

## **WATER ACT 54 OF 1956**

[ASSENTED TO 12 JUNE 1956]

[DATE OF COMMENCEMENT: 13 JULY 1956]

### **as amended by**

Water Amendment Act 75 of 1957  
Water Amendment Act 56 of 1961  
Water Amendment Act 63 of 1963  
Water Amendment Act 71 of 1965  
Water Amendment Act 11 of 1966  
Agricultural Credit Act 28 of 1966  
Water Amendment Act 79 of 1967  
Establishment of the Northern Cape Division of the Supreme Court of South  
Africa Act  
15 of 1969  
Water Amendment Act 77 of 1969  
Water Amendment Act 36 of 1971  
Water Amendment Act 45 of 1972  
General Law Amendment Act 102 of 1972  
Water Amendment Act 58 of 1974  
Water Amendment Act 42 of 1975  
Expropriation Act 63 of 1975  
Water Amendment Act 27 of 1976  
Water Amendment Act 108 of 1977  
Water Amendment Act 22 of 1985

### **GENERAL NOTE:**

**Only the following provisions of the Act have been made applicable to Namibia:**

- (a) Sections 1-4, with effect from 25 June 1969 - see s. 180 (2) of this Act;**
- (b) Section 162, with effect from 1 April 1971, by Proc. 281 of 1970 (see R.S.A. *Government Gazette* 2921 of 13 November 1970)**
- (c) Sections 5 to 7, 9A, 21 to 23, 26 (excluding paragraph (a)), 27 28 (1), 30 34 to 43 44 (2), 45 to 51, 54 to 56, 57 (1), 59 (2), 66, 69, 70 (excluding paragraphs (d), (f), (g) and (h)), 139 to 152, 164bis, 164ter, 165, 166, 170 (excluding subsection (3) and paragraph (c) of subsection (5)) and 171, - with effect from 26 June 1971 by Proclamation 151 of 1971 (see R.S.A. *Government Gazette* 3167 of 25 June 1971); and**
- (d) Sections 9B; 30A (a) and 170 (3) with effect from 18 December 1985 by Act 22 of 1985.**

## **ACT**

**To consolidate and amend the laws relating to the control, conservation and use of water for domestic, agricultural, urban and industrial purposes; to make provision for the control, in certain respects, of the use of sea water for certain purposes; for the control of certain activities on or in water in certain areas; for the control of activities which may alter the natural occurrence of certain types of atmospheric precipitation; for the control, in certain respects, of the establishment or the extension of township in certain areas; and for incidental matters.**

[Long title amended by s. 8 of Act 71 of 1965 and substituted by s. 13 of Act 45 of 1972 and substituted by s. 26 of Act 24 of 1975.]

## **5 Use of private water**

(1) Subject to the provisions of subsection (2) and Chapter III, and rights lawfully acquired and existing at the commencement of this Act, the sole and exclusive use and enjoyment of private water belongs to the owner of the land on which such water is found: Provided that nothing in this section contained shall be construed as derogating from the right of an owner of land to a reasonable share of water which, rising on the land of an upper owner, flows in a known and defined channel on, or along the boundary of, land situated beyond that upon which such water rises, and has for a period of not less than thirty years been beneficially used by the owner of the land so situated.

[Sub-s. (1) amended by s. 2 (a) of Act 22 of 1985.]

(2) A person who is, as contemplated in subsection (1), entitled to the use and enjoyment of private water found on any land of which he is the owner, shall not, except under the authority of a permit from the Minister and on such conditions as may be specified in that permit-

- (a) sell, give or otherwise dispose of such water to any other person for use on any other land, or convey such water for his own use beyond the boundaries of the land on which such water is found;
- (b) construct any water work other than a water work constructed in terms of a direction contained in an order under section 4 of the Soil Conservation Act, 1969 (Act 76 of 1969), to impound or store such water, or impound or store more than 20 000 cubic meter of such water.

[Sub-s. (2) substituted by s. 2 (b) of Act 22 of 1985.]

