

 Clean, Sufficient, Affordable Water to All

**DRAFT WATER BILL, 2020**

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MEMORANDUM

There are number of legal frameworks that regulate water in Zimbabwe. Apart from the Constitution of Zimbabwe (No 20 of 2013), which entrenches the right to food and water under its Bill of Rights, subsidiary legislation exists which speaks to water management and governance. These include the Water Act (Chapter 20:24), the Environmental Management Act (Chapter 20:27), the Zimbabwe National Water Authority Act (Chapter 20:25), the Water (Waste and Effluent Disposal) Regulations (S.I 274/2000), the Public Health Act (Chapter 15:09), Administrative Justice Act (Chapter 10:28) and the National Water Policy. The current Water Act (Chapter 20:24) provides for the development and utilization of water resources of Zimbabwe, establishment, powers and procedures of Catchment Councils and Sub-Catchment Councils granting of permits for the use of water; control of use of water when in short supply; acquisition of servitudes in respect of water; protection of environment and prevention and control of water pollution. As it appears, the Water Act has been widely criticised as archaic, not in sync with the provisions under the new Constitution and not embracing contemporary water resource management principles. Therefore, there is need to align the Water Act with the Constitution, particularly its objectives founding values and principles and other normative standards impacting on access, quality and quantity of water.

Moreover, water as a human right is not a self-standing human right under international law. The human right to water as a right is conferred by various international treaties and conventions such as the Convention on the Rights of the Child, the Convention on Elimination of all forms of Discrimination against Women (CEDAW), the Convention on Rights of Persons with disabilities and the United Nations Committee on Economic, Social and Cultural Rights.

The legal frameworks regulating water in Zimbabwe need to complement each other and have similar objectives. These pieces of legislation must not contradict each other so that the realisation of the right to water becomes easier. Against this background, this Draft Water Bill aligns the Water Act with these various legal frameworks to properly give effect to emerging international principles.

The main amendments in the Draft Water Bill are directed at the following objectives:

1. To give effect to the International Treaties and Conventions to which Zimbabwe is a signatory to and the 2013 Constitution of Zimbabwe
2. To ensure consistency with the provisions of the Constitution of Zimbabwe.

**DRAFT WATER BILL**

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**BILL**

Whereas the Constitution reflects Zimbabwe’s commitments to its international obligations arising from treaties the country is a signatory of;

Whereas the Constitution provides for the right to food and water and obligates the State and every person and every institution and agency of the government at every level to respect, protect, promote and fulfil this right;

Whereas the national government’s overall responsibility for and authority over the nation’s water resources and their use, including the equitable allocation of water for beneficial use, the redistribution of water, and international water matters;

Whereas it is acknowledged the ultimate aim of water resource management is to achieve the sustainable use of water for the benefit of all users;

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

NOW, THEREFORE, be it enacted by the President and the Parliament of Zimbabwe as follows

AN ACT to provide for the development and utilisation of the water resources of Zimbabwe; to provide for the establishment, powers and procedures of catchment councils and catchment management strategies; to provide for the grant of licences for the use of water; to provide for to provide for the control of the use of water when water is in short supply; to provide for water use charges; to provide for access to and rights over land in relation to water; to provide for water use associations; to provide for the safety of dams; to provide for government waterworks; to give effect to international water management; to provide for the protection of the environment and the prevention and control of water pollution and to provide for matters incidental to or connected with the foregoing.

ENACTED by Parliament and the President of Zimbabwe.

PART I

PRELIMINARY

1. **Short title**

 This Act may be cited as the Water Act, 2020.

1. **Interpretation**
2. In this Act-

“Agricultural and Rural Development Authority” means the Agricultural and Rural Development Authority established by section 3 of the Agricultural and Rural Development Authority Act [Chapter 18:01];

“agricultural purposes”, in relation to the use of water, means the use of water for-

(a) the irrigation of land; or

(b) fish farming purposes; or

(c) animal husbandry, including the keeping of poultry, where the amount of water used exceeds 10000 litres per day;

“appropriate Minister”, in relation to any particular matter, means-

(a) any Minister who, by or in terms of any enactment, is empowered or required to exercise any function in respect of the matter; or

(b) a vice-president where, by or in terms of any enactment, the vice president is empowered or required to exercise any function in respect of the matter;

“aquatic ecosystems” means riverine flora and fauna and aquatic life;

“aquifer” means any geological formation which absorbs, stores and transmits water;

“area under jurisdiction of a local authority” means-

(a) in the case of a municipal council, the municipal area;

(b) in the case of a town council, the town council area;

(d) in the case of a local board, the area for which the board has been declared;

“borehole” means a hole drilled or sunk into the ground for the purpose of the abstraction of ground water, the collection of ground water or rock samples, the monitoring of ground water levels, or other purpose. It includes a well, excavation or any artificially constructed or improved underground cavity which can be used for the purpose of-

(a) intercepting, collecting or storing water in or removing water from an aquifer;

(b) observing and collecting data and information on water in an aquifer; or

(c) recharging an aquifer;

“catchment”, in relation to a watercourse or watercourses or part of a watercourse, means the area from which any rainfall will drain into the watercourse or watercourses or part of a water course, through surface flow to a common point or common points;

“charge” includes a fee, price or tariff imposted under this Act;

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

“Director of Physical Planning” means the Director of Physical Planning appointed in terms of section 63 of the Regional, Town and Country Planning Act [Chapter 29:12];

“entitlement” means a right to use water in terms of any provision of this Act or in terms of an instrument issued under this Act;

“estuary” means a partially or fully enclosed body of water-

(a) which is open to the sea permanently or periodically; and

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

“electrical purposes”, in relation to the use of water, means the use of water for the purposes of an electricity undertaking;

“electricity undertaking” means any undertaking which generates and additionally, or alternatively, transmits, distributes or supplies electricity, with all the assets and liabilities appertaining thereto, whether such undertaking is under the control of the State, the Zambezi River Authority, the Zimbabwe Electricity Supply Authority, a local authority, a company or other association of persons or a private individual;

“existing licence” means an existing licence or right to use water granted in terms of this Act or of any enactment repealed by this Act or any predecessor of such enactment;

“feedlot” means one or more enclosures or other structures on any piece of land in which animals or poultry are confined within a restricted area and fed mainly or entirely by means other than natural browsing, grazing for the purpose of bringing them into slaughter condition or maintaining their condition;

“ground water” means all water which is-

(a) beneath the surface of the ground; and

(b) not visible on the land concerned, and includes water in boreholes and wells;

“government waterwork” means a waterwork owned or controlled by the Minister and includes the land on which it is situated;

“hydrological station” means a place where measurements and observations of the flow or level of any surface or ground water are taken or made, as the case may be, and recorded;

“institutional purposes”, in relation to the use of water, means the use of such water for-

(a) boarding-houses, guest farms, hotels and other like enterprises; or

(b) recreational clubs; or

(c) missions or boarding-schools; or

(d) a permanent labour force which, excluding the dependants of the labourers concerned, exceeds one hundred workers;

“local authority” means-

(a) a municipal council, town council or rural district council; or

(b) a local board declared to be a local authority;

“local authority purposes”, in relation to the use of water, means the use of water for the purposes of the community within the area under the jurisdiction of a local authority and of such other persons as may conveniently be supplied with water by the local authority;

“mining purposes”, in relation to the use of water, means the use of water for mining purposes;

“Minister” means the Minister of Rural Resources and Water Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“miscellaneous purposes”, in relation to the use of water, means the use of water for any purposes other than agricultural purposes, electrical purposes, institutional purposes, local authority purposes, mining purposes, primary purposes, railway purposes, road purposes or local authority purposes;

“National Water Authority” means the Zimbabwe National Water Authority established by section 3 of the Zimbabwe National Water Authority Act, 1998;

“non-riparian owner” means an owner of land which is not riparian land;

“owner” in relation to land, includes-

(a) the State;

(b) the person registered in the Deeds Registry as the owner of the land or in whom the land is vested by land;

(c) any person lawfully holding or occupying land in accordance with any agreement or enactment empowering the State to allot land on the promise of title subject to the fulfilment by the allottee of certain conditions;

(d) in the case of land owned or controlled and managed by the Forestry Commission, the Forestry Commission;

(e) in the case of Communal Land, the Minister responsible for administration of the Communal Land Act [Chapter 20:04];

(f) the legal representative of an owner of land who has died or become insolvent or is a minor or of unsound mind or otherwise under disability; and

(g) the liquidator of an owner of land which is a company;

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

“pollution”, in relation to water, means-

(a) such contamination or other alteration of the biological chemical or physical properties of the water, including changes in colour, odour, taste, temperature or turbidity; or

(b) such discharge of any gaseous, liquid, solid or other substances into any water or public stream; as will or is likely to create a nuisance or render the water, as the case may be, detrimental harmful or injurious to the health, safety or welfare of the public or any section thereof or any consumer or user of the water or any birds, fish or other aquatic ecosystems, livestock or wild life;

“primary purposes,” in relation to the use of water, means the reasonable use of water-

(a) for basic domestic human needs in or about the area of residential premises; or

(b) for the support of animal life, other than fish in fish farms or animals or poultry in feedlots;

(c) for the making of bricks for the private use of the owner, lessee or occupier of the land concerned; or

(d) for dip tanks;

“public stream” means a water course of natural origin in which water flows, whether or not-

(a) the watercourse or any portion thereof is dry during any period of the year; or

(b) the conformation of the watercourse has been changed by artificial means;

“railway purposes”, in relation to the use of water, means the use of water by any person authorized to operate a railway system for the purpose of that operation;

 “Registrar” means the Registrar of the Administrative Court;

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

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

(b) water quality including the physical, chemical and biological characteristics of water;

(c) characteristics and condition of instream and riparian habitat; and

(d) characteristics, condition and distribution of aquatic biota.

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

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

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

“riparian land” means land on which, or along the boundary of the whole or any portion of which, a public stream exists;

“riparian owner” means the owner of riparian land;

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

“river system” means a river system declared as such in terms of this Act;

“Secretary” means the Secretary of the Ministry for which the Minister is responsible;

“surface water” means all water found on or below the bed of a public stream, including marshes, springs, swamps or vleis forming the source of or found on the course of the public stream, and includes water in storage works, drainage works or permanent pools;

“water” includes-

(a) surface water; and

(b) all water which rises naturally on any private land or drains or falls naturally on to any private land, even if it does not visibly join any public stream; and

(c) all ground water;

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

“watercourse” means-

(a) a river or spring:

(b) a natural channel in which water flows regularly or intermittently:

(c) a wetland, lake or dam into which, or from which, water flows and

(d) any collection of water which the Minister may, by notice declare to be a watercourse, and a reference to a watercourse includes where relevant, its bed and banks;

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

“water storage works” means a dam, reservoir or well;

“water works” means-

(a) a borehole, canal, channel, embankment, filter, filterbed, pipeline, pumping plant purification plant, plant for the generation of hydro-electric power, water storage works or well; or

(b) any accessory, apparatus, appliance, fitting, machinery or other thing constructed, erected or used for or in connection with the abstraction, control, diversion, drainage, filtration, passage, purification, storage, supply or use of water, including effluent or waste water or the conservation of rainfall or the development of water power; or

(c) any land occupied for or in connection with the abstraction, control, diversion, drainage, filtration, passage, purification, storage, supply or use of water, including effluent or waste water; or

(d) any gauge post, measuring weir or other appliance erected or used for undertakings authorised by or in terms of this Act; and includes any area held, occupied or required for the purpose of irrigation;

“well” means a hole dug into the ground for the purpose of the abstraction of ground water and includes a mine shaft and any other subterraneous works other than a borehole used for such purpose;

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

“sufficient water” means reviewable amounts between internationally stipulated 20-25litres of water per person per day as per the United Nations Development Program and World Health Organization guidelines. These guidelines will be periodically reviewed by the Minister after consultation with all relevant stakeholders and published in the Gazette.

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

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

1. **Public trusteeship of nation’s water resources**

(1) As the public trustee of the nation’s water resources the national government, acting through the Minister and devolved structures of local government must ensure that water is protected, used, developed, conserved, managed, controlled in a sustainable and equitable manner, for the benefit of all persons und in accordance with its Constitutional mandate.

(2) Without limiting subsection (1), the Minister is ultimately responsible to ensure that water is allocated equitably and used beneficially, in the public interest, while promoting environmental values.

(3) The national government, acting through the Minister, and devolved local government authorities, has the power to regulate the use, flow and control of all water in Zimbabwe.

**3B: Water management and national development**

1. For purposes of human and social development, and dignity of the human being, water management must be guided by the following principles:
2. Gender equality, gender balance and non-discrimination
3. Respect for the rights of persons with disabilities, the elderly, women and children
4. The differential roles of men and women in access to, control of, and exploitation of water resources
5. The need to establish friendly water and sanitation infrastructure for persons with disabilities.
6. The principles of devolution and local governance enshrined in Chapter 14 of the Constitution.
7. Access to information required in the interests of public accountability and exercise or protection of a right enshrined on Section 62 of the Constitution.
8. Stakeholder participation and Integrated Water Resource Management.
9. Accessibility, availability, acceptability and quality of water for primary purposes.
10. The need for water resource management and frameworks to promote peace, regional cooperation and development

3C: Relationship between national government and provincial and metropolitan councils and local authorities

(1) All powers of the minister are only exercised directly by the Minister where the Minister is acting at national level.

(2) The powers of the Minister shall be delegated to provincial councils, metropolitan councils and local authorities where such power directly affect water management affairs of these institutions

(3) Where the Minister is granted powers to act directly on the affairs of provincial councils, metropolitan councils and local authorities in water management, the minister shall act upon recommendations of these councils or the Local Government institutions directly affected.

The Minister shall act upon consultations with local government institutions where the matters in question affect water management at both national and local government scales.

**4. Right to safe, clean and potable water**

(1) Pursuant to section 77 of the Constitution, every person has a right to safe, clean and potable water.

