordance with a licence issued under this Act.

(2) In this Part, “abstract water”, includes the abstraction of brackish or marine water for any purpose.

**Application for licence to abstract and use water**

33. (1) A person who wishes to abstract and use water may apply to the Minister for a licence to abstract and use water in the prescribed manner and form, which application must include -

- (a) the name of the applicant;
- (b) the water resource from which the proposed abstraction will be made;
- (c) the proposed location of the abstraction;
- (d) the type and location of the proposed beneficial use;
- (e) the names of owner and occupier of the land upon which the proposed beneficial use will be made;
- (f) the proposed rate and volume of the abstraction;
- (g) the proposed timing of the abstraction;
- (h) a description of any waterworks necessary to accomplish the proposed abstraction and put the abstracted water to beneficial use and a proposed schedule for the completion of such waterworks;
- (i) a description of the proposed treatment that will be given to the abstracted water, including any chemicals proposed to be applied to the water;
- (j) a description of the volume, rate and chemical composition of any effluent or return flow resulting from application of the abstracted water to beneficial use and a description of the location that any such effluent or return flow is expected to enter a water resource; and
- (k) any additional information the Minister may prescribe.

(2) An applicant for a licence to abstract and use water must, at least 60 days before he or she submits the application to the Minister, issue a notice in the *Gazette* -

- (a) inviting all interested persons to submit their objections in writing, if any; and

- (b) stating the place at and period within which objections are to be submitted, which period may not be less than 30 days.
- (3) An application for a licence to abstract and use water must be accompanied by -
  - (a) proof of publication of the notice referred to in subsection (2), and all the objections, if any;
  - (b) the prescribed fee; and
  - (c) an environmental impact analysis of the proposed abstraction of water upon the environment and existing water users and water resources.

#### **Consideration of application for licence to abstract and use water**

**34.** (1) Upon receipt of an application referred to in section 33(1), the Minister must -

- (a) refer the application to the basin management committee concerned for investigation and recommendations; or
- (b) apply subsection (2)(a), (b) and (c), and make a decision, if there is no basin management committee established for the area concerned.

(2) Upon receipt of an application referred to it in terms of subsection (1)(b), a basin management committee must -

- (a) investigate all matters pertaining to the application;
- (b) consider objections, if any;
- (c) give the applicant an opportunity to make representations in support of his or her application in case of any objection; and
- (d) make recommendations to the Minister.
- (3) After considering -
  - (a) any recommendations of the basin management committee, if applicable;
  - (b) the objections by interested persons, if any;
  - (c) the representations of the applicant, if any;
  - (d) the environmental impact analysis; and
  - (e) the compliance with the criteria referred to in section 35(1),

the Minister may grant the application to abstract water, with or without conditions, or deny the application.

(4) A person who wishes to appeal against the decision of the Minister regarding an application for licence to abstract and use water may file a notice of appeal to the Water Tribunal within 14 days of the decision.

**Criteria upon which licence to abstract and use water may be issued**

**35.** (1) In deciding whether a licence to abstract and use water should be issued, the Minister must consider the following criteria -

- (a) whether the proposed abstraction and use of water are consistent with -
  - (i) the objectives and principles referred to in sections 2 and 3, respectively;
  - (ii) the Master Plan; and
  - (iii) any reservation of water made under section 27;
- (b) the impact of the proposed abstraction upon existing water users, water resources and the water reserved or allocated for environmental uses;
- (c) the safe yield of the aquifer from which the abstraction is proposed, if the application is for the abstraction of groundwater;
- (d) the conformity of the proposed use with the efficient water management practices;
- (e) the need to redress the effects of past racial and gender discrimination;
- (f) the likely effect of the proposed abstraction -
  - (i) on the quality of any water resource, and on aquatic ecosystems dependent on the resource;
  - (ii) on Namibia's international obligations relating to internationally shared waters;
- (g) the need to ensure the efficient and beneficial use of water resources;
- (h) the existence of any traditional community and the extent of customary rights and practices in, or dependent upon, the water resource to which an application for the licence relates; and
- (i) any additional criteria the Minister may prescribe.

(2) If the application for a licence to abstract and use water relates to a shared watercourse, the Minister, in addition to the criteria referred to in subsection (1), must consider the following matters -

- (a) the volume of water abstracted and used by all concerned persons or communities;
- (b) the nature of the uses dependent on the watercourse, including the economic and cultural value of the use;
- (c) the number of persons relying upon the watercourse for domestic, agricultural or commercial purposes;
- (d) the date on which the abstractions of water from the watercourse commences;
- (e) the availability and reliability of alternative sources of water to support existing uses; and



- (f) the increases in demand for water from the watercourse reasonably expected to occur in the foreseeable future.

(3) The Minister may issue more than one licence to abstract and use water from one water resource, subject to such terms and conditions as will enable concurrent use of the same resource by the applicants.

#### **Contents of licence to abstract and use water**

- 36.** (1) A licence to abstract and use water must specify -
- (a) the duration of the licence;
  - (b) the location of the abstraction and location of the use;
  - (c) the water use or uses for which it is granted;
  - (d) the person to whom it is granted;
  - (e) the conditions subject to which it is granted;
  - (f) the frequency of review of the licence under section 41;
  - (g) the fact that the licence is subject to periodic review and to suspension, amendment or cancellation in accordance with this Act; and
  - (h) any other prescribed matters.

#### **Terms and conditions of licence to abstract and use water**

- 37.** A licence to abstract and use water is issued subject to -
- (a) the achievement of the goals and objectives of the Master Plan;
  - (b) the protection of the environment and water resource from which the abstraction will be made, the stream flow regime, and other existing and potential use of the water resource, including uses by virtue of customary rights and practices, by -
    - (i) setting out the specific volume of water or percentage of flow which may be abstracted;
    - (ii) setting out the rate of abstraction;
    - (iii) specifying the place where water may be abstracted;
    - (iv) specifying the times when water may be abstracted and used, or not used;
    - (v) limiting the volume of water which may be impounded and stored;
    - (vi) specifying locations where a watercourse may be impounded and where water would be stored;
    - (vii) requiring the licensee to become a member of a local water user's association, where appropriate, before water may be abstracted; and

- (viii) adding any such terms regarding protection of the water resource, the stream flow regime or existing or potential uses of the water resource which the Minister determines to be appropriate.
- (c) proper water management, by -
- (i) specifying efficient water management practices and general requirements for any water use, including water conservation measures;
  - (ii) requiring monitoring, analysis and reporting by the licensee on every water use dependent upon the licence, including bulk uses or local authority uses, by specifying the aspects of water use to be monitored and reported, and the devices to be used for such monitoring;
  - (iii) requiring the preparation and approval of a water management plan;
  - (iv) requiring the payment of water use charges;
  - (v) requiring the licensee to make water available to any person specified in the licence; and
  - (vi) adding any such terms regarding proper water management which the Minister determines to be appropriate;
- (d) the proper discharge or disposal of any return flow or effluent, by -
- (i) specifying the water resource to which and the manner in which return flow or effluent must be returned or disposed of;
  - (ii) specifying permissible levels for some or all of the chemical or physical components of the return flow or effluent;
  - (iii) specifying the treatment to which the return flow or effluent must be subjected, before it is returned or disposed of;
  - (iv) specifying the volume and rate of discharge of return flow or effluent which may be returned or disposed of; and
  - (v) adding such terms regarding discharge or disposal of excess flow or effluent which the Minister determines to be appropriate; and
- (e) the accommodation of reasonable requirements of any traditional community.

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

**38.** (1) A licence containing terms and conditions referred to in section 37 may be issued as a combined licence to abstract and use water and to discharge effluent.

(2) A person in possession of a combined licence referred to in subsection (1) does not require a separate effluent discharge permit referred to in section 60.

#### **Duration of licence to abstract and use water**

**39.** Subject to sections 40 and 41, a licence to abstract and use water may be granted for a term not exceeding five years.

**Renewal of licence to abstract and use water**

**40.** (1) A licence to abstract and use water issued under section 34(3) may be renewed at least three months prior to its expiry, if the licensee submits an application for renewal to the Minister in the prescribed manner.

(2) When considering an application for renewal made under subsection (1), the Minister must consider the application using -

- (a) section 35 criteria; and
- (b) section 61 criteria, in the case of a combined licence referred to in section 38.

**Review, amendment, suspension and cancellation of licence to abstract and use water**

**41.** (1) Subject to subsection (3), the Minister, at any time during the term of duration of any licence issued under this Act, may review such licence and, pursuant to such review, may amend the terms or conditions thereof, or suspend or cancel such licence, if it is in the public interest to do so.

(2) Subject to subsection (3), the Minister may suspend or cancel a licence to abstract and use water, in whole or in part, if the licensee -

- (a) fails to abide by any of the terms or conditions of the licence;
- (b) fails to commence the abstraction of water within the period specified in the terms and conditions of such licence; or
- (c) having commenced with the abstraction of water, ceases the abstraction for a continuous period of three years.

(3) Before the Minister amends, suspends or cancels any licence under subsection (1) or (2), the Minister must invite the licensee to make representations in respect of the proposed amendment, suspension or cancellation.

**Effects of expiry or cancellation of licence to abstract and use water**

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

- (a) require the licensee, at the licensee's expense, to remove any liens or other restrictions preventing the free use of the abstraction works;
- (b) order the licensee to restore, at the licensee's expense, the state of affairs which existed before a licence was issued, if doing so is reasonable and practicable under the circumstances; or
- (c) enter into an arrangement with the licensee or any other person for maintenance of the impoundment, abstraction or effluent discharge works.

**Lease of licence to abstract and use water**

**43.** (1) A licensee may lease his or her licence to another person for a period not exceeding six months, after having given a 30 days' notice to the Minister.

