

Act No. 45, 1999 NATIONAL WATER AMENDMENT ACT

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President)
(Assented to 2 December 1999.)*

ACT

To amend the National Water Act, 1998 so as to effect textual improvements; and to change the procedure for the appointment of members of the Water Tribunal; and to provide for matters connected therewith.

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

Amendment of section 32 of Act 36 of 1998

1. Section 32 of the National Water Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (1) of the following subsection:

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

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

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

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

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

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

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

**(ii) is identified as a stream flow reduction activity in section 36(1);
or**

(iii) is identified as a controlled activity in section 37(1).]”

Amendment of section 33 of Act 36 of 1998

2. Section 33 of the principal Act is hereby amended by the substitution for subsections (1),(2) and (3) of the following subsections, respectively:

“(1) A person may apply to a responsible authority to have a water use which is not one contemplated in section 32(1)[**(b)(i), (ii) or (iii)**](a), declared to be an existing lawful water use.

(2) A responsible authority may, on its own initiative, declare a water use which is not one contemplated in section 32(1)[**(b)(i), (ii) or (iii)**](a), to be an existing lawful water use.

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

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

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

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

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

Amendment of section 146 of Act 36 of 1998

3. Section 146 of the principal Act is hereby amended-

(a) by the substitution for subsection (5) of the following subsection:

“(5) The chairperson, the deputy chairperson, and the additional members of the Tribunal are appointed by the Minister on the recommendation of the Judicial Service Commission contemplated in section 178 of the Constitution and the Water Research Commission established by section 2 of the Water Research Act, 1971 (Act No. 34 of 1971) in accordance with item 3 of Schedule 6.”

(b) by the substitution for subsection (8) of the following subsection:

“(8) The Minister may, after consultation with the Judicial Service Commission or the Water Research Commission, referred to in subsection (5), as the case may be, and after giving the member an opportunity to make representations and considering such representations, for good reason terminate the appointment of any member of the Tribunal.”

Amendment of item 3 of Schedule 6 to Act 36 of 1998

4. Item 3 of Schedule 6 to the principal Act is hereby amended by the substitution for subitems (1), (4), (5), (6) and (7) of the following subitems, respectively:

“(1) Whenever necessary, the Minister must **[request the Judicial Service Commission to]**-

- (a) publish a notice in the *Gazette* calling for nominations for appointment to the Water Tribunal; and
(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which **[the Commission]** he or she considers to be appropriate.

(4) Each of [The] the Judicial Service Commission and the Water Research Commission –

- (a) must consider all valid nominations received before the date contemplated in subitem (2)(f);
(b) may prepare a short list of nominees;
(c) may interview all short-listed nominees; and
(d) must, subject to subitem (6), make recommendations to the Minister on the appointment of members of the Tribunal.

(5) In recommending a nominee for appointment each of the Judicial Service Commission and the Water Research Commission must consider--

- (a) the criteria set out in section 146(4) of the Act;
(b) the reputation and integrity of the nominee; and
(c) any conflict of interests which the nominee may have.

6 (a) The Judicial Service Commission must recommend at least two persons qualified in law for appointment as chairperson of the Tribunal.

(b)The Water Research Commission must recommend persons qualified in water resource management or engineering or with knowledge in related fields, for appointment as deputy chairperson and additional members of the Tribunal.

(c)The Judicial Service Commission or the Water Research Commission, as the case may be, must recommend [a candidate] two candidates for appointment for every vacancy, including that of chairperson or deputy chairperson, where necessary.

(7) The Department must pay all costs -

- (a) relating to the publication of notices in terms of subitem (1); and
(b) incurred by the Judicial Service Commission and the Water Research Commission in the performance of **[its task]** their tasks.”

Short title

5. This is the National Water Amendment Act, 1999.