(2) The State must take all reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of the right to water

(3) For the avoidance of doubt, the state must refrain from interfering with the enjoyment of the right, through:

(a) any practice or activity that denies or limits equal access to adequate water;

(b) unlawfully diminishing or polluting water;

(c) limiting access to, or destroying, water services and infrastructure as a punitive measure;

(d) arbitrary or unjustified disconnection or exclusion from water services or facilities;

(e) discriminatory or unaffordable increases in the price of water;

(f) pollution and diminution of water resources affecting human health;

(g) producing potable water that cause diseases and whose taste or odour is unacceptable;

(h) prolonged unavailability of potable water for domestic uses; or

(i) inaction to reduce distance travelled to fetch water, to not more than 1 kilometre

(4) Measures taken to restrict or limit access to water must be guided by the following considerations:

(a) the need to promote the right to water for citizens and all social groups

(b) the need to promote the public interest in access to water and sustainable water management

(c) the need to promote principles of good administration, good governance, the rule of law and the right to life and dignity

(d) the need to ensure sustainable resource mobilisation for purposes of promoting access to water for all

(e) the need to ensure that the rights of other persons are not unduly infringed by restrictions of access to water

(f) exhausting less restrictive means of achieving the purpose of the limitation.

4A Entitlement to use water

(2) Any person may use water in or from a water resource for purposes such as reasonable domestic use, domestic gardening, animal watering, fire fighting and recreational use.

(2) A person may continue with an existing lawful water use as stipulated in section 43.

(3) A person may use water in terms of a general authorisation or licence under this Act.

(4) Any entitlement granted to any person under this Act replaces any right to use water which that person might otherwise have been able to enjoy or enforce under any other law-

(a) to take or use water;

(b) to obstruct or divert a flow of water:

(c) to affect the quality of any water;

(d) to receive any particular flow of water;

(e) to receive a flow of water of any particular quality; or

(f) to construct, operate or maintain any waterwork.

(5) Mindful of vulnerable members of society including: women, children, the elderly, and persons living with disabilities; all organs of State must take legislative and other measures to ensure the progressive realisation of the right to water by these classes of people, as envisaged in the Constitution.

**5. General functions of Minister**

(1) For the purposes of this Act, the functions of the Minister shall be-

(a) to develop policies to guide the orderly and integrated planning of the optimum development, utilization and protection of the country's water resources in the national interest after consultation with all Water Associations and all relevant stakeholders; and

(b) acting with the participation of local government authorities, to ensure the availability of water to all citizens for primary purposes and to meet the needs of aquatic and associated ecosystems particularly when there are competing demands for water; and

(c) acting upon consultations with, or, where applicable, on recommendations from local government authorities, to ensure the equitable and efficient allocation of the available water resources in the national interest for the development of the rural, urban, industrial, mining and agricultural sectors.

(2) In the performance of his functions in terms of subsection (1), it shall be the duty of the Minister, acting upon consultations with, or where appropriate, recommendations from local government authorities,-

(a) to provide overall policy guidelines on the development, exploitation and utilization of water resources, ensuring that all components of the water cycle such as ground water surface water, evaporation, clouds and rainfall are recognized as being interdependent and forming part of a single water cycle;

(b) to ensure that water resources are managed, utilized and conserved in a manner consistent with national environmental approaches provided for in any enactment;

(c) to encourage participation by consumers in all the sectors referred to in paragraph (c) of subsection (1) and catchment councils in the development, exploitation and distribution of water resources;

(d) acting upon consultations with, or, where applicable, on recommendations from local government authorities to secure the provision of affordable water to consumers in underprivileged communities; persons with disabilities, vulnerable groups in society, women and children

(e) to ensure that water resources are utilized at all times in an efficient manner having special regard to its value and the economic and other benefits that may be derived from it;

(f) to give effect to any international agreement, including but not limited to the International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities, to which Zimbabwe is a party, on matters pertaining to non-discrimination in water us and shared water course systems in a spirit of mutual co-operation;

(g) to ensure that research is carried out and information is obtained and kept, on hydrological and hydrogeological matters such as-

(i) the quality and quantity of the country's water resources which must be clearly defined in regulations

(ii) the utilization of the country’s water resources;

(iii) resources needed to develop the country’s water resources sufficient to meet the reasonable needs of the nation;

(h) to promote efficiency and economy in the utilization of water resources and to encourage the use of water-saving technologies;

(i) to regulate the supply of water by any person to consumers with respect to-

(i) the quality of the service provided to consumers; and

(ii) the protection of consumers from exploitation; without, however, impairing the efficiency of the person’s operations;

(j) acting upon consultations with, or, where applicable, on recommendations from local government authorities, to fix criteria for water allocation and the issue of licences for the use of water by catchment councils;

(k) generally, to fix national standards to be maintained in the exploitation, utilization, conservation and management of water resources, in respect of environmental water quality standards as set by the Minister for Environment in terms of the Environmental Management Act [Chapter 20:26].

**6. Secretary and other officers**

(1) Subject to the Public Service Act [Chapter 16:04], there shall be appointed, in addition to the Secretary, such other officers as may be necessary to carry out the provisions of this Act.

(2) In appointing the Secretary and other officers, gender parity must be followed, and relevant provisions of the Public Entities Corporate Governance Act must be complied with.

(3) In the exercise of their functions under this Act, officers shall be subject to the directions and orders of the Minister at national level, and provincial and local institutions of government at local and regional levels.

**7. Delegation of powers by Minister and Secretary**

(1) The Minister may delegate to the Secretary or to the National Water Authority, or to local government authorities established under Chapter 14 of the Constitution, such of his functions under this Act in the interest of sustainable water management, other than the functions conferred on him by section one hundred and nineteen.

(2) The Secretary may delegate to any other officer or to the National Water Authority such functions-

(a) conferred or imposed on him by or in terms of this Act; or

(b) delegated to him in terms of subsection (1), which power must be exercised in the interests of sustainable water management.

Provided that he shall not so delegate any function delegated to him in terms of subsection (1) without the consent of the Minister.

(3) All functions delegated by the Secretary in terms of subsection (2) shall be exercised and carried out subject to the directions and orders of the Secretary.

(4) At the local government level, the Minister’s powers shall be delegated to the provincial councils, metropolitan councils and local authorities as the case may be, and such powers shall be exercised in terms of the principles of devolution and local governance envisaged in Chapter 14 of the Constitution.

**8. Powers of officers**

(1) Subject to this Act, an officer may, for the better conservation and use of the water resources of Zimbabwe or for the control or prevention of the pollution of water, do all or any of the things set out in the Schedule 1.

(2) A person to whom an order referred to in paragraph 5 of the Schedule has been given may, within a period of 21 days from the date on which the order was given to him, if aggrieved by the order, appeal against the order to the Administrative Court.

(3) Subject to subsection (2), a person who fails to comply with the order referred to in paragraph 5 of the Schedule within the period specified in the order shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding 6 months or to both such fine and such imprisonment.

**9. Powers in respect of hydrological stations**

(1) If the Minister or the National Water Authority-

(a) wishes to construct or maintain a hydrological station on any land; and

(b) is unable to agree on reasonable terms with the owner of the land referred to in paragraph (a) concerning the construction or maintenance referred to in that paragraph;

the Minister or, as the case may be, the National Water Authority with the consent of the Minister, may, subject to subsection (2), compulsorily acquire such land or rights or interests over land as are necessary to construct or maintain a hydrological station on the land concerned.

(2) Parts III, V and VIII of the Land Acquisition Act [Chapter 20:10] shall apply, *mutatis mutandis*, to the exercise by the Minister or the National Water Authority of powers in terms of subsection (1).

PART II

WATER MANAGEMENT STRATEGIES

**10. Establishment of national water resource strategy**

(1) Subject to subsection (4), the Minister must, as soon as reasonably practicable, by notice in the Gazette, establish a national water resource strategy.

(2) The notice must state the address where the strategy, used, developed, conserved, managed and controlled in accordance will the national water may be inspected.

(3) The water resources in the country must be protected used, developed, conserved, managed and controlled in accordance will the national water resource strategy.

(4) A national water resource strategy-

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

(b) must be reviewed at intervals of not more than 5 years.

(5) Before establishing a national water resource strategy or any component of that strategy in terms of subsection (1), the Minister must-

(a) publish a notice in the Gazette-

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

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

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

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

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

**11. Contents of national water resource strategy**

(1) The national water resource strategy must, subject to section 10 (4)(a)–

(a) set out the strategies, objectives, plans, guidelines and procedures of the Minister and institutional arrangements relating to the protection, use, development, conservation, management a id control of water resources within the framework of existing relevant government policy;

(b) provide for at least-

(i) the requirements of the Reserve and identify, where appropriate, water resources from which particular requirements must be met;

(ii) international rights and obligations;

(iii) actions to be taken to meet projected future water needs; and

(iv) water use of strategic importance;

(c) establish water management areas and determine their boundaries;

(d) contain estimates of present and future water requirements;

(e) state the total quantity of water available within each water management area;

(f) state water management area surpluses or deficits;

(g) provide for inter-catchment water transfers between surplus water management areas and deficit water management areas;

(h) set out principles relating to water conservation and water demand management;

(i) state the objectives in respect of water quantity to be achieved through the classification system for water resources provided for in this Act;

(j) contain objectives for the establishment of institutions to undertake water resource management;

(k) determine the inter-relationship between institutions involved in water resource management and

(l) promote the management of catchments within a water management area in a holistic and integrated manner

(2) In determining a water management area in, terms of subsection (1)(c), the Minister must take into account-

(a) watercourse catchment boundaries;

(b) social and economic development patterns;

(c) efficiency considerations; and

(d) communal interests within the area in question.

**12. Giving effect to national water resource strategy**

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

PART III

ESTABLISHMENT, FUNCTIONS AND PROCEDURES OF CATCHMENT

COUNCILS

**13. Establishment of catchment councils**

(1) The Minister, in consultation with the Zimbabwe National Water Authority may, by statutory instrument-

(a) establish a catchment council in respect of an area of a river system specified in that instrument;

(b) fix the number of members representing water users in the river system who shall constitute the catchment council and the manner in which they shall be elected or appointed;

(c) assign a name to the catchment council;

(d) prescribe the procedure at the meetings of or to be followed by the catchment council in the discharge of its functions;

(e) fix the remuneration, if any, and allowances payable to members of a catchment council from funds allocated for that purpose from the Water Levy Fund to meet the reasonable expenses incurred by members in connection with the business of the catchment council.

(2) A catchment council shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing such functions as a body corporate may by law perform.

(3) The Minister may, by statutory instrument-

(a) abolish a catchment council;

(b) alter the area of jurisdiction of a catchment council;

(c) alter the membership or the name of a catchment council.

**14. Functions of catchment councils**

(1) Subject to this Act, a catchment council shall-

(a) in conjunction with the National Water Authority, prepare an outline plan for its river system in accordance with this Act;

(b) determine applications made and grant permits required in terms of this Act;

(c) regulate and supervise the exercise of rights to, and use of, water in respect of the river system for which it is established;

(d) to supervise the performance of functions by subcatchment councils;

(e) ensure proper compliance with this Act; and

(f) perform any other function conferred or imposed upon it in terms of this Act.

(2) The Minister may, by written notice to a catchment council, confer all or any of the powers of officers upon a catchment manager or on all or any of the members of a catchment council and may at any time amend or revoke any such notice.

(3) For the better exercise of its functions, a catchment council may delegate to subcatchment councils, either absolutely or subject to conditions, such of its functions as it thinks fit:

Provided that-

(i) the power to grant permits shall not be delegated to a subcatchment council;

(ii) the delegation shall not prevent the catchment council from exercising the functions concerned;

(iii) the catchment council may amend or withdraw any decision of a subcatchment council in the exercise of its delegated functions.

**15. Powers of catchment councils**

(1) A catchment council may, subject to this Act and in regard to water within the area of the river system for which it is established-

(a) grant an application for-

(i) a licence;

(ii) a provisional licence;

(iii) a temporary licence;

for the use of water subject to such conditions as it thinks fit to impose or may refuse the application;

(b) on an application by any person to whom an existing permit has been granted for a revision of an existing permit, investigate the matter and make anappropriate order on the matter;

(c) on an application by any person in regard to-

(i) a dispute concerning the abstraction, appropriation, control, diversion or use of water; or

(ii) any matter which may be brought before a catchment council in terms of this Act; investigate the dispute or matter and make an appropriate order;

(d) at the request of the Minister or the Administrative Court, investigate any matter concerning the abstraction, appropriation, control, diversion or use of water and report on the matter;

(e) at the request of the Minister-

(i) investigate, define and record the right to the use of the water of any channel, reservoir or public stream, aquifer or other source of supply;

(ii) in the case of any watercourse the character of which has not already been defined by the catchment council, decide whether such watercourse is a public stream or not;

(iii) report for his information on-

A. the use or waste of water abstracted from any public stream;

B. the advisability of interference with or the removal of any dam, weir or other structure in the course of a public stream and, if such interference or removalis recommended, the compensation, if any, to be paid to any affected person;

C. any matter arising out of this Act;

(f) at the direction of the Minister, terminate any investigation requested by him in terms of paragraph (d) or (e);

(g) on its own motion, terminate any investigation referred to in paragraph (b) or (c);

(h) do anything which may be done by a catchment council in terms of this Act or any other enactment.

(2) In the exercise of any power referred to in subsection (1), a catchment council may-

(a) make all such inspections as may be necessary;

(b) call and take expert advice on any matter.

(c) without derogation from relevant sections in this Act, revise or cancel any existing licence.

**16. Establishment of catchment management strategies**

(1) A catchment council contemplated in section 13 must, by notice in the Gazette, establish a catchment management strategy for the protection, use, development, conservation, management and control of water resources within its water management area.

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

(3) A catchment management strategy-

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

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

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

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

(a) publish a notice in the Gazette-

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

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

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

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

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

**17. Contents of catchment management strategy**

(1) A catchment management strategy must-

(a) take into account the class of water resources and resource quality objectives and, where applicable, international obligations;

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

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

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

(e) contain water allocation plans and which must set out principles for allocating water;

(f) take account of any relevant national or regional plans prepared in terms of any other law, including any development plan;

(g) enable the public to participate in managing the water resources within its water management area;

(h) take into account the needs and expectations of existing and potential water users; and

(i) set out the institutions to be established.