(2) A licensee may only lease his or her licence to another person for a period longer than the period referred to in subsection (1) if such lease is approved by the Minister.

(3) An application for approval of the leasing of a licence under subsection (2) must be submitted to the Minister for consideration in terms of subsection (4).

(4) Upon receipt of an application for approval of the leasing of a licence, the Minister must consider -

- (a) whether the terms and conditions of the proposed lease is consistent with the terms and conditions of the licence; and
- (b) any deviation from the terms and conditions of the licence that may impact adversely upon other persons and the environment.

(5) The Minister, within 60 days of receipt of the application for approval of the leasing of a licence, may grant the application, with or without conditions, or deny the application.

#### **Succession to licence to abstract and use water**

**44.** A licence passes on to the named licensee as a successor-in-title at death or transfer, but such passage does not extend the term of the licence.

#### **Issuing of licence to abstract and use water does not guarantee supply of water**

**45.** (1) The issuing of a licence may not be construed as a guarantee, express or implied, of supply of water.

(2) The State is not liable if a licensee fails to get enough supply of water, in whole or in part, as a result of drought or any other cause beyond the control of the State.

### PART IX

#### CONTROL AND PROTECTION OF GROUNDWATER

#### **Permit to drill borehole or to engage in borehole drilling programme**

**46.** (1) A person may not drill, construct, enlarge or otherwise alter a borehole, or engage in a borehole drilling programme, for the purpose of exploring for groundwater, except in accordance with a permit issued under subsection (4).

(2) A person who wants to drill, construct, enlarge or alter a borehole, or engage in a borehole drilling programme for exploring for groundwater, may apply to the Minister for a permit to drill a borehole or to engage in a borehole drilling programme in the prescribed manner.

(3) Upon receipt of the application for a permit referred to in subsection (2), the Minister must consider, among others -

- (a) the safe yield of the aquifer from which the abstraction of water is proposed to be made;
- (b) the conformity of the proposed use with the efficient water management practices; and
- (c) the existence of any traditional community and the extent of customary rights and practices in, or dependent upon the water resource to which the application relates.

(4) After considering the application in terms of subsection (3), the Minister may issue the permit to drill a borehole or to engage in a borehole drilling programme subject to the prescribed terms and conditions, and such other conditions as the Minister may determine.

(5) Sections 40, 41, 42, 43 and 44 apply, with necessary changes, to a permit to drill a borehole or to engage in a borehole drilling programme issued under this section in relation to the renewal, review, transfer, succession, suspension and cancellation of such permit.

#### **Duty to keep records and to provide information on drilling**

47. If the holder of a permit issued under section 46(4) or, where such holder has contracted another person to drill a borehole, or to do other related operations on such holder's own land or on the land of another, the holder or contractor must -

- (a) keep such records of the drillings and other operations carried out; and
- (b) furnish the Minister with information on the findings of such drillings or operations.

#### **Borehole drilling, mining and other operations**

48. (1) Despite any other law to the contrary, a person who proposes to drill a new borehole, or to improve any existing borehole, for the purpose of searching for or extracting minerals or other substances, or for road construction or any other purposes other than exploring for groundwater must -

- (a) inform the Minister of such proposal;
- (b) furnish the Minister with such data and information as the Minister may require in connection with such borehole drilling or improvement; and
- (c) take such measures as may be required by the Minister for conserving and protecting groundwater.

(2) Any excess water collected as a result of any operation contemplated in subsection (1) must be disposed of as prescribed.

#### **Blockage of access to state-owned boreholes**

49. (1) A person may not block or impede access to a state-owned borehole which is meant for public use.

(2) The Minister or water point committee concerned may summarily remove any blockage or impediment referred to in subsection (1).

(3) The costs of removing any blockage or impediment under subsection (2) is recoverable from any person responsible for the blockage or impediment.

#### **Wastage of groundwater**

50. A person may not cause or allow any groundwater to run to waste from any borehole, except -

- (a) for the purposes of testing the extent or quality of the supply, or cleaning, sterilising, examining or repairing the borehole; or

- (b) if such water interferes or threatens to interfere with the execution of any underground mining operations or any other underground works, and no other method of disposing of such water is reasonably practicable.

### **Aquifers**

**51.** (1) The Minister has power -

- (a) to determine the safe yield of any aquifer for the purpose of guiding determinations concerning the abstraction and use of water from the aquifer;
- (b) to require that an aquifer be used on a sustainable basis, including restricting abstractions so that they do not, individually or collectively, exceed the safe yield of the aquifer;
- (c) to impose special requirements and restrictions with respect to artesian wells, for the purpose of preventing wastage or contamination of water, or loss of artesian pressure; and
- (d) to carry out programmes for the recharge of aquifers.

(2) For the purposes of this section, "safe yield" means the amount of water which may be abstracted from an aquifer at a rate that will not reduce the supply to such an extent as would render such abstraction harmful to the aquifer, quality of the water or environment.

### **Licensing of borehole drillers and well constructors**

**52.** (1) A person may not engage in the trade of drilling boreholes or constructing wells unless such person is a licensed borehole driller or well constructor in terms of subsection (2).

(2) The Minister on application made to him or her in the prescribed manner, and after having satisfied himself or herself that the applicant meets the requirements contemplated in subsection (3) must issue the applicant with a licence as a borehole driller or well constructor.

(3) The Minister must prescribe requirements, including professional qualifications, terms and conditions that should be complied with by any person wishing to be issued with a licence as borehole driller or well constructor under subsection (2), and circumstances under which a licence may be cancelled or suspended.

## **PART X**

### **INTERNATIONALLY SHARED WATER RESOURCES**

#### **Internationally shared water resources**

**53.** In its dealings with neighboring states and other riparian states in relation to internationally shared water resources, the Republic of Namibia -

- (a) exercises its rights, and observes and complies with all its duties as conferred and imposed upon it by any international treaty, convention or agreement to which it is a signatory; and
- (b) must uphold such principles and rules of customary international law as are accepted and observed by all nations and as are reflected in -

- (i) the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses; and
- (ii) the Southern African Development Community Protocol on Shared Water Courses.

**Powers and functions of Minister in relation to internationally shared water resources**

**54.** The powers and functions of the Minister in relation to internationally shared water resources are -

- (a) to participate with riparian states in the establishment and continuous development of a common database regarding the description and use of shared water resources;
- (b) to engage in the joint management, planning and development of joint projects with other basin states within the Southern Africa Development Community for the purpose of promoting economic growth, environmental integrity and common understanding;
- (c) to establish and promote institutional relationships between river basin organisations within Namibia and international river basin organisations;
- (d) to ensure the participation of interested persons in the development of Namibia's position concerning internationally shared water resources;
- (e) to develop and improve Namibia's capacity for participation in shared water resource consultations and international river basin organisations; and
- (f) to establish mechanisms, or participate in the re-establishment of mechanisms, for the prevention, management and resolution of disputes relating to internationally shared water resources.

**Collection of data concerning internationally shared watercourses**

**55.** In performing his or her functions with respect to internationally shared watercourses, the Minister must collect and analyse data including, among others -

- (a) the volume of water abstracted and beneficially used within Namibia from each shared watercourse;
- (b) the nature of the beneficial uses within Namibia supported by each shared watercourse, including the economic value of the uses;
- (c) the number of persons within Namibia who rely upon each shared watercourse for domestic, agricultural or industrial purposes;
- (d) the relevant date or dates upon which the abstraction of water from each shared watercourse for beneficial use within Namibia commenced;
- (e) the availability and reliability of alternative sources of water to support existing beneficial uses within Namibia if abstractions from a shared watercourse are curtailed;
- (f) the increases in demand for water from each shared watercourse reasonably expected to occur within Namibia in the foreseeable future;

- (g) the volume and composition of waste discharged from within Namibia into each shared watercourse;
- (h) the relevant date or dates upon which the discharge into each shared watercourse commenced;
- (i) the estimated wasteload capacity of each shared watercourse;
- (j) the availability and reliability of alternative means of waste disposal within Namibia if discharges into a shared watercourse are curtailed; and
- (k) the increases in demand for the wasteload carrying capacity of each shared watercourse reasonably expected to occur in Namibia in the foreseeable future.

## PART XI

### WATER POLLUTION CONTROL

#### **No discharge of effluent without permit**

**56.** Except as otherwise provided in this Part, a person may not -

- (a) discharge any effluent directly or indirectly to any water resource on or under the ground, including through a borehole; or
- (b) construct any effluent treatment facility or disposal site above any aquifer,

unless the discharge of effluent or construction of the treatment facility or disposal site is in compliance with a permit issued under section 60.

#### **Exemption of certain discharge of effluents**

**57.** (1) The Minister, on application made to him or her, may exempt -

- (a) any person who discharges effluents from any septic tank, french drain or similar private sewerage facility for the disposal of household waste to any watercourse or groundwater from the application of section 56;
- (b) with or without conditions, certain discharge of effluents from the application of section 56 by reference to volume or composition of the effluent or type of use.

(2) The Minister may withdraw any exemption contemplated in subsection (1), or amend such exemption by imposing new or further conditions, or by withdrawing certain conditions.

#### **No discharge from sewer without permit**

**58.** A person may not discharge effluent from a sewer directly to any water resource on or under the ground, including through a borehole, unless the discharge is in compliance with a permit issued under section 60.