(3) The provisions of subsection (2) shall not apply to the South African Railways and Harbours Administration and to the selling, giving or disposal in any other manner of any water to the said Administration.

(4) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence.

[S. 5 substituted by s. 2 of Act 45 of 1972.]

## **6 Ownership of public and private water**

(1) There shall be no right of property in public water and the control and use thereof shall be regulated as provided in this Act.

(2) Whenever an owner of land obtains, by artificial means on his own land, a supply of water which is not derived from a public stream, such water shall be deemed to be private water.

[Sub-s. (2) amended by s. 3 of Act 56 of 1961.]

(3) The said owner shall not be entitled to claim a share of any water to which he would otherwise have been entitled in accordance with section *nine* or *ten*, so long as the water court is of the opinion that the supply of water so created is of such volume and can be so utilized by such owner that the use by him of water from a public stream to which his land is riparian would be a wasteful use.

## **7 Use of public water by authorized persons for certain purposes**

(1) Notwithstanding anything contained in this Act-

(a) any person may, while he is lawfully at any place where he has access to a public stream, take and use water from such stream for the immediate purpose of watering or dipping stock or drinking, washing or cooking, or use in a vehicle at that place or for the purposes of waterborne sanitation or the watering of crops on an area of land of not more than one hectare;

(aA) the owner of any land shall not, except under the authority of a permit from the Cabinet and on such conditions as may be specified in that permit, take public water from a public stream for the purposes of the watering of crops on an area of land exceeding one hectare;

(b) any officer or servant of a provincial administration, divisional council or other lawfully constituted body which is responsible for the construction, maintenance, repair or control of any road (other than a road within the area of jurisdiction of any municipal or other like institution) may, while he is lawfully at any place where he has access to a public stream, take and use so much of the water from such stream as may be necessary for the purpose of constructing, maintaining, repairing or controlling such road, provided no riparian owner along the course of such stream is thereby deprived of water from such stream for his own use for the irrigation of land which is then under irrigation or for domestic purposes or for the watering of his stock.

(2) Any person who contravenes the provisions of subsection (1) (aA) shall be guilty of an offence.

[S. 7 amended by s. 3 of Act 22 of 1985.]

**8 and 9** . . .

[Ss. 8 and 9 not applicable in Namibia.]

## **9A Control, regulation, limitation or prohibition of impounding, storage, abstraction, supply or use of public water in certain circumstances**

(1) Notwithstanding any provisions to the contrary in this Act or in any other law contained, and notwithstanding any right any person may have in

respect of public water or the use thereof, the Minister may, whenever in his opinion a water shortage exists or is likely to arise, in his discretion from time to time by notice in the *Gazette* control, regulate, limit or prohibit, as he in the public interest may deem expedient and in the manner and subject to such conditions as he may think fit, the impounding, storage, abstraction, supply or use within any area specified in the notice (irrespective of whether that area consists of or is situated in an area which has been declared a Government water control area under section 59 (1) or includes such an area or a portion thereof or not) of water out of any public stream or natural channel for agricultural, urban or industrial purposes or specified agricultural, urban or industrial purposes.

(2) Any notice in terms of subsection (1) may be applicable in respect of a specified area or public stream or natural channel or any portion of such a stream or natural channel or in respect of two or more areas or public streams or natural channels or portions thereof, and may differentiate between different areas or public streams or natural channels or portions thereof or different periods of any year and may contain different provisions according to the times when and the places where water of a specified public stream or natural channel or portion thereof is or may be impounded or stored and the purposes for which such water is used or is intended to be used or in respect of the different persons or classes of persons to which such a notice relates.

(3) Any officer in the public service authorized thereto by the Minister or the Secretary may at any time enter upon any land and inspect and test water works and water-meters and carry out any other investigation which he may consider necessary for the purpose of establishing how much public water is abstracted, supplied or used on that land or of determining whether the provisions of a notice referred to in subsection (1) are being complied with.

[S. 9A inserted by s. 2 of Act 79 of 1967.]