**18. Guidelines for and consultation on catchment management strategies**

(1) The Minister may establish guidelines in preparation of catchment management strategies.

(2) In developing a catchment management strategy, a catchment council must consult with-

(a) The Minister;

(b) any organ of State which has an interest in the content, effect or implementation of the catchment management strategy; and

(c) any persons, or their representative organisations-

(i) whose activities affect or might affect water resources within its water management area; and

(ii) who have an interest in the content, effect or implementation of the catchment management strategy.

(3) A catchment council must, before the publication ofa notice interms of section 16 (5)(a), refer tothe Minister forconsideration and determination, anyproposed component of a catchment management strategy which in the opinion of the catchment council-

(a) raises a material question of policy; or

(b) raises a question concerning-

(i) the relationship between the Department and other organs of State;

(ii) the relationship between organs of State and their respective roles in developing or implementing a catchment management strategy.

**19. Giving effect to catchment management strategies**

The Minister and the catchment council concerned must give effect to any catchment management strategy established under sections 16 to 18 in exercising any power or performing any duty in terms of this Act.

**20. Persons interested in matters before catchment council**

(1) Before proceeding to the determination of any matter submitted to it, a catchment council shall satisfy itself that all persons who, in its opinion, have an interest which is reasonably likely to be adversely affected by the determination have been duly notified of the proceedings.

(2) Any person who has an interest in the determination of any matter submitted to a catchment council may-

(a) appear before the catchment council; and

(b) present such argument or produce such evidence before the catchment council as he thinks fit.

(3) An irrigation company shall, if any matter before a catchment council arises wholly or partly within the area of the combined water scheme concerned, be taken as having an interest referred to in subsection (2).

**21. Costs**

The costs payable in respect of any proceedings before a catchment council shall be as prescribed.

**22. Orders of catchment council**

(1) Subject to this Act, a catchment council may make such award or order on any proceedings brought before it as it thinks fit.

(2) An award or order of a catchment council-

(a) shall be reduced to writing and a copy thereof, certified by the chairman of the catchment council, shall, if such award or order is made on the hearing and determination of a dispute or application, be served on each party to the dispute or application, as the case may be; and

(b) shall be binding on each party to the dispute or application concerned, if any, unless the award or order is set aside on appeal.

(3) An award or order of a catchment council for the payment of a sum of money by a party to a claim, dispute, appeal or application shall have the same effect as an order of the High Court for such payment unless such award or order is set aside on appeal:

Provided that an appeal against the decision of a catchment council shall not suspend the decision, order, award or finding appealed against.

PART IV

PROTECTION OF WATER RESOURCES

**23. Prescription of classification system**

(1) As soon as is reasonably practicable, the Minister must prescribe a system for classifying water resources.

(2) The system for classifying water resources may-

(a) establish guidelines and procedures for determining different classes of water resources;

(b) in respect of each class of water resource-

(i) establish procedures for determining the Reserve;

(ii) establish procedures which are designed to satisfy the water quality requirements of water users as far as is reasonably possible, without significantly altering the natural water quality characteristics of the resource;

(iii) set out water uses for instream or land-based activities which activities must be regulatedor prohibited in order to protect the water resource; and

(c) provide for such other matters relating to the protection, use, development, conservation, management and control of water resources, as the Minister considers necessary.

**24. Determination of class of water resources and resource quality objectives**

(1) As soon as reasonably practicable after the Minister has prescribed a system for classifying water resources the Minister must, subject to subsection (4), by notice in the Gazette, determine for all or part of every significant water resource-

(a) a class in accordance with the prescribed classification system; and

(b) resource quality objectives based on the class determined in terms of paragraph (a).

(2) A notice in terms of subsection (1) must state the geographical area in respect of which the resource quality objectives will apply, the requirements for achieving the objectives, and the dates from which the objectives will apply.

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

(a) the Reserve;

(b) the instream flow;

(c) the water level;

(d) the presence and concentration of particular substances in water;

(e) the characteristics and quality of the water resource and the instream and riparian habitat;

(f) the characteristics and distribution of aquatic biota;

(g) the regulation or prohibition of instream or land-based activities which may affect the quantity of water in or quality of the water resource; and

(h) any other characteristic, of the water resource in question.

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

(a) publish a notice in the Gazette-

(i) setting out-

(aa) the proposed class;

(bb) the proposed resource quality objectives;

(cc) the geographical area in respect of which the objectives will apply;

(dd) the dates from which specific objectives will apply; and

(ee) the requirements for complying with the objectives; and

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

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

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

**25. Preliminary determination of class or resource quality objectives**

(1) Until-

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

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

(2) A determination in terms of section 24 supersedes a preliminary determination.

**26. Giving effect to determination of class of water resource and resource quality objectives**

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

**27. Determination of Reserve**

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

(2) A determination of the Reserve must-

(a) be in accordance with the class of the water resource as determined in terms of section 24; and

(b) ensure that adequate allowance is made for each component of the Reserve.

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

(a) publish a notice in the Gazette-

(i) setting out the proposed Reserve; and

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

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

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

**28. Preliminary determinations of Reserve**

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

(a) may, for all or part of a water resource; and

(b) must, before authorising the use or water,

make a preliminary determination of the Reserve.

**29. Giving effect to Reserve**

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

**30. Prevention and remedying effects of pollution**

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

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

(b) any other situation exists,

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

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

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

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

(c) contain or prevent the movement of pollutants;

(d) eliminate any source of the pollution;

(e) remedy the effects of the pollution; and

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

(3) A catchment council may direct any person who fails to take the measures required under subsection (1) to –

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

(b) diligently continue with those measures; and

(c) complete them before a given date.

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

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

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

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

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

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

(iii) the situation came about; or

(d) any person who negligently failed to prevent-

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

(ii) the situation from coming about.

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

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

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

**31. Control of emergency incidents**

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

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

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

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

(a) is responsible for the incident;

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

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

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

(a) the Department;

(b) the Zimbabwe Republic Police Service or the relevant fire department; or

(c) the relevant catchment council.

(4) A responsible person must-

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

(b) undertake clean-up procedures;

(c) remedy the effects of the incident; and

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

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

(6) Should-

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

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

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

(ii) undertake clean-up procedures; and

(iii) remedy the effects of the incident.

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

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

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

PART V

USE OF WATER

**32. Water use**

For the purpose of this Act, water use includes-

(a) taking water from a water resource;

(b) storing water;

(c) impeding or diverting the flow of water in a watercourse;

(d) engaging in a stream flow reduction activity;

(e) engaging in a controlled activity;

(f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;

(g) disposing of waste in a manner which may detrimentally impact on a water resource;

(h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process;

(i) altering the bed, banks, course or characteristic of a watercourse;

(j) removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; and

(k) using water for recreational purposes.

**33. Permissible water use**

(1) A person may only use water-

(a) without a licence-

(i) if that water use is permissible;

(ii) if that water use is permissible as a continuation of an existing lawful use; or

(iii) if that water use is permissible in terms of a general authorisation;

(b) if the water use is authorised by a licence under this Act; or

(c) if the responsible authority has dispensed with a licence requirement under subsection (3).

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

(a) must use the water subject to any condition of the relevant authorisation for that use;

(b) is subject to any limitation, restriction or prohibition in terms of this Act or any other applicable law;

(c) in the case of the discharge or disposal of waste or water containing waste contemplated in section 32 (f), (g), (h) or (j), must comply with any applicable waste standards or management practices unless the conditions of the relevant authorisation provide otherwise;

(d) may not waste that water; and

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

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

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

(5) A responsible authority may, authorise the use of water before-

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

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

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

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

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

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

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

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

(i) to provide for the Reserve;

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

(iii) rectify an unfair or disproportionate water use.

**34. Determination of quantity of water which may be allocated by responsible authority**

(1) Subject to the national water resource strategy the Minister may determine the quantity of water in respect of which a responsible authority may issue a general authorisation and a licence from water resources in its water management area.

(2) Until a national water resource strategy has been established, the Minister may make a preliminary determination of the quantity of water in respect of which a responsible authority may issue a general authorisation and licence.

(3) A preliminary determination must be replaced by a determination under subsection (1) once the national water resource strategy has been established.

(4) A responsible authority must comply with any determination made under subsection (1) or (2).

(5) In making a determination under subsections (1) and (2) the Minister must take account of the water available in the resource.

**35. Licences for use of water found underground on property of another person**

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

**36. Transfer of water authorisations**

(1) A water management institution may, at the request of a person authorised to use water for irrigation under this Act, allow that person on a temporary basis and on such conditions as the water management institution may determine, to use some or all of the water for a different purpose, or to allow the use of some or all of that water on another property in the same vicinity for the same or similar purpose.

(2) A person holding an entitlement to use water from a water resource in respect of any land may surrender that entitlement or part of that entitlement-

(a) in order to facilitate a particular licence application for the use of water from the same resource in respect of other land; and

(b) on condition that the surrender only becomes effective if and when such application is granted.

(3) The annual report of a water management institution or a responsible authority, as the case may be, must, in addition to any other information required under this Act, contain details in respect of permission granted under subsection (1) or every application granted under subsection (2).

**37. Regulations on the use of water**

(1) Subject to subsection (4), the Minister may make regulations-

(a) limiting or restricting the purpose, manner or extent of water use;

(b) requiring that the use of water from a water resource be monitored, measured and recorded;

(c) requiring that any water use be registered with the responsible authority;

(d) prescribing the outcome of effect which must be achieved by the installation and operation of any waterwork;

(e) regulating the design, construction, installation, operation and maintenance of any waterwork, where it is necessary or desirable to monitor any water use or to protect a water resource;

(f) requiring qualifications for the registration of persons authorised to design, construct, install, operate and maintain any waterwork, in order to protect the public and to safeguard human life and property;

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

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

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

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

(k) prescribing procedural requirements for licence applications;

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

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

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

(iii) the procedure to deal with a transaction;

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

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

(o) prescribing-

(i) procedures for obtaining; and

(ii) the required contents of,

assessments of the likely effect which any proposed licence may have on the quality of the water resource in question.

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

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

(b) differentiate between different geographical areas; and

(c) create offences and prescribe penalties.

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

(a) general provisions applicable to all waste; and

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

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

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

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

(c) prevent wasteful water use;

(d) facilitate the management of water use and waterworks;

(e) facilitate the monitoring of water use and water resources; and

(f) facilitate the imposition and recover of charges.

**38. Considerations for issue of general authorisations and licences**

(1) In issuing a general authorisation or licence a responsible authority must take into account all relevant factors, including-

(a) existing lawful water uses;

(b) the need to redress the results of past racial and gender discrimination;

(c) efficient and beneficial use of water in the public interest;

(d) the socio-economic impact-

(i) of the water use or uses if authorised; or

(ii) of the failure to authorise the water use or uses;

(e) any catchment management strategy applicable to the relevant water resource;

(f) the likely effect of the water use to be authorised on the water resource and on other water users;

(g) the class and the resource quality objectives of the water resource;

(h) investments already made and to be made by the water user in respect of the water use in question;

(i) the strategic importance of the water use to be authorised;

(j) the quality of water in the water resource which may be required for the Reserve and for meeting international obligations; and

(k) the probable duration of any undertaking for which a water use is to be authorised.

(2) A responsible authority may not issue a licence to itself without the written approval of the Minister.

**39. Essential requirements of licences**

(1) A licence contemplated in this section must specify-

(a) the water use or uses for which it is issued;

(b) the property of area in respect of which it is issued;

(c) the person to whom it is issued;

(d) the conditions subject to which it is issued;

(e) the licence period, which may not exceed forty years; and

(f) the review periods during which the licence may be reviewed must be at intervals of not more than 5 years.

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

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

(3) Subject to subsection (4), a responsible authority may extend the licence period of a licence if this is done as part of a general review of licences.

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

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

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

**40. Conditions for issue of general authorisations and licences**

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

(a) relating to the protection of-

(i) the water resource in question;

(ii) the stream flow regime; and

(iii) other existing and potential water users;

(b) relating to water management by-

(i) specifying management practices and general requirements for any water use, including water conservation measures;

(ii) requiring the monitoring and analysis of and reporting on every water use and imposing a duty to measure and record aspects of water use, specifying measuring and recordingdevices to be used;

(iii) requiring the preparation and approval of and adherence to, a water management plan;

(iv) requiring the payment of charges for water use;

(v) requiring the licensee to provide or make water available to a person specified in the licence; and

(vi) in the case of a general authorisation, requiring the registration of the water use with the responsible authority and the payment of a registration fee as a pre-condition of that use;

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

(i) specifying a water resource to which it must be returned or other manner in which it must be disposed of;

(ii) specifying permissible levels for some or all of its chemical and physical components;

(iii) specifying treatment to which it must be subject, before it is discharged; and

(iv) specifying the volume which may be returned;

(d) in the case of controlled activity-

(i) specifying the waste treatment, pollution control and monitoring equipment to be installed, maintained and operated, and

(ii) specifying the management practices to be followed to prevent the pollution of any water resource;

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

(i) setting out the specific quantity of water or percentage of flow which may be taken;

(ii) setting out the rate of abstraction;

(iii) specifying the method of construction of a borehole and the method of abstraction from the borehole;

(iv) specifying the place from where water may be taken;

(v) specifying the times when water may be taken;

(vi) identifying or limiting the area of land on which any water taken from a resource may be used;

(vii) limiting the quantity of water which may be stored;

(viii) specifying locations where water may be stored; and

(ix) requiring the licensee to become a member of a water user association before water may be taken;

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

(i) specifying practices to be followed to limit stream flow reduction and other detrimental impacts on the water resource; and

(ii) setting or prescribing a method for determining the extent of the stream flow reduction caused by the authorised activity;

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

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

(i) in the case of a licence-

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

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

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

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

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

**41. Security by applicant**

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

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

(i) A letter of credit from a bank;

(ii) a surety or a bank guarantee;

(iii) a bond;

(iv) an insurance policy; or

(v) any other appropriate form of security.

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

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

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

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

**42. Issue of licence no guarantee of supply**

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

(a) the statistical probability of supply;

(b) the availability of water; or

(c) the quality of water.