#### **Application for permit to discharge effluent or construct effluent treatment facility or disposal site**

**59.** (1) A person who wishes to apply for a permit to discharge effluent or to construct an effluent treatment facility or disposal site must submit to the Minister an application in the prescribed manner and form, which application must include -



- (a) the name of the applicant;
- (b) the location of the proposed discharge;
- (c) the owner and occupier of the land or facility from which the proposed discharge will be made;
- (d) the location of the proposed effluent treatment facility, if any;
- (e) the location of the proposed disposal site, if any;
- (f) any land, water resource, or environmentally sensitive area to which the discharged effluent will flow, directly or indirectly;
- (g) the proposed volume and rate of the effluent discharge;
- (h) the proposed duration of the discharge;
- (i) the anticipated chemical composition of the discharge, including pathogenic organisms;
- (j) the proposed treatment that will be applied to the effluent stream prior to discharge, including a description of any effluent treatment facility that will be constructed prior to commencement of the discharge; and
- (k) any such additional information that the Minister may prescribe.

(2) An applicant for a permit to discharge effluents or to construct effluent treatment facility or disposal site must, at least 60 days before he or she submits the application to the Minister, issue a notice in the *Gazette* -

- (a) inviting all interested persons to submit their objections in writing, if any; and
- (b) stating the place at and period within which objections are to be submitted, which period may not be less than 30 days.

(3) An application for a permit to discharge effluent or to construct effluent treatment facility or disposal site must be accompanied by -

- (a) the proof of publication of the notice referred to in subsection (2); and
- (b) the prescribed fee.

**Consideration of application for permit to discharge effluent or construct effluent treatment facility or disposal site**

**60.** (1) Upon receipt of an application referred to in section 59(1), the Minister must -

- (a) give the applicant an opportunity to make representations in support of his or her application, if there is any objection made;
- (b) require the applicant to conduct an assessment of the impact of the proposed effluent discharge or the proposed effluent treatment facility or disposal site upon the environment, including owners and occupiers of land and water resources, including ground water, in the vicinity of the proposed effluent discharge or construction of effluent treatment facility or disposal site.

- (2) After considering -
- (a) the contents of the application;
  - (b) the environmental impact analysis;
  - (c) the objections by interested persons, if any;
  - (d) representations of the applicant, if any; and
  - (e) the compliance with the criteria referred to in section 61,

the Minister may issue the permit to discharge effluent or to construct an effluent treatment facility or a disposal site, with or without conditions.

(3) An applicant or any interested person may appeal to the Water Tribunal against the decision of the Minister regarding an application for a permit to discharge effluent, or to construct an effluent treatment facility or a disposal site within 14 days of the decision.

**Criteria upon which permit to discharge effluent or to construct effluent treatment facility or disposal site may be issued**

**61.** In deciding whether a permit to discharge effluent, or to construct an effluent treatment facility or a disposal site should be issued, the Minister must consider the following criteria -

- (a) whether the proposed discharge or construction is consistent with the Master Plan;
- (b) the use of water from any source to which the discharge will be made;
- (c) the standards for waterborne contaminants adopted by a competent authority;
- (d) the impact of the discharge on existing water uses;
- (e) the impact of the proposed effluent treatment facility or disposal site upon ground water;
- (f) any impact of the proposed effluent discharge upon the environment, including owners and occupiers of land and water resources in the vicinity of the proposed effluent discharge or construction of effluent treatment facility or disposal site;
- (g) the effect of the proposed effluent discharge or construction of effluent treatment facility or disposal site on Namibia's international obligations relating to internationally shared waters;
- (h) the need to ensure the efficient and beneficial use of water resources; and
- (i) any additional criteria the Minister may prescribe.

**Contents of permit to discharge effluent or construct effluent treatment facility or disposal site**

**62.** A permit to discharge effluent or to construct an effluent treatment facility or disposal site must specify -

- (a) the person to whom the permit is granted;
- (b) the location of the discharge;
- (c) the location of the effluent treatment facility or disposal site;
- (d) the limits of any constituent elements of the discharge;
- (e) requirements for waterproofing or covering the effluent treatment facility or disposal site;
- (f) the duration of the permit;
- (g) the conditions subject to which the permit is granted;
- (h) the frequency of review of the permit under section 67; and
- (i) the fact that the permit is subject to periodic review and to suspension, amendment or revocation under this Act.

**Terms and conditions of permit to discharge effluent or construct effluent treatment facility or disposal site**

**63.** A permit to discharge effluent or to construct an effluent treatment facility or disposal site is issued subject to -

- (a) the protection of any water resource to which the discharge will be made as well as any existing or potential uses of the water resource, including environmental uses, by -
  - (i) setting out the specific volume of effluents that may be discharged;
  - (ii) setting out the rate of discharge;
  - (iii) specifying the concentration of certain constituent of the effluent;
  - (iv) specifying the times, if any, when effluents may not be discharged;
  - (v) specifying the locations where a discharge may, or may not, be made; and
  - (vi) adding any such terms regarding the protection of the water resource which the Minister determines to be appropriate;
- (b) the protection of any water resource, including ground water in the vicinity of the effluent treatment facility or disposal site, by -
  - (i) specifying the location of the effluent treatment facility or disposal site;
  - (ii) limiting the type, volume, composition or concentration of effluent discharged to the effluent treatment facility or disposal site;
  - (iii) specifying the requirements for lining or covering the effluent treatment facility or disposal site;
  - (iv) specifying the requirements for operating, managing and closing the effluent treatment facility or disposal site; and

- (v) adding any such terms for the protection of residents, water uses or water resources in the vicinity of the effluent treatment facility or disposal site which the Minister determines to be appropriate;
- (c) proper effluent discharge management, which -
  - (i) requires the monitoring, analysis and reporting on every discharge specifying the aspects of the discharge to be monitored and reported and specifying the devices to be used for such monitoring;
  - (ii) requires the preparation and approval of an effluent discharge management plan;
  - (iii) requires the payment of charges;
  - (iv) may require the addition of any such terms regarding proper effluent management which the Minister determines to be appropriate; and
  - (v) requires the protection of public health.

**Standards of effluent quality**

**64.** The Minister, after consultation with competent authorities, may prescribe minimum standards of effluent quality with which effluent discharges must comply.

**Duration of permit to discharge effluent or construct effluent treatment facility or disposal site**

**65.** (1) The duration of a permit to discharge effluent or to construct effluent treatment facility or disposal site may not exceed a term of five years.

(2) Subject to sections 67 and 70, a permit to discharge effluent or to construct effluent treatment facility or disposal site expires at the end of its term of duration.

**Renewal of permit to discharge effluent or construct effluent treatment facility or disposal site**

**66.** (1) A permit to discharge effluent or to construct an effluent treatment facility or disposal site may be renewed at least three months prior to its expiry if the permit holder submits an application for renewal to the Minister in the prescribed manner.

(2) When considering an application for renewal submitted under subsection (1), the Minister must consider the application using the criteria for determination of application referred to in section 61.

**Review of permit to discharge effluent or construct effluent treatment facility or disposal site**

**67.** (1) The Minister, at any time during the duration of a permit to discharge effluent or to construct an effluent treatment facility or disposal site, may review such permit and amend the terms and conditions, if he or she considers it to be in the public interest.

(2) Before the Minister amends the terms and conditions of a permit to discharge effluent or to construct an effluent treatment facility or disposal site under subsection (1), the Minister, may invite the permit holder to make representations in respect of the amendment.

**Transfer of permit to discharge effluents or construct effluent treatment facility or disposal site**

**68.** (1) A holder of a permit to discharge effluent or to construct an effluent treatment facility or disposal site may apply to the Minister for approval to transfer his or her permit to another person.

(2) Upon receipt of an application for transfer of a permit to discharge effluent or to construct an effluent treatment facility or disposal site, the Minister must -

- (a) evaluate whether the terms and conditions of the proposed transfer are consistent with the terms and conditions of the permit;
- (b) evaluate any deviation from the terms and conditions of the permit that may have an adverse impact upon other persons or the environment; and
- (c) give the proposed transferee and any interested persons an opportunity to make representations with regard to the application, if they so wish.

(3) The Minister, within 60 days of receipt of the application for transfer of a permit to discharge effluent or to construct an effluent treatment facility or disposal site, may grant the application, with or without additional conditions, or deny the application.

**Succession to permit to discharge effluent or construct effluent treatment facility or disposal site**

**69.** A permit to discharge effluent or to construct effluent treatment facility or disposal site must pass to the named permit holder as a successor-in-title at death or transfer, but that passage of the permit to a successor-in-title does not extend the duration of the permit.

**Suspension and cancellation of permit to discharge effluent or construct effluent treatment facility or disposal site**

**70.** (1) Subject to subsection (2), the Minister may cancel a permit to discharge effluent or to construct an effluent treatment facility or disposal site, or suspend it in whole or in part, if -

- (a) the permit holder fails to comply with this Act or any of the terms or conditions of the permit;
- (b) the permit holder fails to commence with the discharge or construction operations within the period stipulated in the permit;
- (c) having commenced with the discharge of effluent or construction of an effluent treatment facility or disposal site, the permit holder ceases the discharge or construction; or
- (d) it is in the public interest to do so.

(2) The Minister may not suspend or cancel a permit referred to in subsection (1), without giving the permit holder an opportunity to make representations within 30 days of receipt of the notification of the Minister's intention to suspend or cancel such permit.

**Effects of expiry or cancellation of permit to discharge effluent or construct effluent treatment facility or disposal site**

71. If a permit to discharge effluent or to construct an effluent treatment facility or disposal site expires and is not renewed, or is cancelled prior to its expiry the Minister may -

- (a) order the permit holder to restore, at the holder's expense, the state of affairs that existed before the permit was granted, if doing so is reasonable and practicable under the circumstances; or
- (b) enter into an arrangement with the permit holder or any other person for the maintenance of the effluent discharge works.

## PART XII

## PROTECTION OF WATER RESOURCES

**Declaration of water management area**

72. (1) The Minister, by notice in the *Gazette*, may declare an area as water management area for the purpose of protecting any water resource, riverine habitat, watershed, wetland, environment or ecosystem at risk of depletion, contamination, extinction or disturbance from any source, including aquatic and terrestrial weeds, and such notice must include -

- (a) a description of the purposes for which the area is so declared;
- (b) the geographic boundaries of the area; and
- (c) the limitations and prohibitions applicable within the area.

(2) The Minister may not declare any area as a water management area without giving owners or occupiers of land within a proposed water management area the opportunity to make representations regarding the need for the water management area, the proposed boundaries of the area or the land use limitations and prohibitions proposed for the area.

(3) The boundaries of any water management area must be determined in a manner that takes competing uses of the area concerned into consideration.

(4) If the declaration of a water management area results in or requires the acquisition of land through expropriation, every such acquisition, including the award of compensation and appeals related thereto must be conducted in accordance with the law on expropriation of property in the public interest.

**Effect of declaration of water management area**

73. (1) A person may not undertake or cause to be undertaken any activity that impairs or conflicts with the purposes for which a water management area is declared.

(2) Without prejudice to the generality of subsection (1), the Minister may prescribe limitations to be observed within a water management area, which must include, among others, a prohibition or limitation on -

- (a) on the abstraction of water;
- (b) on the erection of any structures;

- (c) on the application or storage of any chemicals, including pesticides or fertilisers;
- (d) on the alteration of existing land contours, including any grading or construction of roads or cultivation of crops;
- (e) on the clearing or harvesting of vegetation, including the felling of trees, the removal of riparian growth or the draining of wetlands, or use of wetland resources;
- (f) on the discharge of effluent;
- (g) on mining, dredging or the reclamation of land; and
- (h) necessary for the protection of a water resource.

(3) If a limitation under subsection (2)(a) or (f) affects existing licences or permits issued under this Act, the limitation must, to the extent possible, be assessed and distributed proportionately among all affected licences or permits, as the case may be.

#### **Amendment of water management area and withdrawal of declaration of area**

- 74.** The Minister, by notice in the *Gazette*, may -
- (a) amend the geographic boundaries of a water management area, or any prohibition or limitation applicable to the area, if circumstances in respect of the area change or so require; or
  - (b) withdraw a declaration of a water management area if the circumstances under which the declaration was made no longer exist.

### PART XIII

#### WATER USE, CONSERVATION AND EFFICIENT WATER MANAGEMENT PRACTICES

##### **Development of efficient water management practices**

**75.** (1) The Minister must prescribe procedures on how to develop and adopt efficient water management practices that minimise wastage of water, encourage efficient water use and advance the control of pollution, either for regions in general or for a specific region, or for any area defined by the Minister.

(2) In prescribing procedures as to how to develop and adopt efficient water management practices in terms of subsection (1), the Minister must consult public and private institutions dealing with environment and water, and water users concerned, and may consider any of the following measures -

- (a) economic instruments, including pricing structures;
- (b) water metering;
- (c) standard setting;
- (d) public education;
- (e) efficiency in improved water technology, particularly improvements in irrigation technology; and
- (f) such other measures as the Minister may consider necessary.

**Implementation of efficient water management practices**

76. (1) The Minister must undertake periodic reviews of water users throughout Namibia to determine their compliance with the efficient water management practices.

(2) If a water user fails to comply with efficient water management practices, the Minister must issue a notice of non-compliance to the non-compliant water user requesting the user to take corrective measures within a period specified in the notice which period may not exceed 60 days from the date of receipt of the notice.

(3) Subject to subsection (4), if the non-compliant water user fails to comply with the notice referred to in subsection (2), the Minister may -

- (a) cancel or suspend the user's licence, if the user is licensed; or
- (b) impose monitoring and such other measures which the Minister determines to be appropriate in the circumstances.

(4) The Minister may not take any decision under subsection (3) without affording the water user and any other interested persons the opportunity to show cause why -

- (a) a licence may not be suspended or cancelled; or
- (b) monitoring measures and such other measures may not be imposed.

(5) A water user or any interested person who is not satisfied with the decision made by the Minister under subsection (3) may file a notice of appeal to the Water Tribunal within 14 days from the date the decision was made.

**Transfer of conserved irrigation water**

77. (1) A water user who has conserved irrigation water by successfully applying efficient water management practices may transfer such water, except groundwater, to another person on the approval of the Minister made upon application.

(2) An application for approval of the transfer of conserved water under subsection (1) must be submitted to the Minister for consideration in terms of subsection (3).

(3) Upon receipt of an application for approval of the transfer of conserved irrigation water referred to in subsection (2), the Minister must consider -

- (a) whether the terms and conditions of the proposed transfer is consistent with the terms and conditions of the conservation of irrigation water;
- (b) any deviation from the terms and conditions of the licence to abstract and use water that may impact adversely upon other persons and the environment; and
- (c) the purposes for which water will be used by the transferee.

(4) The Minister, within 60 days of receipt of the application for approval of the transfer of conserved irrigation water, may grant the application, with or without additional conditions, or deny the application.



## PART XIV

## DAM SAFETY AND FLOOD MANAGEMENT

**Blockage of watercourse**

78. (1) A person may not engage in any construction activity that impounds, blocks or otherwise impedes the flow of water in a watercourse without the Minister's written approval authorising such activity.

(2) The Minister may take any reasonable measures to remove or to minimise the effects of an unauthorised blockage of a watercourse, and may recover from any person responsible for the blockage the costs of any such measures taken.

(3) Any person responsible for causing the unauthorised blockage of a watercourse is responsible for any damage to any person, property, or the environment caused as a result of the unauthorised blockage.

(4) The Minister has the right to bring an action for damages against any person responsible for unauthorised blockage of a watercourse that caused damage.

**Control measures for dam safety**

79. (1) The owner of a dam must -

- (a) upon the Minister's request, provide the Minister with any information, drawings, specifications, design assumptions, calculations, documents and test results within the period specified in the request; and
- (b) give access to the dam to any person authorised by the Minister to inspect and determine whether -
  - (i) the dam is a dam with a safety risk;
  - (ii) the dam should be declared under subsection (2) to be a dam with a safety risk;
  - (iii) a directive should be issued for specific repairs or alterations to the dam; or
  - (iv) the owner has complied with the provisions of this Act applicable to the dam.

(2) The Minister, by notice in the *Gazette*, may categorise dams to be dams with a safety risk, or declare a dam to be a dam with a safety risk.

(3) Subject to subsection (7), the Minister, by written notice to the owner of a dam with a safety risk, may direct the owner -

- (a) to submit, at the owner's cost, and within a period specified in the notice, a report by a professional engineer regarding the safety of the dam; or
- (b) to undertake, at the owner's cost, and within a period specified in the notice, any specific repairs or alterations to the dam which are necessary to protect the public, property and the resource quality from any risk of structural failure of the dam.

(4) Any interested person may petition the Minister for the review and evaluation of any dam which they reasonably believe to be a dam with a safety risk.

(5) Upon receipt of the petition under subsection (4), the Minister must give the owner of such dam an opportunity to make representations regarding the petition, before the Minister decides whether to categorise such dam a dam with a safety risk or not.

(6) If the owner of the dam with a safety risk fails to comply with the directive contemplated in subsection (3)(b), the Minister may undertake the repairs or alterations and recover the costs from the owner.

(7) Before issuing a directive under subsection (3)(b), the Minister must -

- (a) be satisfied that the repairs or alterations 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 should the dam fail.

### **Responsibilities of professional engineer**

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

(2) A professional engineer appointed under this Part 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) A professional engineer appointed under this Part to carry out a dam safety evaluation must -

- (a) inspect whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam safety are 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.

### **Registration of dam with safety risk**

**81.** (1) The Minister must keep a register of dams with a safety risk.

(2) For the purposes of flood risk prevention and flood management and control, the owner of a dam with a safety risk must register that dam with the Minister in the prescribed manner.

(3) An application for registration must be made within 120 days after the date on which -

(a) a notice referred to in section 79(2) declaring a category of dams to be dams with a safety risk was published; or

(b) an already completed dam is declared to be a dam with a safety risk.

(4) A successor-in-title to an owner of a dam with a safety risk must forthwith inform the Minister of the succession, and the Minister must record the successor's name in the register.

**Factors to be considered in declaring dam or category of dams as dam or category of dams with a safety risk**

**82.** In declaring a category of dams as dams with a safety risk, or a dam as 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 such dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned;

(ii) the person by whom such 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 such dam.

**Exemption of owners of certain categories of dams**

**83.** (1) The Minister, by notice in the *Gazette*, may exempt an owner of a dam belonging to certain category of dams from complying with the provisions of sections 79 and 81 subject to such conditions as the Minister may determine.

(2) The Minister may withdraw the exemption referred to in subsection (1) or impose further or new conditions in respect of the exemption by notice in the *Gazette*.

(3) Before deciding on an exemption under subsection (1) or (2), the Minister must consider -

(a) the degree of risk or potential risk posed by the dam or category of dams to public safety, property and the resource quality;

(b) the manner of design, construction, alteration, repair, impoundment of water in, operation or abandonment of the dam or category of dams;

(c) the supervision involved in the dam or category of dams;

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

### **Prevention of flood risk**

**84.** (1) For the purpose of preventing or minimising the risk of flooding, flood damage and water pollution, the Minister may -

- (a) prohibit the construction on submersible lands of dykes, levees or other structures likely to hinder the runoff of floodwater, or authorise the construction of such structures if they are necessary for the protection of already existing residences or other private structures;
- (b) alter or demolish dykes, embankments, levees, structures or other works, irrespective of their legal status, if in the Minister's opinion, they hinder water runoff or extend the flood plain with harmful results;
- (c) prohibit the growing of crops, the building of structures or the placing of deposits on land located between a watercourse and any protective dykes, embankments or levees;
- (d) consult with regional and local authority councils in determining the geographic extent of floodplain areas and assist such councils in regulating the development and use of lands within such areas; or
- (e) prescribe measures for the control and management of storm and flood risk within local authority areas.