**43. Definition of existing lawful water use**

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

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

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

(ii) is a stream flow reduction activity contemplated in section 47; or

(iii) is a controlled activity contemplated in section 48 (1); or

(b) which has been declared an existing lawful water use under section 44.

**44. Declaration of water use as existing lawful water use**

(1) A person may apply to a responsible authority to have a water use which is not one contemplated in section 43 (1)(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 43 (1)(a), to be 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 toward effecting the use had been taken in good faith before the date of commencement of this Act.

**45. Authority to continue with existing lawful water use**

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

(a) any existing conditions or obligations attaching to that use;

(b) its replacement by a licence in terms of this Act; or

(c) any other limitation or prohibition by or under this Act.

(2) A responsible authority may require the registration of an existing lawful water use.

**46. Verification of existing water uses**

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

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

(a) have a suitable application form annexed to it;

(b) specify a date before which the application must be submitted;

(c) inform the person concerned that any entitlement to continue with the water use may lapse if an application is not made on or before the specified date; and

(d) be delivered personally or sent by registered mail to the person concerned.

(3) A responsible authority-

(a) may require the applicant, at the applicant’s expense, to obtain and provide it with other information, in addition to the information contained in the application;

(b) may conduct its own investigation into the veracity and the lawfulness of the water use in question;

(c) may invite written comments from any person who has an interest in the matter; and

(d) must afford the applicant an opportunity to make representations on any aspect of the application.

(4) A responsible authority may determine the extent and lawfulness of a water use pursuant to an application under this section, and such determination limits the extent of any existing lawful water use contemplated in section 43 (1).

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

(a) after the closing date specified in the notice, if that person has not applied for verification; or

(b) after the verification application has been refused, if that person applied for verification.

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

**47. Declaration of stream flow reduction activities**

(1) The following are steam flow reduction activities-

(a) the use of land for afforestation which has been or is being established for commercial purposes; and

(b) an activity which has been declared as such under subsection (2).

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

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

(a) the extent to which the activity significantly reduces the water availability in the watercourse;

(b) the effect of the steam flow reduction on the water resource in terms of its class and the Reserve;

(c) the probable duration of the activity;

(d) any national water resource strategy established under section 5; and

(e) any catchment management strategy established under section 8.

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

(a) publish a notice in the Gazette-

(i) setting out the activity proposed to be declared a stream flow reduction activity; and

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

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

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

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

**48. Controlled activity**

(1) The following are controlled activities:

(a) irrigation of any land with waste or water containing waste generated though any industrial activity or by a waterwork;

(b) an activity aimed at the modification of atmospheric precipitation;

(c) a power generation activity which alters the flow regime of a water resource;

(d) intentional recharging of an aquifer with any waste or water containing waste; and

(e) an activity which has been declared as such under section 49.

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

**49. Declaration of certain activities as controlled activities**

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

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

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

(a) must publish a notice in the Gazette-

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

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

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

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

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

(4) Every notice published in terms of subsection (1) must contain a schedule on which must be listed all controlled activities set out in section 48 (1)(a) to (d) and those which have, up to the date of the notice, been declared to be controlled activities under subsection (1).

PART VI

APPLICATION, REVIEW AND RENEWAL OF LICENCES

**50. Application for licences**

(1) A person who is required or wishes to obtain a licence to use water must apply to the relevant responsible authority for a licence.

(2) Where a person has made an application for an authorisation to use water under another Act, and that application has not been finalised when this Act takes effect, that application must be regarded asbeing an application for a water use under this Act.

(3) A responsible authority may charge a reasonable fee for processing a licence application, which may be waived in deserving cases.

(4) A responsible authority may decline to consider a licence application for the use of water to which the applicant is already entitled by way of an existing lawful water use.

**51. Procedure for licence applications**

(1) An application for a licence for water use must-

(a) be made in the form;

(b) contain the information; and

(c) be accompanied by the processing fee,

determined by the responsible authority.

(2) A responsible authority-

(a) may, to the extent that it is reasonable to do so, require the applicant, at the applicant’s expense, to obtain and provide it by a given date with-

(i) other information, in addition to the information contained in the application

(ii) an assessment by a competent person of the likely effect of the proposed licence on the resource quality; and

(iii) an independent review of the assessment furnished in terms of subparagraph (ii), by a person acceptable to the responsible authority;

(b) may conduct its own investigation on the likely effect of the proposed licence on the protection, use, development, conservation, management and control of the water resource;

(c) may invite written comments from any organ of state which or person who has an interest in the matter; and

(d) must afford the applicant an opportunity to make representations on any aspect of the licence application.

(3) A responsible authority may direct that any assessment under subsection (2)(a)(ii) must comply with the requirements contained in regulations made under the Environmental Management Act.

(4) A responsible authority may, at any stage of the application process, require the applicant-

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

(i) describing the licence applied for;

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

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

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

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

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

(5) The Minister must align and integrate the process for consideration of a water use license with the timeframes and processes applicable to applications for-

(a) licences, permits or rights for prospecting, exploration, mining and production in terms of the Mines and Minerals Act; and

(b) environmental authorisations in terms of the Environmental Management Act.

**52. Reasons for decisions**

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

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

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

**53. Compulsory licence applications**

(1) If it is desirable that water use in respect of the one or more water resources within a specific geographical area to be licenced-

(a) to achieve a fair allocation of water from a water resource in accordance with section 55 –

(i) which is under water stress; or

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

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

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

(d) to protect water resource quality,

the responsible authority may issue a notice requiring persons to apply for licences for one or more types of water use.

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

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

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

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

(d) state the closing date for licence applications;

(e) state the application fee; and

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

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

**54. Late applications**

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

**55. Proposed allocation schedules**

(1) A responsible authority must, after considering-

(a) all applications received in response to the publication of a notice in terms of section 53(1); and

(b) any further information or assessment obtained,

prepare a proposed allocation schedule specifying how water from the water resource in question will be allocated.

(2) A proposed allocation schedule must, subject to subsection (3), reflect the quantity of water to be-

(a) assigned to the Reserve and any relevant international obligations;

(b) assigned to meet the requirements of existing licences;

(c) allocated to each of the applicants to whom licences ought to be issued in order to redress the results of past racial and gender discrimination in accordance with the constitutional mandate for water reform;

(d) allocated to each of the applicants exercising existing lawful water uses to whom the licensing authority determines that licences should be issued; and

(e) allocated to each of the applicants.

(3) A responsible authority is under no obligation to allocate all available water.

(4) After completing a proposed allocation schedule the responsible authority must publish a notice in the Gazette-

(a) containing a copy of the proposed schedule, or stating the address where it may be inspected;

(b) inviting written objections to be submitted on the proposes schedule, specifying an address to which the objections are to be submitted and specifying a date before which the objections are to be submitted, which date must be not less than 60 days after the date of publication of the notice; and

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

**56. Preliminary allocation schedule**

(1) After considering all objections received on the proposed allocation schedule on or before the date specified in the notice contemplated in section 55(4), the responsible authority must prepare a preliminary allocation schedule and publish a notice in the Gazette-

(a) containing a copy of the preliminary allocation schedule, or stating the address where it may be inspected; and

(b) stating that an appeal in respect of any unsuccessful objection to the preliminary allocation schedule may be made.

**57. Final allocation schedules**

(1) A preliminary allocation schedule becomes a final allocation schedule-

(a) (i) if no appeal is lodged within the time limit;

(ii) if it has been amended following every successful appeal; or

(iii) if every appeal lodged is dismissed; and

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

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

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

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

**58. Licences replace previous entitlements**

(1) Any licence issued pursuant to an application contemplated in section 53(1) replaces any existing lawful water use entitlement to that person in respect of the water use in question.

(2) Notwithstanding the provisions of section 4, no person to whom a general notice to apply for a licence has been directed in terms of section 53 in respect of an existing lawful water use may exercise that water use-

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

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

**59. Review and amendment of licences**

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

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

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

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

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

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

(4) If an amendment of a licence condition on review severely prejudices the economic viability of any undertaking in respect of which the licence was issued apply.

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

**60. Formal amendment of licences**

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

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

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

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

(2) The responsible authority may require the licensee-

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

(b) to make a formal application for the amendment or substitution.

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

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

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

**61. Successors-in-title**

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

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

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

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

**62. Procedure for earlier renewal or amendment of licences**

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

(2) Unless an application for the renewal or amendment of a licence is made in terms of section 60, it must-

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

(b) be dealt with according to the procedure as set out in section 53.

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

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

**63. Rectification of contravention**

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

(a) any provision of Part VI;

(b) a requirement set or directive given by the responsible authority under this Part; or

(c) a condition which applies to any authority to use water,

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

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

(a) carry out any works and take any other action necessary to rectify the contravention and recover its reasonable costs from the person on whom the notice was served; or

(b) apply to a competent court for appropriate relief.

**64. Suspension or withdrawal of entitlements to use water**

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

(a) to comply with any condition of the entitlement;

(b) to comply with this Act; or

(c) to pay a charge which is payable in terms of Part VI.

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

(a) for the period specified in the notice of suspension; or

(b) until the responsible authority is satisfied that the person concerned has rectified the failure which led to the suspension.

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

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

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

**65. Surrender of licence**

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

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

PART VII

FINANCIAL PROVISIONS

**66. Pricing strategy for water use charges**

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

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

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

(i) gathering information;

(ii) monitoring water resources and their use;

(iii) controlling water resources;

(iv) water resource protection, including the discharge of waste and the protection of the Reserve; and

(v) water conservation;

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

(i) the costs of investigation and planning;

(ii) the cost of design and construction;

(iii) pre-financing of development;

(iv) the costs of operation and maintenance of waterworks;

(v) a return on assets; and

(vi) the costs of water distribution; and

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

(3) The pricing strategy may-

(a) differentiate on an equitable basis between-

(i) different types of geographic areas;

(ii) different categories of water use; and

(iii) different water users;

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

(i) an appropriate water management institution; or

(ii) consumers directly;

(c) provide for the basis of establishing charges;

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

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

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

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

(i) socio-economic aspects within the area in question;

(ii) the physical attributes of each area; and

(iii) the demographic attributes of each area;

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

(i) the manner in which the water is taken, supplied, discharged or disposed of;

(ii) whether the use is consumptive or non-consumptive;

(iii) the assurance and reliability of supply and water quality;

(iv) the effect of return flows on a water resource;

(v) the extent of the benefit to the derived from the development of a new water resource;

(vi) the class and resource quality objectives of the water resource in question; and

(vii) the required quality of the water to be used; and

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

(i) the extent of their water use;

(ii) the quantity of water returned by them to a water resource;

(iii) their economic circumstances; and

(iv) the statistical probability of the supply of water to them.

(5) The pricing strategy may provide for a differential rate for waste discharges, taking into account-

(a) the characteristics of the waste discharged;

(b) the amount and quality of the waste discharged;

(c) the nature and extent of the impact on a water resource caused by waste discharged;

(d) the extent of the permitted deviation from prescribed waste standards or management practices; and

(e) the required extent and nature of monitoring the water use.

(6) In setting a pricing strategy for water use charges, the Minister-

(a) must consider the class and resource quality objectives for different water resources;

(b) may consider incentives and disincentives-

(i) to promote the efficient use and beneficial use of water;

(ii) to reduce detrimental impacts on water resources; and

(iii) to prevent waste of water; and

(c) must consider measures necessary to support the establishment of tariffs by water services authorities and the use of lifeline tariffs and progressive block tariffs.

(7) Before setting a pricing strategy for water use charges under subsection (1), the Minister must-

(a) publish a notice in the Gazette-

(i) setting out the proposed pricing strategy; and

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

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

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

**67. Application of pricing strategy**

(1) Water use charges-

(a) may be made-

(i) within a specific water management area; or

(ii) on a national or regional basis; and

(b) must be made in accordance with the pricing strategy for water use charges set by the Minister.

(2) Charges made within a specific water management area may be made by and are payable to the relevant water management institution.

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

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

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

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

**68. Recovery of water use charges**

(1) The Minister may direct any water management institution to recover any charges for water use made by the Minister under section 67 (1)(a) from water users within its water management area or area of operation, as the case may be.

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

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

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

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

**69. Liability tor water use charges**

(1) Water use charges contemplated in this Part-

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

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

(2) Any person holding a licence to use water must pay all charges imposed under section 67 in respect of that water use.

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

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

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

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

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

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

**70. Water use charges are charges on land**

(1) A charge made in terms of section 67 (1), including any interest, is a charge on the land to which the water use relates and is recoverable from the current owner of the land without releasing any other person who may be liable for the charge.

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

(a) on written application by any person; and

(b) within 30 days of the application,

issue a certificate stating the amount of any unpaid water charges and any interest due in respect of any land.

PART VIII

WATER SHORTAGE AREAS

**71. Declaration of water shortage areas**

(1) If the Minister, acting on the recommendation of the National Water Authority and in consultation with the catchment council concerned, is of the opinion that-

(a) the flow of water in any public stream has at any time ceased or if the flow of water or the level of water in the storage works has fallen or is likely to fall below the level of the usual flow or acceptable level of storage works in the public stream; or

(b) it appears that the abstraction of water from boreholes and wells in any area is likely to diminish unduly the ground water resources in the area or affect adversely the flow of any surface water in any public stream; he may, by notice in the Gazette, declare any area specified in the notice to be a water shortage area for such period, not exceeding twelve months, as may be specified in the notice.

(2) The Minister may, in consultation with the catchment council concerned, by notice in the Gazette, cancel a declaration made in terms of subsection (1).

**72. Powers of catchment council in respect of water shortage areas**

(1) Notwithstanding anything contained in this Act, a catchment council may, in respect of a water shortage area within its area-

(a) suspend or amend any permits; or

(b) make orders in relation to the abstraction, appropriation, control, diversion or use of any water; or

(c) upon an order of the Administrative Court on application by a catchment council, authorize the Minister or any other person to enter on any land for the purpose of-

(i) abstracting water from any storage works, borehole, well or mine on the land;

(ii) sinking boreholes and wells on the land and abstracting water therefrom and conserving, diverting or using such water; for such purposes and in such quantities as the catchment council may authorize, and may make all such other orders as may be necessary in relation to subparagraph (i) and (ii); or

(d) determine the priority in the use of water in the water shortage area.