(2) A person who is not satisfied with the decision or order of the Minister under subsection (1) may appeal to the Water Tribunal within 14 days from the date such person was notified of such decision or order.

(3) An appeal referred to in subsection (2) may not stay the operation of the Minister's decision or order, if the decision or order relates to the existence of an emergency risk of flooding or imminent emergency risk of flooding.

## **PART XV**

### **WATER REGULATORY BOARD**

#### **Establishment of Water Regulatory Board**

**85.** There is established a juristic person to be known as the Water Regulatory Board consisting of five members appointed by the Minister.

**Objects of Board**

**86.** The objects of the Board are to exercise control over water and effluent pricing in the water supply and effluent discharge industries, and to provide quality independent assessment of water pricing proposals by water utilities and suppliers.

**Functions and powers of Board**

- 87.** (1) The functions of the Board are -
- (a) to determine, by notice in the *Gazette*, with the concurrence of the Minister responsible for finance, the maximum charges, fees and tariffs relating to -
    - (i) the supply of water by water utilities and suppliers to any water user for domestic, commercial, industrial or agricultural use;
    - (ii) the issue of a licence to abstraction and use water under this Act;
    - (iii) the issue of a permit to discharge effluent or to construct effluent treatment facility or disposal site, and the receipt of effluent by any person, under this Act; and
    - (iv) the evaluation or examination of an effluent treatment facility or disposal site,in accordance with the water and effluent pricing policy determined in terms of section 105; and
  - (b) to perform such other functions as the Minister may prescribe.
- (2) The Board may -
- (a) for the purposes of subsection (1), carry out investigations as it or the Minister may consider necessary or expedient;
  - (b) borrow money subject to the written approval of the Minister;
  - (c) sell or dispose of any of its assets with the prior written approval of the Minister.

**Qualification for appointment as member of Board**

- 88.** (1) To qualify for appointment as member of the Board a person must -
- (a) have knowledge and experience in one or more of the following disciplines, namely, finance, economy, commerce, law, business management, social science, water engineering, or water or environmental resources management; and
  - (b) be a Namibian citizen.
- (2) The Minister must appoint one of the members of the Board to be the chairperson of the Board.

**Term of office of member of Board**

**89.** A member of the Board holds office for a term of three years, and is eligible for re-appointment at the expiration of that term.

**Vacation of office by member of Board and filling of casual vacancy**

**90.** (1) A member of the Board vacates office, if such member -

- (a) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (b) resigns as a member after giving the Minister a 30 days' written notice of such member's intention to resign;
- (c) has been absent for three meetings of the Board in a year, without the permission of the chairperson of the Board; or
- (d) is removed by the Minister under subsection (2).

(2) The Minister may remove a member from office, if such member -

- (a) is guilty of misconduct; or
- (b) fails to comply with or contravenes this Act.

(3) If a member dies or vacates office, the vacancy must be filled for the unexpired portion of the term of office of that member.

**Committees of Board**

**91.** (1) The Board may establish any committee of the Board to perform any functions of the Board which the Board may assign to the committee.

(2) A committee of the Board consists of such members of the Board as the Board may appoint to the committee, but the Board may appoint any other person to serve on a committee, if the Board considers it necessary.

(3) The Board must designate any member of a committee to be the chairperson of the committee.

**Meetings of Board**

**92.** (1) The first meeting of the Board must be held at a place and time as the Minister may determine and any meeting of the Board thereafter must be held at a place and time as the Board may determine.

(2) The majority of the members of the Board forms a quorum for any meeting of the Board.

(3) The chairperson of the Board presides at all meetings of the Board.

(4) If the chairperson is absent from any meeting of the Board, the members present must elect a member to preside at that meeting and such member may perform all the functions and exercise all the powers of the chairperson.

(5) The decision of the majority of the members present at any meeting of the Board constitutes a decision of the Board, and in the event of any equality of votes the member presiding has a casting vote in addition to a deliberative vote.

**Validity of decisions**

**93.** A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason only of -

- (a) a vacancy in the Board;
- (b) the fact that a person who is not entitled to sit as member of the Board sat as a member at the time when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the requisite majority of the members who were present at the time and entitled to sit as members.

#### **Funds of Board**

**94.** The Board must be funded with moneys appropriated by Parliament for that purpose, and may receive funds from any source and use such funds as such source may direct or agree with the Board.

#### **Accounts of Board**

- 95.** (1) The Board must -
- (a) open and maintain a banking account into which all moneys received for the Board must be deposited and from which all its expenses may be defrayed; and
  - (b) keep such books of accounts as are necessary to represent fairly the state of affairs and business of the Board and to explain the transactions and financial position of the Board.

(2) Any unexpended balance in the account of the Board at the end of any financial year of the Board must be carried forward as a credit in the account to the next financial year.

#### **Payment of allowances**

**96.** Members of the Board who are not employees in the Public Service must be paid from the funds of the Board such allowances, including travel and subsistence allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.

#### **Financial year of Board**

- 97.** The financial year of the Board ends on 31 March in each year.

#### **Reports of Board**

- 98.** (1) The Board must -
- (a) not later than three months after the end of each financial year, submit such books of accounts and financial statements to the Auditor-General for audit; and
  - (b) not later than six months after the end of each financial year, compile an annual report that includes the activities of the Board and the audit report, and submit it to the Minister.

(2) The Minister must table the annual report in the National Assembly within 60 days, if the National Assembly is in session, or, if it is not in session, within 30 days after the commencement of its next session.

**Chief executive officer**

**99.** (1) Subject to the approval of the Minister, the Board must appoint a suitably qualified and experienced person as chief executive officer of the Board.

(2) The chief executive officer -

- (a) is appointed for a five year term of office, subject to a six months probation, and on such terms and conditions of service, as the Board, in agreement with the Minister and the Minister responsible for finance, may determine;
- (b) is eligible for reappointment; and
- (c) may be removed from office before the expiry of the five year term in accordance with the terms of the contract of employment.

(3) Whenever the office of the chief executive officer becomes vacant or the chief executive officer is for any reason unable to perform his or her functions, the Board may -

- (a) designate any staff member of the Board; or
- (b) if circumstances so require, appoint any person, after consultation with the Minister,

to act as chief executive officer, until the vacancy is filled or the chief executive officer is able to perform his or her functions.

(4) A person designated or appointed in terms of subsection (3) has all the powers and performs all the functions of the chief executive officer.

(5) Subject to this Act, the directives and policies of the Board and the general supervision of the Board, the chief executive officer -

- (a) carries out of the resolutions of the Board and manages the affairs of the Board and performs the day to day administrative functions of the Board;
- (b) supervises the employees of the Board and exercises disciplinary powers over such employees; and
- (c) is the accounting officer of the Board charged with the bookkeeping of moneys received by and payments made by the Board, and must keep such accounting records as are necessary to give a true reflection of the transactions and financial situation of the Board and represent accurately the state of affairs and business of the Board.

(6) Unless the Board directs otherwise in relation to any matter, the chief executive officer must attend every meeting of the Board, and may participate in discussions on any matter under consideration at such meeting, but has no right to vote at such meeting.

**Staff of Board**

**100.** (1) The Board in agreement with the Minister and the Minister responsible for finance -

- (a) may employ such persons as it may consider necessary to perform the functions of the Board;



- (b) determines the terms and conditions of service of its employees, which may include medical aid, housing, gratuities and pension benefits.

(2) The Board may enter into agreement with any person to perform any act or provide any service for or on behalf of the Board in respect of any matter related to the functions of the Board.

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

**101.** (1) The Board, in writing and on such conditions as it may determine, may delegate any power or assign any function conferred or imposed upon the Board by or under this Act, to any committee, the chief executive officer or any employee of the Board.

(2) With the prior approval of the Board, the chief executive officer, subject to such conditions as he or she thinks fit, may authorise in writing any employee of the Board to perform any function assigned to the chief executive officer by or under this Act.

(3) The Board may not delegate the power to make rules or to appoint the chief executive officer.

#### **Confidentiality**

**102.** A member of the Board or committee, the chief executive officer, an employee of the Board, or any other person who is or was involved in the administration of this Act, may not disclose to any person any confidential information acquired in the performance of any function whether before, during or after his or her involvement in the affairs of the Board, except for the purposes of the performance of his or her functions in terms of this Act, or when required to do so by any law or a court of law.

#### **Rules by Board**

**103.** The Board, with the approval of the Minister, may make rules relating to -

- (a) the measures to be implemented by the Board in order to protect its funds;
- (b) the policies to be followed by the Board in the borrowing of money and the procurement of goods and services;
- (c) the procedures in respect of meetings of the Board and committees of the Board;
- (d) the manner how allowances payable to members are paid;
- (e) the good management and administration of the affairs of the Board and the effective execution of its functions;
- (f) personnel matters, including disciplinary measures and procedures;
- (g) the keeping of records, minutes and books of account; or
- (h) any other matter which the Board considers necessary or expedient for the proper exercise of its powers and effective carrying out of its functions.

#### **Appeals against determination of Board**

**104.** A person who is not satisfied with a determination of the Board relating to charges, fees, or tariffs may appeal to the Board within 30 days of receipt of the notification of such determination.

## PART XVI

DETERMINATION OF WATER AND EFFLUENT PRICING  
POLICY AND RECOVERY OF CHARGES, FEES AND TARIFFS**Determination of water and effluent pricing policy**

**105.** (1) Despite anything to the contrary contained in any other law, the Minister must determine water and effluent pricing policy after consultation with interested persons at a meeting invited by the Minister by notice in the *Gazette*.