(2) Any action taken or order made in terms of subsection (1) shall lapse-

(a) after such period as the catchment council may determine; or

(b) after the expiry of the period for which the area was declared a water shortage area; or

(c) on the cancellation of the declaration of the water shortage area concerned;

whichever is the earliest.

(3) Any person who is aggrieved by any decision of a catchment council in terms of this section may appeal to the Administrative Court.

**73. Sinking, deepening or altering of boreholes and wells in ground water shortage areas restricted**

(1) No person shall, in a water shortage area, commence to sink, deepen or alter a borehole or well for any purpose otherwise than in accordance with a permit issued by the catchment council, and the provisions relating to boreholes and wells shall apply, mutatis mutandis.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment not exceeding six months or to both such fine and such imprisonment.

**74. Maximum volume and rate of abstraction of water in water shortage areas**

(1) On the recommendation of the National Water Authority, a catchment council may, by notice in the Gazette and in a newspaper circulating in the area concerned, fix a maximum volume of water which may be abstracted from any public stream or storage works and the maximum rate per month at which water may be abstracted from any borehole or well in a water shortage area.

(2) The rate or volume referred to in subsection (1) may be fixed in relation to the area of land owned by any person in the water shortage area concerned or to any other circumstance which the catchment council considers relevant to the fixing of such rate or volume.

(3) No person shall, after the publication of a notice referred to in subsection (1), in any month abstract water from any public stream, storage works, borehole or well in the water shortage area concerned at a rate exceeding the maximum rate fixed in terms of subsection (1).

(4) A catchment council may cause to be investigated the use being made of water ina water shortage area, and may, after having given the owner or occupier of land onwhich the public stream, water works, borehole or well is located not less than 14 days' notice of its intention to do so, amend the conditions of, or suspend, any permit relating to any such water.

(5) Any person who-

(a) abstracts or desires to abstract water within a water shortage area for the purpose of his occupation or trade; or

(b) has carried out water conservation measures or works, the nature and extent of which are approved by the catchment council and which are likely to result in an improvement in the water resources in a water shortage area; may apply to the catchment council for a permit to abstract water within the water shortage area at a rate higher than the maximum rate fixed in terms of subsection (1).

(6) A local authority may, whether the area under the jurisdiction of the local authority is within or outside a water shortage area, apply to the catchment council concerned for a permit to abstract water within a water shortage area at a rate higher than the maximum rate fixed in terms of subsection (1).

(7) The catchment council may, on an application in terms of subsection (5) or (6)—

(a) issue a permit authorizing the abstraction of water at a rate higher than the maximum rate fixed in terms of subsection (1), subject to such conditions as it thinks fit to impose; or

(b) refuse the application.

(8) Any person to whom a permit has been issued to sink, deepen or alter a borehole or well in a water shortage area may, in the course of sinking, deepening or altering, abstract ground water at a rate higher than the maximum rate fixed in terms of subsection (1).

(9) Any person who is aggrieved by-

(a) the maximum rate of abstraction of water fixed in terms of subsection

(1) may, within a period of thirty days from the date of publication of the notice referred to in that subsection; or

(b) any decision of a catchment council in terms of subsection 7 may, within a period of thirty days from the date of such decision; appeal to the Administrative Court.

(10) On an appeal in terms of subsection 9-

(a) relating to the maximum rate of abstraction of water fixed in terms of subsection (1), the Administrative Court may direct the catchment council to amend the rate or may confirm it; or

(b) relating to any decision of the catchment council in terms of subsection (7), the Administrative Court may direct the catchment council-

(i) to issue or reissue the permit applied for, subject to such conditions as the Administrative Court may specify in such direction; or

(ii) to refuse the application concerned.

(11) Any person who contravenes subsection (3) shall be guilty of an offence and liable a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

**75. Measuring and recording of water abstracted in water shortage areas**

(1) A catchment council may, by notice in writing served on the person concerned, require any person who is abstracting water in a water shortage area for any purpose-

(a) to provide and install a meter or other measuring device for measuring and recording the amount of water abstracted; and

(b) to submit at such intervals as may be specified in the notice and in the prescribed manner, returns of the water so abstracted.

(2) An officer or any person authorized by the catchment council may read and inspect any meter or other measuring device installed in terms of subsection (1) and seal such device in order to prevent interference with its working.

(3) Any person who fails to comply with a requirement in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

**76. Minister may delegate powers under this Part to local authorities**

The Minister may, after consultation with the local authority concerned and the Minister responsible for local government and after considering the financial resources available to such local authority, by notice in the Gazette-

(a) authorize the delegation of any of the powers conferred on a catchment council by this Part to a local authority subject to such conditions as he thinks fit to impose; and

(b) amend or withdraw the powers delegated to a local authority in terms of paragraph (a).

PART IX

ACCESS TO AND RIGHTS OVER LAND

**77. Definitions**

“interested party” means every owner of, and every holder of a real right in or lease of, land within the area on or over which a servitude is claimed;

“permanent servitude” means a servitude other than a temporary servitude;

“real right” means a real right registered in terms of the Deeds Registries Act [Chapter 20:15] or the Mines and Minerals Act [Chapter 21:05];

“servitude” means a servitude of abutment, a servitude of passage, a servitude of purification or a servitude of storage;

“servitude of abutment” means the right to occupy and use by means of water works, and the necessary appurtenances and structures, the banks or bed of a public stream or land adjacent thereto or any other land belonging to another and includes the right of access to and over the area subject to such right of occupation and use, after giving such notice as is reasonable in the circumstances to the occupier thereof, for the purpose of constructing, inspecting, maintaining and operating the water works and the necessary appurtenances and structures concerned or for any other purpose necessary for the effective enjoyment of the rights referred to in this definition;

“servitude of passage” means the right to occupy and use so much land belonging to another as may be necessary for or incidental or the passage of water and includes the right-

(a) to construct such water works as may be necessary for such passage on such land and over, under or alongside other water works or to enlarge and extend existing water works; and

(b) of access to and over the area subject to such right of occupation and use, after giving such notice as is reasonable in the circumstances to the occupier thereof, for the purpose of constructing, inspecting, maintaining and operating water works referred to in paragraph (a) or for any other purpose necessary for the effective enjoyment of the rights referred to in this definition;

“servitude of purification” means the right to occupy and use so much land belonging to another as may be necessary for or incidental to the filtration and purification of water and processes incidental thereto and includes the right-

(a) to construct such water works as may be necessary for such filtration and purification; and

(b) of access to and over the area subject to such right or occupation and use, after giving such notice as is reasonable in the circumstances to the occupier thereof for the purpose of constructing, inspecting, maintaining and operating water works referred to in paragraph (a) or for any other purpose necessary for the effective enjoyment of the rights referred to in this definition;

“servitude of storage” means the right to occupy and use land belonging to another by inundating it with water by means of water storage works, together with such land-

(a) contiguous to the land so inundated as may be required to be occupied and used by the holder of the servitude of storage for the purpose of preventing the pollution of the water stored by or in the water storage works; and

(b) adjacent to or near the land so inundated as may be required to be occupied and used for the purpose of passage, after giving such notice as is reasonable in the circumstances to the occupier thereof, for the purpose of cleansing and maintaining the water storage works or for any other purpose necessary for the effective enjoyment of the rights referred to in this definition;

“temporary servitude” means a servitude with a duration of-

(a) a fixed number of years; or

(b) the period for which it is used for the purpose for which it is granted, with or without further specification of such duration.

**78. Acquisition of servitudes**

(1) A person who is authorised under this Act to use water 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 the extent that this is necessary to give effect to that authorisation.

(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 property on which the claimant may use the water.

(3) A servitude under this Part may also be claimed in respect of an existing waterwork.

(4) A person who intends to claim a servitude under this section must follow the procedure set out in Schedule 2.

**79. Rights and duties of servitude holders and landowners**

(1) A holder of a servitude contemplated in this Part has a reasonable right of access to the land which is subject to the servitude for the purpose of constructing, altering, replacing, inspecting, maintaining, repairing or operating the relevant waterwork, or for any other purpose necessary for the effective enjoyment of that servitude.

(2) The holder of a servitude contemplated in this Part may, in a reasonable manner and subject to any other applicable law-

(a) take from the land subject to the servitude, any material or substance reasonably required for constructing, altering, replacing, maintaining or repairing any waterwork or part of a waterwork in respect of which the servitude has be 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 waterwork in the reasonable exercise of the servitude;

(d) occupy, during the period of construction of the waterwork 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 waterwork;

(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 the extent that this is necessary for the control, operation and maintenance of the relevant waterwork.

(3) A holder of a servitude contemplated in this Part must, when requested in writing by the owner of the land subject to the servitude, at the holder’s cost-

(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 requested work, 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 that land subject to the servitude to the extent that this is reasonably possible.

**80. Procedure for acquisition and amendment of servitudes**

(1) A servitude contemplated in this Part may be acquired or an amendment or cancellation of a servitude obtained by-

(a) executing and registering an applicable deed in terms of the Deeds Registries Act, or

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

(2) A person claiming a servitude or an amendment of a servitude under this Part may, on reasonable notice to the landowner-

(a) enter;

(b) make any investigation; and

(c) undertake any operation,

on land which will be subject to the servitude, where this is reasonable in the circumstances and necessary for determining the nature and extent of the servitude and for complying with item 3 of Schedule 2.

(3) A person acting under subsection (2) must-

(a) cause as little damaged as possible to the land; and

(b) where any damages is caused-

(i) repair the damage where possible; or

(ii) pay compensation to the landowner in an agreed amount of an amount determined by a competent court.

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

(a) the owner of the land is authorised to use water from a specific water resource;

(b) the use of the waterwork is compatible with the authorised water use; and

(c) the owner of the land agrees to be responsible for a proportionate share of the cost of constructing, repairing and maintaining the waterwork.

(5) A claim to share in the use of a waterwork under subsection (4) must be dealt with-

(a) in the agreement between the parties; or

(b) in a High Court order.

**81. Powers of High Court in respect of Claim for servitude**

On hearing a claim for a servitude or for an amendment to a servitude in terms of this Part, a 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, usufruct or similar right over the property, and order that such compensation be paid; or

(d) dismiss the claim.

**82. Compensation payable for granting of servitudes**

(1) In determining just and equitable compensation 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 waterwork relating to the servitude or amendment;

(b) whether any existing waterwork will be used to give effect to the servitude;

(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 other person with a compensatable 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 waterwork relating to the servitude or amendment.

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

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

(1) The acquisition, amendment or cancellation of a servitude by virtue of an order of the High Court takeseffect when the order is noted in terms of the Deeds Registries 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.

**84. Cancellation of servitude**

An owner of land subject to a servitude of abutment, aqueduct or submersion may –

(a) if the relevant authorisation associated with the servitude is terminated;

(b) if the rights and obligations in respect of the servitude have not been exercised on the land subject to the servitude for a continuous period of 3 years; or

(c) for any other lawful reason,

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

**85. Joint waterworks involving servitude**

Subject to this Act, two or more persons who are authorised to use water may agree to-

(a) construct a joint waterwork; and

(b) create a servitude associated with that waterwork,

to give effect to their authorised water use.

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

(1) A water management institution (including the State)-

(a) retains ownership of a waterwork placed in good faith on land belonging to another;

(b) may remove such a waterwork from the land; and

(c) may transfer the rights held in respect of improvement on such land to another person or authority.

(2) When a waterwork is removed under subsection (1)(b), the owner of the property-

(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) 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 property not owned by the State or the institution may be transferred to another person or authority.

**87. Transfer of personal servitudes**

(1) Despite any law to the contrary, a personal servitude, whether registered or not, held by the Minister or a water management institution may be transferred-

(a) from the Minister to a water management institution; or

(b) from a water management institution to the Minister or to another water management institution.

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

PART X

WATER USER ASSOCIATIONS

**88. Proposal for establishment of water user association**

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

(a) the reasons for making the proposal;

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

(c) the proposed activities of the association;

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

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

(f) the proposed constitution of the association;

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

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

**89. Procedure for establishment of water user association**

(1) The Minister may on his or her own initiative or after receiving a proposal containing the information required in terms of section 88 (1), by notice in the Gazette-

(a) establish a water user association, give it a name, determine its area of operation and approve its constitution subject to section 90 (2); or

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

(2) the Minister may-

(a) require a person who has submitted a proposal in terms of subsection (1) to provide the Minister with additional information to that required by section 88 (1); and

(b) instruct the Secretary to conduct an investigation regarding-

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

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

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

(a) publish a notice in the Gazette-

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

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

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

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

(4) The Minister need not fulfil all the requirements of subsection (3), if there has been sufficient consultation on a proposal submitted in terms of section 88.

(5) The Minister may-

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

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

**90. Constitution of water user association**

(1) Schedule3contains a model constitution which may be used as a basis for drawing up and proposing a constitution for a proposed water user association.

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

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

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

(c) the voting powers of members;

(d) procedures for terminating membership;

(e) procedures for electing the management committee of the association;

(f) procedural requirements for appointment of employees of the association;

(g) procedural requirements for obtaining loans; and

(h) the financial obligations of members towards the association.

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

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

**91. Powers of water user association**

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

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

(b) are inconsistent with this Act.

**92. Directives to water user association**

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

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

(3) If a water user association-

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

(b) has acted unfairly or in a discriminatory or inequitable way towards any member of the association;

(c) has failed to admit persons to membership unfairly or on discriminatory grounds;

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

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

(f) is unable to exercise its powers or perform its duties effectively due to dissension among the management committee or its members;

(g) has failed to comply with its constitution or this Act; or

(h) has become redundant or ineffective,

the Minister may-

(i) direct the association to take any action specified by the Minister;

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

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

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

(a) the nature of the deficiency;

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

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

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

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

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

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

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

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

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

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

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

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

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

**93. Disestablishment of water user association**

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

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

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

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

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

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

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

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

(a) publish a notice in the Gazette-

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

(ii) setting out the reasons for disestablishing the water user association; and (iii) inviting written comments on the proposal, specifying an address to which and a datebefore which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;

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

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

**94. Winding up affairs of disestablished water user association**

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

(a) as provided for in its constitution; or

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

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

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

(4) No transfer duty, other tax or duty is payable in respect of the transfer of any assets under subsection (3).

PART XI

SAFETY OF DAMS

**95. Definitions**

(1) In this Part-

“advisory panel” means an advisory panel appointed in terms of subsection (3) of section 98.

“approved civil engineer” means a civil engineer who has been declared to be an approved civil engineer in terms of subsection (5) of section 98;

“approved civil engineering technician” means a civil engineering technician who has been declared to be an approved civil engineering technician;

“appurtenant works” means any works which contribute directly or indirectly to the functioning, operation or safety of a small dam or large dam and includes-

(a) outlet works and penstocks, pipelines, tunnels and other water conduits, whether running through the structure of the small dam or large dam or the abutments thereof; and

(b) gated and ungated spillways and erosion control and energy dissipating works, whether in the structure of the small dam or large dam or separate therefrom; and

(c) anchoring, buttressing, drainage and other stabilising works in original earth or rock slopes, whether downstream or upstream of the small dam or large dam; and

(d) devices or works for measuring flow, movement, pore water pressure, seepage, strain, temperature or uplift pressure, whether in the structure of the small dam or large dam or separate therefrom; and

(e) such other works as may be declared in terms of subsection (2) to be appurtenant works;

 “dam works” means the alteration, construction, reconstruction or removal of a small dam or large dam;

“design flood”, in relation to a small dam or large dam, means the estimated maximum flow of water resulting from floods or other causes, which flow-

(a) is required to pass through the spillway or other discharge facilities; and

(b) is approved or fixed in relation to the small dam or large dam concerned in terms of subsection (3);

“dry freeboard” means the vertical distance between the water level attained when the design flood is being passed and the level of the non-overflow crest of the wall of the small dam or large dam concerned;

“full supply level” means that water level which pertains immediately prior to the release of excess flood water through the spillway;

“high flood level” means the maximum level of water which can safely be contained by a small dam or large dam without encroaching on the dry freeboard thereof;

“large dam” means a structure, whether constructed or proposed to be constructed, which, together with its abutments, appurtenant works and foundations, is capable of diverting or storing water and which-

(a) has a vertical height of fifteen metres or more measured from the nonoverflow crest of the wall of the structure to the lowest point on the downstream face of the wall; or

(b) is capable of storing one million or more cubic metres of water at full supply level; or

(c) has foundations which, in the opinion of the Secretary as notified to the owner of the structure, may or causes special or unexpected difficulties; or

(d) in the opinion of the Secretary as notified to the owner of such structure, is a small dam of unusual design; or

(e) is declared in terms of subsection (2) to be a large dam;

“owner”, in relation to a small dam or large dam-

(a) means the person entitled to divert or store water by means of the small dam or large dam; and

(b) includes the legal representative of any person referred to in paragraph

(a) who has died, become insolvent, is a minor or of unsound mind or is otherwise under disability and, in the case of a company, the liquidator of the company;

 “small dam” means a structure, whether constructed or proposed to be constructed, which, together with its abutments, appurtenant works and foundations, is capable of diverting or storing water and which-

(a) has a vertical height of more than eight metres but less than fifteen metres measured from the non-overflow crest of the wall of such structure to the lowest point on the downstream face of such wall; or

(b) is capable of storing more than five hundred thousand but less than one million cubic metres of water at full supply level; or

(c) is declared in terms of subsection (2) to be a small dam.

(2) The Minister, on the recommendation of the National Water Authority and in consultation with the catchment council concerned, may, by notice in writing given to the owner of the small dam or large dam concerned-

(a) declare any works, other than works referred to in paragraphs (a) to

(d) of the definition of “appurtenant works” in subsection (1), to be appurtenant works;

(b) declare any structure, other than a structure referred to in paragraphs

(a) to (c) of the definition of “small dam” in subsection (1) or in paragraphs (a) to (e) of the definition of “large dam” in that subsection, which, together with its abutments, appurtenant works and foundations, is capable of diverting or storing water to be a small dam or large dam, as the case may be;

for the purposes of this Part.

(3) The Secretary, in consultation with the catchment council concerned, may approve or fix, in relation to a small dam or large dam, a flow of water as the design flood thereof.

**96. Control measures for dam with safety risk**

(1) The owner of a dam must-

(a) within the period specified, provide the Minister with any information, drawings, specifications, design assumptions, calculations, documents and test results requested by the Minister; or

(b) give any person authorised by the Minister access to that dam, to enable the Minister to determine whether-

(i) that dam is a dam with a safety risk;

(ii) that dam should be declared to be a dam with a safety risk;

(iii) a directive should be issued for specific repairs or alterations to that dam;

(iv) the owner has complied with any provisions of this Act applicable to that dam.

(2) The Minister may by notice in the Gazette declare a category of dams to be dams with a safety risk.

(3) The Minister may-

(a) by written notice to the owner of a dam, declare that dam to be a dam with a safety risk;

(b) direct the owner of a dam with a safety risk to submit, at the owner’s cost, and within a period specified by the Minister, a report by an approved professional person regarding the safety of that dam; or

(c) direct the owner of a dam with a safety risk to undertake, at the owner’s cost, and within a period specified by the Minister, any specific repairs or alternations to that dam which are necessary to protect the public, property or the resource quality from a risk of failure of the dam.

(4) If the owner of the dam fails to comply with the directive contemplated in subsection (3)(c) within the period specified, the Minister may undertake the repairs or alterations and recover the costs from the owner.

(5) Before issuing a directive, the Minister must-

(a) be satisfied that the repairs or alterations directed are necessary, adequate, effective and appropriate to reduce the risk to an acceptable level; and

(b) consider the impact on public safety, property, the resource quality and socio-economic aspects if the dam fails.

**97. Responsibilities of approved professional persons**

(1) When carrying out a task in terms of this Part, an approved professional person also has a duty of care towards the State and the general public.

(2) An approved professional person appointed to carry out a task on a dam must-

(a) ensure that the task is carried out according to acceptable dam engineering practices;

(b) keep the prescribed records;

(c) compile the prescribed reports; and

(d) where the task includes constructing, altering or repairing a dam, issue a completion certificate to the owner of the dam to the effect that the task on that dam has been carried out according to the applicable design, drawings and specifications.

(3) An approved professional person appointed to carry out a dam safety evaluation must-

(a) consider whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam satisfy acceptable dam engineering practices; and

(b) compile a report on the matters contemplated in paragraph (a) according to the prescribed requirements and submit the signed and dated report to the owner of the dam within the prescribed period.

**98. Registration of dam with safety risk**

(1) The owner of a dam with a safety risk must register that dam.

(2) An application for registration must be made within 120 days-

(a) after the date on which the dam with a safety risk becomes capable of containing, storing or impounding water;

(b) after the date on which an already completed dam is declared to be a dam with a safety risk; or

(c) after publication of a notice declaring a category of dams to be dams with a safety risk, as the case may be.

(3) A successor-in-title to an owner of a dam with a safety risk must promptly inform the Secretary of the succession, for the substitution of the name of the owner.

**99. Factors to be considered in declaring dam or category of dams with safety risk**

In declaring a category of dams or a dam to be a category of dams or a dam with a safety risk, the Minister must consider-

(a) the need to protect the public, property and resource quality against the potential hazard posed by the dam or category of dams;

(b) the extent of potential loss or harm involved;

(c) the cost of any prescribed measures and whether they are reasonably achievable;

(d) the socio-economic impact if such a dam fails; and

(e) in the case of a particular dam, also-

(i) the manner in which that dam is designed, constructed, altered, repaired, operated, inspected maintained or abandoned;

(ii) the person by whom that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned; and

(iii) the manner in which the water is contained, stored or impounded in that dam.

**100. Exemptions**

(1) The Minister may exempt owners of dams belonging to certain categories, by notice in the Gazette, from compliance with any provision in this Part or any regulation made under this Part, on conditions determined by the Minister.

(2) The Minister may in writing exempt an owner of a dam belonging to a certain category from compliance with any provision in this Part on conditions determined by the Minister.

(3) The Minister may withdraw the exemption or impose further or new conditions in respect of the exemption.

(4) Before deciding on an exemption, 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 in, 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 Act.

**101.Regulations regarding dam safety**

(1) The Minister may make regulations-

(a) for the establishment of a register of approved professional persons for dealing with dams with a safety risk-

(i) providing for-

(aa) different classes of approved professional persons;

(bb) the tasks or category of tasks which each class of approved professional persons may perform; and

(cc) the conditions under which each class of approved professional persons may perform any task or category of tasks;

(ii) concerning the requirements for admission to each class;

(iii) setting out, in respect of each class, the procedure for-

(aa) approval;

(bb) withdrawal of an approval; and

(cc) suspension of an approval; and

(iv) providing for a processing fee for an approval;

(b) regulating the approval of a person as an approved professional person for a specific task-

(i) setting out the procedure for approval;

(ii) setting out the procedure for cancelling an approval;

(iii) requiring that the approved person be assisted in the task by another person or a group of persons which specific experience and qualifications; and

(iv) providing for a processing fee for an approval;

(c) in respect of dams with a safety risk –

(i) classifying such dams into categories;

(ii) requiring the owner of a dam of a specific category to appoint an approved professional person to-

(aa) design that dam or any repair, alteration or abandonment of the dam;

(bb) ensure that a task is carried out according to the applicable design, drawings and specifications; and

(cc) carry out dam safety evaluations on the dam;

(iii) requiring that licences be issued by the Minister before any task relating to a specific category of dams may commence, and the conditions, requirements and procedure to obtain any specific licence;

(iv) laying down licence conditions and requirements that must be met when carrying out a task on a specific category of dams;

(v) requiring an approved professional person, appointed for a dam of a specific category, to keep records of information and drawings, and to compile reports;

(vi) requiring-

(aa) an owner of a dam belonging to a specific category of dams; and

(bb) an approved professional person appointed for a specific task for a specific dam, to submit information, drawings, reports and manuals;

(vii) determining the duties of-

(aa) an owner of a dam belonging to a specific category of dams; and

(bb) an approved professional person appointed for a specific task for a specific dam;

(d) requiring the owner of a dam with a safety risk to accomplish regular monitoring of the dam, to the extent and manner prescribed;

(e) requiring the registration of a specific dam with a safety risk, and setting out the procedure and the processing fee payable for registration; and

(f) specifying time periods that must be complied with.

(2) In making regulations under subsection (1)(a), the Minister must consider-

(a) the expertise required for the effective design, construction, alteration, repair, operation, maintenance and abandonment of a dam in the category concerned; and

(b) the qualifications and experience needed to provide the expertise for a particular category of tasks

PART XII

GOVERNMENT WATERWORKS

**102. Acquisition, construction, alteration, repair, operation and control of government waterworks**

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

**103. Consultation and environmental impact assessment**

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

(a) prepare an environmental impact assessment relating to the proposed waterwork which must, where the Minister considers it appropriate, comply with the requirements contained in regulations made under the Environmental Management Act;

(b) publish a notice in the Gazette-

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

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

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

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

(d) consider-

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

(ii) the environmental impact assessment.

(2) Subsection (1) does not apply-

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

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

(c) if the waterwork is a minor one.

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

(a) to demolish the waterwork; or

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

**104. Financing of government waterworks**

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

**105. Water from government waterworks**

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

(2) The Minister may fix a charge for water allocated from a government waterwork.

**106. Access to and use of government waterworks for recreational purposes**

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

(2) The Minister may-

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

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

(i) the use of;

(ii) entry into; and

(iii) the use of any water surface or land associated with,

any government waterwork for recreational purposes.

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

and with any other applicable law.

**107. Government waterworks constructed before announcement of Act**

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

**108. Disposal of government waterworks**

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

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

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

**109. Regulations regarding government waterworks**

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

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

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

(c) charges for-

(i) entrance to;

(ii) use of facilities at; and

(iii) the private development of,

a government waterwork.

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

(a) the safety and protection of government waterworks;

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

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

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

PART XIII

INTERNATIONAL WATER MANAGEMENT

**110. Establishment of bodies to implement international agreements**

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

(a) investigating, managing, monitoring and protecting water resources;

(b) regional co-operation on water resources;

(c) acquiring, constructing, altering, operating or maintaining a waterwork; or

(d) the allocation, use and supply of water.

**111. Governance and functions of bodies**

(1) A notice contemplated in section 110 must, with due regard to the relevant international agreement, give details of-

(a) the governance of the body;

(b) the functions of the body;

(c) the financing of the body;

(d) mechanisms for controlling and supervising the affairs of the body;

(e) the disestablishment of the body and the winding-up of the body’s affairs; and

(f) any other matter necessary to give effect to the agreement.

(2) If the Minister is satisfied that it will not prejudice the capacity of a body to perform the functions for

which it was established, the Minister may direct a body established under section 110 to perform additional functions which may include, but are not limited to, providing water management institutions with-

(a) management services;

(b) financial services;

(c) training; and

(d) other support services.

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

**112. Powers of bodies**

A body established under section 110 is a body corporate and has the powers of a natural person full of capacity, except those powers which-

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

(b) are excluded by or are inconsistent with this Act or the relevant international agreement.

**113. Bodies must manage different functions as separate units**

(1) If given additional functions under section 111(2), a body must manage each of its functions separately, and must account for them separately.

(2) A body must apply accounting practices consistent with generally accepted accounting practices.

**114. Reports on performance of functions**

(1) Unless the international agreement provides, otherwise, a body must report on the performance of its functions within three months after the end of its financial year.

(2) The report must-

(a) be accompanied by the body’s audited financial statements for that financial year; and

(b) be submitted to the Minister and such other party as may be required by the international agreement.

(3) The report must contain sufficient information to allow the Minister to assess the performance of the body in respect of all its functions against the objectives set out in the relevant agreement.

**115. Investigation of affairs or financial position of bodies**

(1) The Minister may, with the consent of the other parties to the agreement, or if the agreement so provides, appoint a person to investigate the affairs or financial position of a body and that person may for this purpose attend any meeting of the body.