(2) Despite anything to the contrary in any law contained, a person may not levy or charge any charge, fee or tariff exceeding a maximum charge, fee or tariff determined in terms of section 87(1)(a).

**Recovery of water use and effluent discharge charges, fees and tariffs**

**106.** (1) The charges, fees and tariffs contemplated in section 87(1)(a) are recoverable in the prescribed manner.

(2) The Minister, by notice in the *Gazette*, with the concurrence of the Minister responsible for finance, may determine the rate of interest charges payable on default payment of charges, fees and tariffs contemplated in section 87(1)(a).

(3) If water use or effluent discharge charges or fees are not paid on due date -

(a) interest is chargeable during the period of default at a rate determined under subsection (2);

(b) the Minister may restrict or suspend -

(i) the supply of water to a defaulter water user, if water is supplied by the Department of Water Affairs; or

(ii) the licence or permit to which the charges, fees or tariffs relate,

until the charges, fees or tariffs, together with interest, are paid.

(4) Before the restriction or suspension referred to in subsection (3) is imposed, the Minister must give the water user concerned an opportunity to make representations.

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

(6) A water user whose water use is restricted or suspended under this section may not later claim the water to which such water user would otherwise have been entitled during the period of restriction or suspension.

**Water use and effluent discharge charges, fees and tariffs are binding on land**

**107.** (1) The charges, fees and tariffs, including any interest thereof, are binding on the land to which the water use or effluent discharge relates and are recoverable from the current owner or occupier of the land in the prescribed manner, without releasing any other person who may be liable for the charges, fees or tariffs.

(2) Upon a written application by the current owner or occupier, the Minister or any person supplying water or discharging effluent must issue a statement of account to the applicant, within 30 days of receipt of the application, showing the amount of any

unpaid water use or effluent discharge charges, fees or tariffs binding on the land to which the supply of water or discharge of effluent relates, including any interest due in respect of such amount.

(3) If the statement of account referred to in subsection (2) is not issued to the applicant within 30 days of receipt of the application as required in that subsection, the unpaid charges, fees or tariffs, including interest thereof, are no longer recoverable from the current owner or occupier of the land as required in subsection (1).

## PART XVII

### SERVITUDES

#### Acquisition of servitudes

**108.** (1) A person who is authorised under this Act to abstract or use water or discharge effluent may -

- (a) claim a servitude of -
  - (i) abutment;
  - (ii) aqueduct; or
  - (iii) submersion; or
- (b) obtain an amendment to any existing servitude of abutment, aqueduct or submersion,

to an extent necessary to give effect to a licence or permit issued under this Act.

- (2) The servitude claimed under subsection (1)(a) may be -
  - (a) a personal servitude in favour of the claimant; or
  - (b) a praedial servitude in favour of the claimant in the claimant's capacity as owner of land on which the claimant may use the water.

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

(4) A person who intends to claim a servitude under this section must follow the procedure referred to in section 110.

#### Rights and duties of servitude holders and landowners

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

- (a) the purpose of constructing, altering, replacing, inspecting, maintaining, repairing or operating the relevant waterworks; or
- (b) any purpose necessary for the effective enjoyment of the servitude.

(2) Subject to the law governing properties, the holder of a servitude may, in a reasonable manner -

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

to an extent necessary for the control, operation and maintenance of the relevant waterworks.

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

- (a) maintain the servitude area;
- (b) repair and maintain waterworks relating to the servitude; and
- (c) repair and maintain access roads associated with the servitude.

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

(5) On termination of a servitude, the holder of the servitude must rehabilitate the land that is subject to the servitude to an extent that is reasonably possible.

#### **Procedure for acquisition and amendment of servitude**

**110.** (1) A servitude may be acquired, amended or cancelled by -

- (a) executing and registering an applicable deed in terms of the Deeds Registries Act or the Registration of Deeds in Rehoboth Act whichever is applicable; or

(b) by means of an order of the High Court.

(2) Upon a reasonable notice to the landowner, a person claiming a servitude or proposing an amendment to a servitude may enter on the land on which the servitude is claimed or the amendment is proposed -

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

if it is necessary for determining the nature and extent of the servitude or amendment to the servitude.

(3) If a person acting under subsection (2) caused any damage to the land referred to in that subsection, such person may -

- (a) where possible, repair the damage at his or her own cost; or
- (b) compensate the landowner with an amount agreed between the parties, or an amount determined by a competent court.

(4) An owner of the land against which a servitude is claimed may claim to share in the use of any proposed waterworks relating to the servitude if -

- (a) he or she is authorised to use water from a specific water resource;
- (b) the use of the waterworks is compatible with the licensed or permitted water use; or
- (c) he or she agrees to be responsible for a proportionate share of the costs of constructing, repairing and maintaining the waterworks.

(5) A claim to share in the use of the waterworks under subsection (4) may be dealt with -

- (a) in an agreement between the parties; or
- (b) in the High Court order contemplated in section 113.

#### **Powers of High Court in respect of claim for servitude**

**111.** On hearing a claim for a servitude or for an amendment to a servitude under section 110, the High Court may -

- (a) award the claim with or without modifications on such terms as it considers just;
- (b) award compensation or refuse to award compensation;
- (c) determine whether a proportionate amount of compensation should be paid to the holder of a right of lease, mortgage, use or similar right over the property, and order that such compensation be paid; or
- (d) dismiss the claim.

**Compensation payable for granting of servitude**

**112.** (1) In determining a just compensation payable for the granting of a servitude or amendment thereof, a High Court must take into account all relevant factors, including -

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

(2) The High Court may determine the time and manner of payment of compensation.

**Noting of servitude and amendment by endorsement against title deed**

**113.** (1) The acquisition, amendment or cancellation of a servitude by virtue of an order of the High Court takes effect when the order is noted in terms of the Deeds Registries Act, or the Registration of Deeds in Rehoboth Act.

(2) Nothing in this section prevents a person from electing to register the acquisition, amendment or cancellation of a servitude in accordance with the Deeds Registries Act or the Registration of Deeds in Rehoboth Act.

**Cancellation of servitude**

**114.** An owner of land subject to a servitude of abutment, aqueduct or submersion may -

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

apply to the High Court for the cancellation of the servitude.

**Joint waterworks involving servitude**

**115.** Subject to Part XIV, two or more holders of licence to abstract and use water or of permits to discharge effluent under this Act, may agree to construct a joint waterworks, and create a servitude associated with such waterworks to give effect to their water abstraction and use or effluent discharge.

**Ownership of waterworks on land belonging to another**

**116.** (1) The State or a water management institution retains ownership of a waterworks placed in good faith on land belonging to another, and may -

- (a) remove such waterworks from such land; or
- (b) transfer the rights held in respect of improvements on the land to any person.

(2) If a waterworks is removed from any land under subsection (1)(a), the owner of such land -

- (a) may require the Minister or the water management institution concerned to restore, as far as possible, any physical damage to the land caused by the removal; and
- (b) apart from the claim referred to in paragraph (a), has no other claim against the Minister or the water management institution concerned.

(3) The rights of the State or a water management institution in respect of improvements on land not owned by the State or the institution may be transferred to any person.

**Transfer of personal servitude**

**117.** (1) Despite anything to the contrary in any law contained, a personal servitude, whether registered or not, held by the State or a water management institution may be transferred -

- (a) from the State to a water management institution; or
- (b) from a water management institution to the State or to another water management institution.

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

**PART XVIII****WATER TRIBUNAL AND ARBITRATION AND  
MEDIATION OF DISPUTES****Establishment of Water Tribunal**

**118.** (1) There is established a special court to be known as the Water Tribunal, which -

- (a) has jurisdiction over the whole of Namibia and its seat in Windhoek;
- (b) may -

- (i) hear and decide matters relating to a water resource anywhere in Namibia;
- (ii) summon any person to its hearings, either as a party or witness to the matter; or
- (iii) hear and decide appeal matters referred to it under section 120.

(4) Subject to subsection (5), the Water Tribunal consists of not less than five and not more than seven members appointed by the Minister in a part-time capacity on the recommendation of the Judge President.

(5) In recommending persons for appointment, or appointing persons, as members of the Water Tribunal, the Judge President or the Minister, as the case may be, must consider gender balance.

(6) A person must have at least knowledge, skills and experience in law, engineering, science, economics, or water resource management or management in other water related disciplines to qualify for appointment as member of the Water Tribunal.

(7) Subject to subsection (9), a member of the Water Tribunal holds office for a term of three years and is eligible for re-appointment at the expiration of that term.

(8) The Minister must appoint from amongst the members of the Water Tribunal -

- (a) a member who has qualifications, experience and skills in law as chairperson of the Water Tribunal; and
- (b) any member as deputy chairperson.

(9) A member of the Water Tribunal vacates office -

- (a) after giving the Minister a 30 days' notice of his or her intention to resign;
- (b) if he or she is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (c) if he or she is declared insolvent; or
- (d) if his or her appointment is terminated under subsection (10).

(10) The Minister, after consultation with the Judge President, and after giving the member an opportunity to make representations, and considering such representations, may terminate the appointment of any member of the Water Tribunal for any valid reason.

(11) The Minister, with the concurrence of the Minister responsible for finance, must determine the terms and conditions of service and allowances, including subsistence and travel allowances and sitting allowances of the members of the Water Tribunal who are not in the employ of the State.

(12) The expenditure of the Water Tribunal must be defrayed from moneys appropriated by Parliament for that purpose, but the Tribunal may receive any funds from any other source to fund any project as the source may direct or agree with the Water Tribunal.

(13) The Minister may establish as many regional offices of the Water Tribunal as possible.