(2) A body must, subject to subsection (1), on request, provide the Minister’s appointee with such-

(a) information on the affairs and financial position of the body;

(b) access to all book, accounts, documents and assets of the body; and

(c) information and data on water resources,

as may be required by the Minister or the Minister’s appointee.

(3) The Minister may recover from the body concerned the reasonable fees and disbursements of any person appointed under subsection (1).

PART XIV

APPEALS AND DIPUTE RESOLUTION

**116. Establishment of Water Tribunal**

(1) The Water Tribunal is hereby established.

(2) The Tribunal is an independent body which-

(a) has jurisdiction in all the provinces in the country; and

(b) may conduct hearing anywhere in the country.

(3) The Tribunal consists of a chairperson, a deputy chairperson and as many additional members as the Minister considers necessary.

(4) Members of the Tribunal must have knowledge in law, engineering, water resource management or related fields of knowledge.

(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.

(6) The chairperson and the deputy chairperson may be appointed in a full-time or part-time capacity while the additional members must be appointed in a part-time capacity.

(7) The Minister must determine the employment conditions and the remuneration of the chairperson, the deputy chairperson and all other members of the Tribunal in consultation with the Minister of Finance.

(8) The Minister may, after consultation with the Judicial Service 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.

**117. Operation of Water Tribunal**

(1) Subject to section 116 (4), 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 by the Tribunal.

(2) The expenditure of the Tribunal must be defrayed out of money appropriated by Parliament for that purpose or from any other source.

(3) Neither the Tribunal, the chairperson, the deputy chairperson nor any other member is liable for an act or omission committed in good faith while performing a function in terms of this Act.

**118. Appeals to Water Tribunal**

(1) There is an appeal to the Water Tribunal-

(a) against a directive issued by a catchment council;

(b) against a claim by a catchment council for the recovery of costs;

(c) against the apportionment by a catchment council of a liability for costs;

(d) against a decision of a water management institution on the temporary transfer of a water use authorisation;

(e) against a decision of a responsible authority on the verification of a water use;

(f) against a decision of a responsible authority on an application for a licence, or on any other person who has timeously lodged a written objection against the application;

(g) against a preliminary allocation schedule published by a responsible authority, by any interested person;

(h) against the amendment of a condition of a licence by a responsible authority on review;

(i) against a decision of a responsible authority on an adjudication of claims;

(j) against a directive issued by a responsible authority;

(k) against a claim by a water management institution for the recovery of costs by the person against whom the claim is made;

(l) against a decision by a responsible authority on the suspension, withdrawal or reinstatement of an entitlement, or on the surrender of a licence by the person entitled to use water or by the licensee; and

(m) against a declaration made by, directive given by or costs claimed by the Minister in respect of a dam with a safety risk.

(2) An appeal must be commenced within 30 days after-

(a) publication of the decision in the Gazette;

(b) notice of the decision is sent to the appellant; or

(c) reasons for the decision are given,

whichever occurs last.

(3) The procedure for lodging, hearing and deciding-

(a) an appeal under subsection (1); and

(b) an application for the determination of compensation.

(4) The chairperson may make rules which-

(a) govern the procedure of the Tribunal, including the procedure for lodging and opposing an appeal or an application and the hearing thereof by the Tribunal;

(b) may provide for application or appeal fees payable by a claimant or appellant; and

(c) must be approved and published in the Gazette by the Minister.

**119. Appeals from decision of Water Tribunal**

(1) A party to a matter in which the Water Tribunal-

(a) has given a decision on appeal under section 118, may, on a question of law, appeal to a High Court against that decision; or

(b) has determined the liability for compensation or the amount of compensation may, on a question of law, appeal to a High Court against that determination.

(2) The appeal must be noted in writing within 21 days of the date of the decision of the 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 relevant High Court and with the Water Tribunal; and

(d) be served on every party to the matter.

(4) The appeal must be prosecuted as if it were an appeal from a Magistrate’s Court to a High Court.

**120. Mediation**

(1) The Minister may at any time and in respect of any dispute between any persons relating to any matter contemplated in this Act, at the request of a person involved or on the Minister’s own initiative, direct that the persons concerned attempt to settle their dispute through a process of meditation and negotiation.

(2) A directive under subsection (1) must specify the time when the place where such process must start.

(3) Unless the persons concerned have informed the Minister at least seven days before the date specified in terms of subsection (2) that they have appointed a mediator, the Minster must appoint a mediator.

(4) Notwithstanding subsection (3), the parties may at any time during the course of mediation or

negotiation proceedings, by agreement between them, appoint another person to act as mediator.

(5) A person appointed by the Minister in terms of subsection (3) must either be an official of the Department or an independent mediator.

(6) Where the Minister or the Department is a part to the dispute, the mediator may not be an official of the Department.

(7) The contents of all discussions which took place and of all submissions made as part of a mediation process 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-

(a) the Department, if the Minister has appointed the mediator; or

(b) the parties, if they have appointed the mediator.

PART XV

OFFENCES AND REMEDIES

**121. Offences**

(1) No person may-

(a) use water otherwise than as permitted under this Act;

(b) fail to provide access to any books, accounts, documents or assets when required to do so under this Act;

(c) fail to comply with any condition attached to a permitted water use under this Act;

(d) fail to comply with a directive issued under this Act;

(e) unlawfully and intentionally or negligently tamper or interfere with any waterwork or any seal or measuring device attached to a waterwork;

(f) fail or refuse to give data or information, or give false or misleading data or information when required to give information under this Act;

(g) fail to register an existing lawful water use when required by a responsible authority to do so;

(h) intentionally refuse to perform a duty, or obstruct any other person in the exercise of any power or performance of any of that person’s duties in terms of this Act;

(i) unlawfully and intentionally or negligently commit any act or omission which pollutes or is likely to pollute a water resource;

(j) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect a water resource;

(k) fail to register a dam with a safety risk;

(l) fail to comply with a temporary restriction on the use of water or

(m) commit contempt of the Water Tribunal

(2) Any person who contravenes any provision of subsection (1) is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

**122. Enquiry in respect of compensation for harm, loss or damage suffered**

Where any person is convicted of an offence under this Act and-

(a) another person has suffered harm or loss as a result of the act or omission constituting the offence; or

(b) damage has be caused to a water resource,

the court may, in the same proceedings-

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

(ii) at the written request of the Minister in respect of the damage caused to a water resource; and

(iii) in the presence of the convicted person,

enquire without pleadings into the harm, loss or damage and determine the extent thereof.

**123. Award of damages**

After making a determination in terms of section 122, the Court may –

(a) award damages for the loss or harm suffered by the person referred to in section 122 against the accused;

(b) order the accused to pay for the cost of any remedial measures implemented or to be implemented; and

(c) order that the remedial measures to be implemented, be undertaken either by the accused or the relevant water management institution.

**124. Offences in relation to employer and employee relationships**

Whenever an act or omission by an employee or agent-

(a) constitutes an offence in terms of this Act, and takes place with the express or implied permission of the employer or principal, as the case may be, the employer or principal, as the case may be, is, in addition to the employee or agent, liable to conviction for that offence; or

(b) would constitute an offence by the employer or principal, as the case may be, in terms of this Act, that employee or agent will in addition to that employer or principal be liable to conviction for the offence.

**125. Interdict or other order by High Court**

A High Court may, on application by the Minister or the water management institution concerned, grant an interdict or any other appropriate order against any person who has contravened any provision of this Act, including an order to discontinue any activity constituting the contravention to remedy the adverse effects of the contravention.

PART XVI

GENERAL AND TRANSITIONAL PROVISIONS

**126. State bound**

This Act binds all organs of state and government and private and natural persons.

**127. Limitation of liability**

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 duty in terms of this Act; or

(b) the failure to exercise any power, or perform any duty in terms of this Act, unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith.

**128. Amendment or substitution of instruments**

(1) For the purposes of this section, “instrument” includes any regulation, strategy, licence, directive or notice made, determined, issued or given in terms of this Act.

(2) If the proposed amendment or substitution of an instrument-

(a) is not likely to alter the rights and obligations of any person materially;

(b) corrects any clerical mistake, unintentional error or omission in an instrument; or

(c) corrects any figure miscalculated in an instrument; or

(d) corrects any misdescription of any person, thing or property,

the amendment or substitution may be made without following the procedure required for establishing or giving effect to the instrument.

**129. Effect of delegation**

Where a power is conferred on a person to delegate the exercise of a power then, unless the contrary intention appears-

(a) such a delegation does not prevent the exercise of that power, or the performance of that duty by the person who made the delegation;

(b) such a delegation may be made subject to such conditions or limitations as the person making that delegation may specify; and

(c) a power so delegated, when exercised or performed by the delegate, must be regarded as having been exercised or performed by the person making the delegation.

**130. Documents deemed to be properly authorised and issued**

(1) A notice, directive or other document issued in terms of this Act in good faith by any water management institution and purporting to have been signed by the chairperson, secretary or chief executive officer of the institution must be regarded as having been properly authorised and issued in terms of a valid decision, until evidence to the contrary is adduced.

(2) Any document issued in terms of this Act without authority may be ratified subsequently.

**131.Documents and steps valid under certain circumstances**

(1) A notice, directive or other document issued in good faith in terms of this Act, but which does not comply with this Act, is valid if the non-compliance is not material and does not prejudice any person.

(2) The failure to take any steps required in terms of this Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure-

(a) is not material;

(b) has subsequently been rectified; and

(c) does not prejudice any person.

(3) A failure in good faith to consult with or send notice to any relevant person or body as required by this Act does not invalidate any act of or process for which such consultation is a prerequisite.

**132. Service of documents**

(1) Any notice, directive or other document in terms of this Act, must be served-

(a) if it is to be served on a natural person-

(i) by hand delivery to that person;

(ii) by hand delivery to a responsible individual at that person’s business or residential address;

(iii) by sending it by registered mail to that person’s business or residential address; or

(iv) where that person’s business and residential address is unknown, despite reasonable enquiry, by publishing it once in the Gazette and once in a local newspaper circulating in the area of that person’s last known residential or business address; or

(b) if it is intended for a juristic person-

(i) by hand delivery to a responsible individual at the registered address or principal place of business of that juristic person;

(ii) by sending it by facsimile to the registered address or principal place of business of that juristic person;

(iii) by sending it be registered mail to the registered address or principal place of business of that juristic person;

(iv) by conspicuously attaching it to the main entrance of the registered address or the principal place of business of that juristic person, or

(v) by hand delivery to any member of that juristic person’s board of directors or governing body.

(2) Any notice, directive or other document served according to subsection (1) is considered to have come to the notice of the person, unless the contrary is proved.

**133. Repeal of laws, and savings**

Subject to this Part, the Water Act [Chapter 20:22], is repealed.

**Schedule 1: Powers of Officers**

1. To construct, control, establish, maintain and supervise water works.

2. To do the acts referred to in paragraph 1 at the request of any person on -

(a) such conditions as may be prescribed; and

(b) payment of such charges as may be agreed on between the Secretary and the person.

3. To make estimates, investigations, plans and surveys for water works or hydroelectric power works and to record information obtained by means of such investigations and surveys.

4. To examine and advise on any scheme for the alteration, establishment, maintenance or repair of water works submitted by irrigation companies involved in combined water schemes, local authorities, owners, lessees or occupiers of land, catchment councils or other persons on payment of such fees as may be fixed by the Minister in consultation with the National Water Authority.

5. To inspect the courses of public streams and water works and, subject to the approval of the Minister, to order any person to do such acts and execute such repairs with respect to water works as the officer concerned may consider necessary in the public interest.

6. To obtain and record information concerning the extent of land under irrigation in Zimbabwe, the quantity of water used for irrigation and the amount, nature and value of crops obtained through irrigation.

7. To establish and maintain hydrological stations and record the observations made at the stations.

8. Generally to obtain and record information and statistics relating to the hydrological conditions of Zimbabwe in respect of both surface and ground water.

9. To abstract from any public stream water required for the construction of water works.

10. To sink boreholes and wells and obtain and conserve supplies of ground water-

(a) on State land or Communal Land; or

(b) at the request of any person under such conditions and on the payment of such fees as may be fixed by the Minister in consultation with the National Water Authority.

11. While engaged in the construction or repair of any water works-

(a) to erect huts, tents or other temporary buildings; and

(b) to park vehicles and any vehicles used by the officer concerned in such construction or repair; and

(c) to store any equipment, machinery or supplies to be used by him in connection with such construction or repairs, on any site convenient to him:

Provided that-

(i) the officer concerned shall cause as little damage as possible to the site or premises;

(ii) before the exercise of any power conferred by this paragraph, the person in charge of the construction or repair shall give reasonable notice to the owner, lessee or occupier of any land which will be affected by the intended exercise of the power;

(iii) no hut, tent or other temporary buildings shall be erected within 300 metres of any premises;

(iv) if the owner, lessee or occupier referred to in proviso (ii) objects to any site chosen for the erection, parking or storage referred to in subparagraph (a), (b) or (c), the objection shall be referred to the Administrative Court, which may make such order thereon as it thinks fit;

(v) the Minister shall pay to the owner of land affected by the exercise of power conferred by this paragraph in respect of any damage caused thereto such compensation from moneys appropriated by Act of Parliament for the purpose as the Minister and such owner may agree or, failing agreement, as the Administrative Court may fix.

12. To enter at all reasonable times on any land, premises or works, with such animals, appliances, instruments, machinery, men and vehicles, and to do all such acts thereon as are necessary for or incidental to the exercise of the powers of the Minister or of the officer concerned or of any other officer or the discharge of any duty imposed on him by this Act:

Provided that-

(i) the officer concerned shall cause as little damage as possible to the land, premises or works;

(ii) the officer concerned shall not enter any premises without the consent of the owner, lessee or occupier of the premises;

(iii) the Minister shall pay to the owner of the land, premises or works in respect of any damage caused thereto such compensation from moneys appropriated by Act of Parliament for such purpose as the Minister and the owner may agree or, failing agreement, as the Administrative Court may fix.

13. To exercise any power, other than a power referred to in paragraphs 1 to 12, conferred on the officer concerned by or under this Act or any other enactment.