### Operation of Water Tribunal

**119.** (1) The Permanent Secretary must designate staff members of the Ministry sufficient in number to provide administrative, technical and clerical support to the Water Tribunal.

(2) Subject to subsection (3), the chairperson of the Water Tribunal or, in the absence of the chairperson, the deputy chairperson, presides at all sittings of the Water Tribunal.

(3) After having considered the necessary field of knowledge for the purposes of hearing a particular matter, the chairperson may nominate one or more members of the Water Tribunal to hear a matter, and a decision by such member or members constitutes a decision of the Water Tribunal.

(4) The Water Tribunal or any member of the Tribunal is not liable for any act or omission committed in good faith while performing any functions in terms of this Act unless such act or omission has been committed due to the negligence of the Tribunal such member.

(5) The Water Tribunal may -

(a) subpoena for questioning any person who may be able to give information relevant to the issues; or

(b) subpoena any person who is believed to be in possession or control of any book, document or object relevant to the issues, to appear before the Tribunal and to produce such book, document or object.

(6) A subpoena must be signed by a member of the Water Tribunal and must -

(a) specifically require the person named in it to appear before the Tribunal;

(b) state the date, time and place at which the person must appear; and

(c) sufficiently identify any book, document or object to be produced by such person.

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

(8) The party at whose request a subpoena was issued must pay witness fees, travel and subsistence allowances to a person subpoenaed to appear before the Water Tribunal, at the applicable High Court scale.

(9) The Water Tribunal may administer an oath or accept an affirmation from any person called or subpoenaed to give evidence.

(10) A person commits an offence, if such person willfully -

(a) obstructs or in any way interferes with, or knowingly prevents, the service of any summons issued by the Water Tribunal; or

(b) dissuades, hinders or prevents or attempts to dissuade, hinder or prevent any person lawfully summoned to appear as a party or witness before the Water Tribunal, from so appearing.

- (11) A person commits contempt of the Water Tribunal -
- (a) if, after having been subpoenaed to appear before the Tribunal, the person without good cause does not attend;
  - (b) if the person, without good cause, fails to produce any book, document or object specified in a subpoena;
  - (c) if, after having appeared in response to a subpoena, the person fails to remain in attendance until excused by the Tribunal;
  - (d) by refusing to take the oath or to make an affirmation as a witness when the Tribunal so requires;
  - (e) by refusing to answer any question fully and to the best of the person's knowledge and believe, but subject to subsection (7);
  - (f) if during the proceedings, the person behaves improperly, or insults any member of the Tribunal, or interrupts the proceedings; or
  - (g) if the person prejudices or improperly influences the proceedings of the Tribunal.
- (12) The Water Tribunal may -
- (a) forthwith remove and detain in custody the person suspected of any contempt of the Water Tribunal referred to in subsection (11), as if he or she were a prisoner awaiting trial, until the rising of the Water Tribunal;
  - (b) refer any contempt of the Water Tribunal referred to in subsection (11) to a magistrate's court for trial.

### Appeal to Water Tribunal

**120.** (1) A person who is not satisfied with any decision of the Minister or any water management institution made under this Act relating to -

- (a) a water related matter;
- (b) a water resource;
- (c) any licence or permit issued under this Act; and
- (d) an aquifer,

may appeal to the Water Tribunal against such decision and the appeal must be noted in writing within 21 days of such decision.

- (2) The notice of appeal must -
- (a) set out every question of law and of facts in respect of which the appeal is lodged;
  - (b) set out the grounds for the appeal;
  - (c) be lodged with the Water Tribunal; and
  - (d) be served on every party to the matter.

(3) The Water Tribunal may, for good reason, condone the late lodging of an appeal.

(4) The Minister or a water management institution against whose decision an appeal is lodged must within 30 days of receipt of the service of the notice of appeal -

- (a) send to the Water Tribunal all documents relating to the matter, together with the reasons for its decision;
- (b) allow the appellant and every party opposing the appeal to make copies of the documents and reasons.

(5) An appeal before the Water Tribunal must be heard by one or more members, as the chairperson may determine.

(6) A party to an appeal may be represented by a person of such party's choice.

(7) Appeals to the Water Tribunal take the form of a rehearing, in that, the Tribunal -

- (a) may receive evidence; and
- (b) must give the appellant and every party opposing the appeal an opportunity to present their case.

(8) The Water Tribunal must keep minutes containing a summary of the proceedings of every hearing.

#### **Appeal against decision of Water Tribunal**

**121.** (1) A party who is not satisfied with the decision of the Water Tribunal, on a question of law, may appeal to the High Court against such decision.

(2) The appeal must be noted in writing within 21 days of the decision of the Water Tribunal.

- (3) The notice of appeal must -
  - (a) set out every question of law in respect of which the appeal is lodged;
  - (b) set out the grounds for the appeal;
  - (c) be lodged with the High Court and with the Water Tribunal; and
  - (d) be served on every party to the matter.

(4) The appeal must be conducted as if it were an appeal from a magistrate's court to the High Court.

#### **Water Tribunal to arbitrate certain disputes**

**122.** The Water Tribunal may, in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965), arbitrate a dispute between parties if both parties agree in writing.

#### **Mediation of disputes**

**123.** (1) The Minister, at any time and in respect of any dispute between any persons relating to water, water resource, aquifer, any licence or permit issued this Act

and other related matters, and at the request of any party to the dispute or on the Minister's own initiative, may direct the parties to attempt to settle their dispute through a process of mediation.

(2) A directive under subsection (1) must specify the period within which such process must commence, and request the parties to appoint a mediator and the place and time of mediation proceedings.

(3) If the parties have not informed the Minister at least seven days before the end of the period specified in the directive referred to in subsection (2) that they have appointed a mediator, the Minister may appoint a mediator, subject to the parties' agreement.

(4) Notwithstanding subsection (3), the parties may at any time during the course of mediation proceedings agree to relieve their mediator from such responsibility on the reason of lack of impartiality or any valid reason and appoint another mediator.

(5) A person to be appointed by the Minister under subsection (3) may be a staff member of the Ministry or any other person.

(6) If the Minister or the Ministry is a party to the dispute, the mediator may not be a staff member of the Ministry.

(7) All the evidence given and discussions and submissions made during the mediation proceedings under this section are privileged in law, and may not be received in evidence by any court of law, unless the parties agree otherwise.

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

## PART XIX

### GENERAL PROVISIONS

#### **Right of entry upon or into any property for inspection, investigation, establishment of hydrographic stations, research, survey, taking of samples, or rehabilitation work and other remedial work**

**124.** (1) The Minister or any person authorised by the Minister in writing may enter upon or into any property at any reasonable time for the purposes of -

- (a) inspecting waterworks, water resource, or the use of water, or taking samples or making tests to determine whether -
  - (i) water is being wasted, misused or polluted;
  - (ii) the terms and conditions of any licence or of any permit are being complied with; or
  - (iii) an offence under this Act is being committed.
- (b) performing rehabilitation or other remedial work to a waterworks or water resource;
- (c) making such investigations, researches and surveys as the Minister may consider necessary; or

(d) establishing or maintaining hydrographic stations and other works for the purpose of obtaining and recording information and statistics regarding the condition of Namibia's water resources.

(2) Any person acting under subsection (1) may -

(a) take measurements to ascertain the quantity of water abstracted or the quantity of effluent discharged by means of any works;

(b) examine any records kept for the purposes of this Act; and

(c) take samples of any water, or effluent or other substance.

(3) Compensation is payable to the owner or occupier of any property for damage caused to such property as a result of any construction works performed under subsection (1)(d) or any other acts, except any damage caused pursuant to subsection (4).

(4) If entry upon or into any property in terms of this section is refused, the Minister or person referred to in subsection (1) may use force to gain entry upon or into such property in the prescribed manner and in the presence of a police officer or the owner or occupier of such property, but the Minister, the person or the State is not liable for any damage caused as a result of the use of force to gain entry.

#### **Enquiry in respect of compensation for harm, loss or damage suffered and award of damages**

**125.** (1) If a court convicts a person of an offence under this Act and another person has suffered harm or loss as a result of the act or omission constituting the offence, or damage has been caused to a waterworks or water resource, the court may, in the same proceedings -

(a) at the written request of the person who suffered the harm or loss; or

(b) at the written request of the Minister in respect of the damage caused to a waterworks or water resource owned by the State,

and in the presence of the convicted person, inquire into the harm, loss or damage and determine the extent of damages thereof.

(2) After having determined the extent of damages under subsection (1), the court or any other court of competent jurisdiction may -

(a) award damages for the loss or harm suffered by any person against whom the offence has been committed or who has suffered damage as a result of the offence;

(b) order the offender to pay for the cost of any remedial measures which measures may be implemented by the offender or the water management institution in whose area the loss, harm or damage has been suffered.

#### **Expropriation and temporary use of property in public interest**

**126.** (1) Subject to subsection (2), the Minister may -

(a) expropriate any property;

(b) use temporarily any property; or

- (c) in writing, authorise a water management institution to use temporarily any property,

in respect of water or effluent in the public interest.

(2) Any expropriation or use of any property in the public interest under subsection (1) must be done in accordance with the law on expropriation of property in the public interest.

- (3) If the Minister -

- (a) expropriates any property under section 72 or this section; or
- (b) use temporarily any property, or authorises a water management institution to use temporarily any property under this section,

any reference to “Minister” in the law on expropriation of property in the public interest must be construed as being a reference to the Minister.

### **Water related emergencies**

**127.** (1) If any threat relating to water arises or is about to arise, the Minister, by notice in the *Gazette*, may declare a water related emergency in respect of any area in Namibia, and, despite the provisions of any other sections, may take necessary measures to deal with the emergency by reducing or eliminating such threat, including, among others -

- (a) the cancellation or suspension of a licence to abstract and use water or of a permit to discharge effluents or construct an effluent treatment facility or a disposal site in respect of such area, in whole or in part; and
- (b) the issuance of instructions for the operation of a dam either to minimise the risk of flooding or to maximise available water supplies in case of water shortage.