**Schedule 2: Procedural matters regarding servitudes**

1. A person who intends to claim a servitude or an amendment of a servitude under the Act must give the owner of the land which will be subject to the servitude written notice of his or her claim.

2. Where the claimant is not the owner of the land in favour of which the servitude is claimed, the claimant must give the owner written notice of the claimant’s claim.

3. The notice must include details of at least the following, where relevant:

(a) the entitlement of the claimant to the use of the water;

(b) a description of the land which will be subject to the servitude;

(c) whether the servitude claimed is a personal or praedial servitude;

(d) in the case of a personal servitude, the name, identity number or registration number (if applicable) of the person in whose favour the servitude is claimed;

(e) in the case of a praedial servitude, a description of the land in favour of which the servitude is claimed;

(f) the likely impact of the servitude on the land or its use;

(g) in the case of a servitude of aqueduct, the route along which the water is to be led over the land which will be subject to the servitude and other affected land;

(h) in the case of a servitude of submersion, where the water will be stored and the area that will be submerged;

(i) the nature and locality of any proposed waterwork, including any road or other structure, which will reduce the loss and inconvenience to the owner or occupier of the land which will be subject to the servitude, as a result of the servitude;

(j) how and when maintenance of the proposed waterwork is likely to be carried out;

(k) the nature, quality and situation of any materials required from the land which will be subject to the servitude for the purpose of constructing any proposed waterwork;

(l) the land reasonably required during the construction period for-

(i) construction camps;

(ii) accommodating people;

(iii) workshops; or

(iv) storage purposes;

(m) the extent and location of any land reasonably required for construction, operating and maintain a proposed waterwork on the land which will be subject to the servitude; and

(n) the compensation offered.

4. A plan depicting the location of the proposed waterworks on the land which will be subject to the servitude must be attached to the notice.

5. When a person gives a notice of a claim for a servitude of for an amendment of a servitude, that person must also send, by registered post, a copy of the notice to-

(a) the lessee of the land;

(b) the national, provincial or local government authority responsible for controlling, maintaining or repairing a road across which the claimant intends constructing a waterwork in terms of the servitude or amendment; and

(c) every person who, from a perusal of-

(i) the title deeds of the land;

(ii) the records of any other government office which records prospecting or mining rights, appears to have any interest in the land which may be negatively affected by the servitude, if the whereabouts of the person can be readily ascertained.

6. A notice under item 1 or 2 may be amended as a result of-

(a) the claimant exercising his of her rights under section 79 of the Act; or

(b) objections to the notice by the owner of the land subject to the servitude or the owner of the land in favour of which the servitude is claimed.

7. An amended notice must be dealt with in the same way as the original notice.

**Schedule 3: Model Constitution of Water User Association**

**1. Name of Association**

The name of the Association is [specify the name] (hereinafter referred to as “the Association”).

**2. Application of the Water Act, 2020 to the constitution**

This constitution is subject to Part X of the Water Act of 2020 (hereafter referred to as the Act).

**3. Objects of the Association**

The objects of the Association are- [briefly describe the objects]

**4. Principal functions of the Association**

The principal functions to be performed by the Association in its area of operation are-

[*Note: The following are options. Others may be proposed. Choose and number your options*]

\* To prevent water from any water resource being wasted.

\* To protect water resources.

\* To prevent any unlawful water use.

\* To remove or arrange to remove any obstruction unlawfully placed in a watercourse.

\* To prevent any unlawful act likely to reduce the quality of water in any water resource.

\* To exercise general supervision over water resources.

\* To regulate the flow of any watercourse by-

- clearing its channel;

- reducing the risk of damage to the land in the event of floods;

- changing a watercourse back to its precious course where it has been alerted through natural causes.

\* To investigate and record-

- the quantity of water at different levels of flow in a watercourse;

- the times when, and

- the places where water may be used by any person entitled to use water from a water resource.

\* To construct, purchase or otherwise acquire, control, operate and maintain waterworks considered to be necessary for-

- draining land; and

- supplying water to land for irrigation or other purposes.

\* To supervise and regulate the distribution and use of water from a water resource according to the relevant water use entitlements, by erecting and maintaining devices for-

- measuring and dividing; or

- controlling the diversion of the flow of water.

**5. Ancillary functions of Associations**

(1) The Association may perform functions other than its principal functions only if it is not likely-

(a) to limit the Association’s capacity to perform its principal functions; and

(b) to be the financial prejudice of itself of its members.

(2) Other functions of the Association may include –

[*Note: The following are options. Others may be proposed. Choose and number your options*]

\* Providing management services, training and other support services to –

(a) water services institutions; and

(b) rural communities.

\* Providing catchment management services to or on behalf of responsible authorities.

**6. Founding members**

(1) The founding members of the Association are the members whose names appear in Annexure 1 of this constitution and who have been authorised by the proposed participants to act on their behalf in establishing the Association.

(2) The founding members will, for purposed of arranging the first election of members of the Management committee, be considered to be the Management Committee of the Association with powers and duties limited to arranging the election in accordance with this constitution.

**7. Members of the Association**

(1) The first members of the Association are the person who, during the consultation process, indicated their willingness to become members of the Association and whose names appear in Annexure 2 of this constitution.

(2) Application for new membership of the Association must be addressed to the Management Committee which must, at a meeting of the Committee, consider an application and approve it unless there is good reason to refuse it.

(3) An association must allow a person to become a member of the Association if directed by the Minster to do so.

(4) A member may only resign as a member of the Association with the approval of the Management Committee, which may not unreasonably withhold its approval.

[*Note: A reason for not accepting a resignation would be, for example, if the resignation would detrimentally affect the Association’s ability to meet its financial commitments in respect of infrastructure provided to serve the member concerned*]

**8. Register of members**

All members must communicate their addresses from time to time to the person acting as secretary of the Association, who must keep a register of the names of the members and their addresses.

**9. Rights of members**

(1) Membership of the Association does not give any member right to any of the moneys, property or assets of the Association, but only gives members the privileges of membership, subject to such charges and reasonable restrictions that are imposed by the Management Committee from time to time.

(2) A member whose application for membership has been approved is bound by the constitution and rules of the Association which are then in force or as they are subsequently amended.

**10. Liability of members**

The liability of members is limited to the amount of unpaid charges and interest thereon owing by them to the Association.

**11. Qualification of candidates for membership of Management Committee**

Any member of the Association is eligible for election as a member of the Management Committee. If the Association’s area of operation is divided into sub-areas, a member will only be eligible for election as a member of the Management Committee for the sub-area in which that member resides.

**12. Nomination of and voting for members of Management Committee**

Any person whose name is on the voters list of the Association may nominate candidates for election as members of the Management Committee and may vote at an election of members of the Committee. A person whose name appears on a voters list prepared for a sub-area of the Association’s area of operation, will be entitled to nominate candidates and to vote only in elections for that sub-area.

**13. Membership of Management Committee**

[*Note: The following options. Others may be proposed. Choose and number your options]*

(1) Option (a) The Management Committee of the Association will consist of [specify the number] members.

Option (b) [Note: This option is additional to option (a) and applies where the area of operation of the Association is divided into sub-areas.]

The area of operation of the Association will be divided into sub-areas as described in Annexure 3 to this constitution. Each area will be represented on the Management Committee on the basis set out in that Annexure.

(2) Membership of the Management Committee will be determined by an election process in which all members whose names are on the Association’s voters list may participate.

(3) Option (a) Members will be elected for a fixed term of [specify period] years.

Option (b) [Applies to election process only] Members will be elected for a fixed term of [specify period] years.

The first election will take place as follows-

(i) one-third of the members elected who stand highest on the poll will hold office for a period of [specify period] years;

(ii) one-third of the members elected who stand next highest on the poll will hold office for a period of [specify period] years; and

(iii) the remaining members elected will hold office for a period of [specify period] years,

If in any case-

(a) no poll is required because the nominations received were not greater than the number of members to be elected; or

(b) two or more candidates have received an equal number of votes,

the respective periods of office of the members will be determined by lot under supervision of the returning officer.

(4) If a vacancy occurs on the Management Committee, the vacancy must be filled according to this item, provided that the member must be elected for a period equal to the remainder of the period for which the member who as vacated the office would otherwise have continued in office.

(5) At least 30 days’ notice of an election must be given to all members of the Association.

**14. Appointment of chairperson and deputy chairperson**

[*Note: The following are options. Others may be proposed. Choose and number your options*]

(1) Option (a) After election of the Management Committee the members of that Committee must elect a chairperson and deputy chairperson of the Association from amongst their members. The Management Committee may appoint any person to chair the proceedings for that purpose.

(2) The chairperson and deputy chairperson hold office for a period of 12 months from the date of their election and may be re-elected.

(3) When the period of office of a chairperson or deputy chairperson expires, that person will, provided that he or she remains a member of the Association, remain in office until the next meeting of the Management Committee.

(4) A new chairperson and deputy chairperson of the Management Committee will be elected annually.

Should any of these offices be vacated before the term expires, the office must be filled immediately according to the procedure set out in this item.

**15. Voter’s list**

(1) The founding members of the Association must select a person to prepare a voters list for the first election of members of the Management Committee. The voters’ list must show-

(a) the names of all members included in Annexure 2 to this constitution and, where appropriate, the name of a member’s accredited representative;

(b) particulars of each member’s entitlement to water use; and

(c) the number of votes a member is entitled to.

(2) If the Association’s area of operation is divided into sub-areas, the voters’ list must also be divided into subareas and the particulars referred to in subitem (1) must be shown under the respective subareas.

(3) The number of votes will be determined on the following basis-

[*Note: The following are options. Others may be proposed. Choose and number your options*]

Option (a)

One vote per entitlement to water use.

Option (b)

A pro-rata number of votes in proportion to the quantity of water authorised under a particular entitlement, compared to the total quantity of water under all of the entitlements registered with the Association. In this calculation all fractions must be rounded off to the next higher figure.

Option (c)

A pro-rata number of votes in proportion to the quantity of water authorised under a particular entitlement, compared to the total quantity of water under all the entitlements registered with the Association.

In this calculation-

(i) all fractions must be rounded off to the next higher figure; and

(ii) no member will be awarded more than 10 votes.

Option (d)

One vote for every five hectares or part of five hectares of land that can be irrigated in terms of a member’s entitlement.

Option (e)

One vote for every five hectares or part of five hectares of land that can be irrigated in terms of a member’s entitlement, provided that no member will be awarded more than 10 votes.

(4) If the entitlement to use water is not in the name of a natural person, the holder must nominate an accredited representative whose name must appear on the voters’ list and who may exercise the vote.

(5) If the entitlement is in the name of two or more persons they must designate one of their numbers to represent them and that person’s name must appear on the voter’s list and he or she may exercise the vote.

(6) The voters’ list must annually be revised by the Management Committee and also whenever that is an amendment to the Association’s area of operation.

**16. Appointment of employees**

(1) The Management Committee may employ such persons as it considers necessary to perform the Association’s functions under this constitution.

(2) The appointment of employees or any change in their conditions of service must be approved by resolution of the Management Committee.

(3) All employees of the Association will remain in office despite any change in the composition and membership of the Management Committee.

**17. Raising of loans**

(1) The Management Committee may raise by way of loans, including bank overdrafts, any funds required by it for the purpose of carrying out any of its functions under this constitution or the Act.

(2) Whenever the Management Committee proposes to raise a loan, it must give notice in writing of its intention, setting out details of the proposal. The notice must be given to every member of the Association not less than 21 days before the date of the meeting of the Committee at which the proposal will be considered.

(3) No loan may be raised without a resolution of the Management Committee passed at a meeting atwhich not less than two-thirds of the members of the Committee are present.

**18. Charges and recovery of charges**

(1) For the purpose of defraying any expenditure that the Management Committee has lawfully incurred or may lawfully incur in carrying out its functions and duties it may annually assess charges on members according to the pricing strategy for water use set out by the Minister.

(2) The Management Committee may recover the charges assessed from either-

(a) the owners of the land concerned; or

(b) any person to whom water is supplied on the land.

(3) Whenever the Management Committee has assessed a charge, the Committee must prepare an assessment roll setting forth-

(a) the name of each member liable to pay charges;

(b) a description of the piece of land, which may be a specially delineated area, in respect of which the charge is assessed;

(c) the quantity of water or abstraction time period to which the member is entitled;

(d) the amount of the charge assessed;

(e) the date or dates on which payment is due and the amount due on each date; and

(f) the rate of interest payable on non-payment and the effective date of interest.

(4) A copy of the assessment roll must lie open for inspection in the office of the Association at all reasonable times by any member of the Association.

**19. Annual Report**

The Management committee must, within three months after the end of the Association’s financial year, convene a general meeting of members and must at the meeting-

(i) table an audited financial statement of the Association’s accounts for the preceding financial year, including full particulars of any remuneration paid by the Association to the members of the Management Committee and employees of the Association; and

(ii) give an account to the members of its activities during the year.

**20. Winding up**

[*Note: The following are options. Other may be proposed. Choose and number your options*]

Option (a)

(1) The Association may be dissolved by a resolution passed at a special general meeting held for that

purpose, provided that-

(i) the resolution is passed by a majority of two-thirds of the members present and entitled to vote at the meeting; and

(ii) the resolution is confirmed at a further special general meeting held not less than four weeks after the preceding special general meeting by a majority vote of members entitled to vote thereon.

(2) A meeting passing a resolution referred to in sub item (1)(i) of this constitution may also pass resolutions by a majority vote for-

(a) the appointment of a liquidator; and

(b) the disposal of surplus funds and assets of the Association after winding up and after the payment of all debts and obligations of the Association, provided that any surplus assets may only be transferred to an Association or institution with objects similar to those of the Association, or to the Minister.

Option (b)

The affairs of the Association will be wound up by a person appointed by the Minister in accordance with any directives given by the Minister.

**ANNEXURE 1**

(*In alphabetical order*)

LIST OF MEMBERS.

**ANNEXURE 2**

(*In alphabetical order*)

DESCRIPTION OF SUB-AREAS AND REPRESENTATION IN MANAGEMENT COMMITTEE.