(2) The Minister or any other person is not personally liable for any damage or loss occurred as a result of an act or omission committed pursuant to the exercise of powers by the Minister or such other person under this section.

### **Appointment of persons on contract**

**128.** (1) Despite anything to the contrary contained in the Public Service Act, 1995 (Act No. 13 of 1995), the Minister -

- (a) when necessary, may appoint any person on contract for any specific project connected to this Act;
- (b) after consultation with the Minister responsible for finance, must, from time to time, determine the conditions of service of any person appointed under paragraph (a).
- (2) A person appointed under subsection (1) -
- (a) must be paid from money appropriated by Parliament for any purpose referred to in that subsection;
- (b) may be paid from money donated or granted by any source for any specific purposes as the source may direct or agree with the Minister.

**Lease of waterworks**

**129.** (1) Subject to the State Finance Act, 1991 (Act No. 31 of 1991), the Minister may lease any waterworks of the Ministry to a water point committee on such terms and conditions as the Minister may determine.

- (2) A leasehold agreement for any waterworks referred to in subsection (1) -
- (a) must be done in writing;
  - (b) may provide that the waterworks be leased subject to a probationary period as determined by the Minister.

**Transfer of ownership of waterworks**

**130.** (1) Subject to the State Finance Act, the Minister may transfer ownership in any waterworks of the Ministry to a water point committee on such terms and conditions as the Minister may determine.

(2) The agreement to transfer ownership in any waterworks to a water point committee under subsection (1) must be done in writing.

**Financial assistance**

**131.** (1) The Minister may give financial assistance to a water management institution or any person for -

- (a) the development of a water resource;
  - (b) the maintenance of a waterworks; or
  - (c) the protection of a water resource.
- (2) Financial assistance referred to in subsection (1) -
- (a) must be paid from money appropriated by Parliament for such purposes referred to in that subsection;
  - (b) may be given in the form of a grant, loan or subsidy subject to the prescribed terms and conditions.
- (3) Before giving any financial assistance under subsection (1), the Minister must -
- (a) consider equity;
  - (b) transparency;
  - (c) the redressing of the past racial and gender discrimination; and
  - (d) the financial position of the applicant.

**Offences**

**132.** (1) A person commits an offence, if such person -

- (a) uses water or treats or disposes effluent, otherwise than as provided by or under this Act;

- (b) wastes water at any water point;
  - (c) refuses access to any books, accounts, documents, or assets to any person required to have such access by or under this Act;
  - (d) unlawfully and intentionally or negligently tampers or interferes with any waterworks or any seal or measuring device attached to a waterworks;
  - (e) vandalises or otherwise damages any waterworks or effluent discharge facility;
  - (f) refuses or fails to give data or information, or gives false or misleading data or information, when required to give data or information in terms of or under this Act;
  - (g) refuses entry upon or into any property to any person exercising his or her powers or performing his or her duties in terms of or under this Act, or obstructs or interferes with such person;
  - (h) unlawfully and intentionally or negligently commits any act or omission which pollutes or is likely to pollute a water resource;
  - (i) refuses or fails to register a dam with a safety risk;
  - (j) refuses or fails to comply with a temporary restriction on the use of water imposed with respect to a water related emergency or the establishment of a water management area; or
  - (k) levies or charges any charge, fee, or tariff contrary to section 105(2).
- (2) A person who is convicted of an offence under -
- (a) subsection (1)(a) or (b) is liable to a fine not exceeding N\$4 000 or imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment, and a court may, in addition to any penalty, order the person to pay compensation for any damage suffered as a result, and such compensation must be paid as the court may direct;
  - (b) any paragraph of subsection (1), except paragraphs (a) and (b), is liable -
    - (i) to a fine not exceeding N\$20 000 or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; and
    - (ii) on the second conviction, to a fine not exceeding N\$40 000 or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment; or
  - (c) section 119(10) or (11) is liable to a fine not exceeding N\$2 000 or imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

### Regulations

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



- (a) the form of any application which may be made in terms of this Act, and the particulars to be furnished in connection with such application, or certificate, licence, permit and register issued or kept in terms of this Act;
- (b) the maximum and minimum number of members of a basin management committee, method of election, term of office, procedure at meetings and qualification for membership of a basin management committee;
- (c) any matter which is necessary or expedient for the efficient functioning of basin management committees and their sub-committees;
- (d) the procedure for the registration of water point user associations and local water user associations;
- (e) the imposition of any conditions on water point user associations and local water user associations;
- (f) the registration and the keeping of a register of professional engineers appointed to deal with dams with a safety risk;
- (g) the eligibility for financial assistance under section 131 and the manner in which application for financial assistance may be made;
- (h) the classification of dams into categories;
- (i) the construction, maintenance and repair of dams;
- (j) the manner and extent of monitoring of dams with safety risk;
- (k) determination of charges, fees and tariffs payable for supply of water or discharge of effluent by the Department of Water Affairs;
- (l) the registration of dams with a safety risk, and the manner registration fees are paid;
- (m) any matter required or permitted to be prescribed under this Act; and
- (n) generally any matter which the Minister considers necessary or expedient to prescribe to achieve the purposes of this Act.

(2) Before making a regulation under subsection (1), the Minister must consult the basin management committees, water point user associations, local water user associations, or the Engineering Council of Namibia established by section 2 of the Engineering Profession Act, 1986 (Act No. 18 of 1986), or local authority councils, as the case may be, and may consult any other interested persons or bodies.

(3) A regulation made under subsection (1) may prescribe a penalty for any contravention of or failure to comply with such regulation not exceeding a fine of N\$2 000 or a period of six months imprisonment, or both such fine and such imprisonment.

#### **State bound**

**134.** This Act binds the State.

#### **Limitation of liability**

**135.** Neither the State nor any other person is liable for any damage or loss caused by -

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

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

### **Savings and transitional provisions**

**136.** (1) Any area declared or deemed to have been declared a water control area under a law repealed by section 137 is deemed to have been declared under this Act as a water management area.

(2) Any irrigation district declared or any irrigation board or other management body established by or under a law repealed by section 137 and exists at the commencement of this Act, continues to exist as if it has been declared as an irrigation area or established as an irrigation board under this Act until undeclared or dissolved by the Minister.

(3) A person who at the commencement of this Act has abstracted and used water under a licence issued under a law repealed by section 137 may continue to do so, but must apply to the Minister for a licence to abstract and use water in accordance with section 33 within 24 months of commencement, and attach to the application a report, describing -

- (a) the volume of water annually abstracted in each of the two preceding years;
- (b) the water source from which the abstraction is made;
- (c) the use for which the abstraction is made;
- (d) the date upon which the abstraction commenced;
- (e) the particulars in relation to any effluent, if any, discharged as a result of the abstraction; and
- (f) any other information as the Minister may prescribe.

(4) A person who at the date of commencement of this Act has discharged effluent under a permit issued under a law repealed by section 137 may continue to do so, but must apply to the Minister for a permit to discharge effluent in accordance with section 59, within 24 months of commencement, and attach a report to the application describing -

- (a) the volume of effluent annually discharged in each of the two preceding years;
- (b) any water source into which the effluent is discharged;
- (c) the chemical constituents and the concentration values of the effluent, if known;
- (d) the date upon which the discharge commenced; and
- (e) any information as the Minister may prescribe.

(5) A person who at the date of commencement of this Act has an effluent treatment facility or disposal site must apply to the Minister for a permit to construct effluent treatment facility or disposal site in accordance with section 59 within 24 months of commencement.

(6) Anything done under a law repealed by section 137 and which could have been done under a corresponding provision of this Act is deemed to have been done under this Act.

#### Laws repealed or amended

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

#### Short title and commencement

138. (1) This Act -

- (a) is called the Water Resources Management Act, 2004; and
- (b) commences on a date to be determined by the Minister by notice in the *Gazette*.

#### SCHEDULE

#### LAWS REPEALED OR AMENDED (Section 137)

No. and Year of Law	Short Title	Short Title
Act No. 54 of 1956	Water Act, 1956	Repealed as whole
Act No. 75 of 1957	Water Amendment Act, 1957	Repealed as whole
Act No. 56 of 1961	Water Amendment Act, 1961	Repealed as whole
Act No. 63 of 1963	Water Amendment Act, 1963	Repealed as whole
Act No. 71 of 1965	Water Amendment Act, 1965	Repealed as whole
Act No. 11 of 1966	Water Amendment Act, 1966	Repealed as whole
Act No. 79 of 1967	Water Amendment Act, 1967	Repealed as whole
Act No. 77 of 1969	Water Amendment Act, 1969	Repealed as whole
Act No. 34 of 1971	Water Amendment Act, 1971	Repealed as whole
Act No. 45 of 1972	Water Amendment Act, 1972	Repealed as whole
Act No. 58 of 1974	Water Amendment Act, 1974	Repealed as whole
Act No. 42 of 1975	Water Amendment Act, 1975	Repealed as whole
Act No. 27 of 1976	Water Amendment Act, 1976	Repealed as whole
Act No. 108 of 1977	Water Amendment Act, 1977	Repealed as whole
Act No. 4 of 1982	Water Amendment Act, 1982	Repealed as whole
Act No. 22 of 1985	Water Amendment Act, 1985	Repealed as whole
Act No. 12 of 1997	Namibia Water Corporation Act, 1997	Amended by the substitution for the "Water Act, 1956 (Act No. 54 of 1956)" wherever it appears in that Act of the following Act: "Water Resources Management Act, 2004 (Act No. 24 of 2004)".