## **9B Control of impounding or abstraction of public water in excess of a certain quantity**

(1) Notwithstanding anything to the contrary contained in this Act or any other law, no person shall construct, alter or enlarge any water work on any land which on the date of commencement of the Water Amendment Act, 1985, was registered in the deeds registry as a separate piece of land, if more than 20 000 thousand cubic meter of public water are or, after completion of such construction, alteration or enlargement, will be capable of being impounded or stored in or by means of that water work, or that water work and any other waterwork or water works on that land, except under the authority of a permit issued by the Cabinet, and on such conditions as may be specified in that permit.

[Sub-s. (1) substituted by s. 1 of Act 42 of 1975 and amended by s. 1 of Act 108 of 1977 and substituted by s. 4 of Act 22 of 1985.]

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

[S. 9B inserted by s. 2 of Act 36 of 1971.]

**10 - 20** . . .

[Ss. 10 to 20 not applicable in Namibia.]

## **21 Purification and disposal of industrial water and effluents**

(1) (a) The purification of any waste water or any effluent or waste produced by or resulting from the use of water for industrial purposes shall form an integral part of the process of such use and, subject to the provisions of subsection (5), any person using water, including sea water, for industrial purposes, shall purify such water, effluent or waste so as to conform to such requirements as the Minister may from time to time, after consultation with the South African Bureau of Standards, prescribe by notice in the *Gazette* either generally or in relation to water used for or in connection with any one or more specified industrial purposes or in relation to water derived from any specified public stream or the sea, or in relation to water used in any prescribed area.  
[Para. (a) amended by s. 5 of Act 56 of 1961 and substituted by s. 3 (a) of Act 42 of 1975.]

(b) Any requirements prescribed under paragraph (a) shall be such as to ensure that the waste water, effluent or waste to which such requirements relate will, after purification in accordance with those requirements, be at least as free of impurities as would have been the case if the purification thereof had been effected in accordance with the recommendation of the said Bureau.

(2) Water which has been used for industrial purposes and any effluent produced by or resulting from such use, other than water or effluent referred to in subsection (3), shall, subject to the provisions of section 11, after purification in accordance with subsection (1), be returned by the user at the nearest convenient point to the bed of the public stream from which the said water was abstracted or, if it was abstracted from the sea, to the sea: Provided that where water has been so used at any place outside the natural watershed of the catchment area of the public stream from which it was abstracted and in the opinion of the water court it is for physical or economic reasons impracticable to return such water or any such effluent to the said stream, such water or effluent may be returned by the user to the bed of some other public stream at a point determined by the water court.

[Sub-s. (2) substituted by s. 3 (b) of Act 42 of 1975.]

(3) The provisions of sub-sections (1) and (2) shall not apply in respect of a person supplied with water by the Minister or by any local authority or other person or lawfully constituted body having a right to control and supply public or private water, including underground water, within its area of jurisdiction, if the Minister or, as the case may be, such local authority, person or body or any other local authority has undertaken the duty of disposing of such water or any effluent or waste produced by or resulting from the use thereof after such water has been used by the said person and has been discharged into any channel, drain or sewer under the control of the Minister or the local authority, person or body concerned.

(4) Water used for industrial purposes and returned in accordance with sub-section (2), shall not be diminished in quantity save in so far as such

diminution is caused by such use.

(5) (a) Any person or user referred to in subsection (1) or (2) may apply to the Minister for a permit exempting him from compliance with the provisions of either of those subsections, and the Minister may, after such investigation as he may consider necessary, if he is satisfied that compliance with the said provisions is impracticable in the particular circumstances, grant a permit subject to such conditions as he may deem fit to impose, exempting such person or user from compliance therewith to such extent as the Minister may determine, or authorizing such person or user to discharge any waste water, effluent or waste referred to in subsection (1) in an unpurified state or in such state of semi-purification as the Minister may determine, into any public stream or, as the case may be, into the sea at a point to be fixed by the Minister: Provided that, in the case of an application for exemption from compliance with the provisions of subsection (1), the Minister shall in considering such application have due regard to the regulations made under section 10 (1) (d) of the Sea-shore Act, 1935 (Act 21 of 1935), and section 13 (1) (g) of the Sea Fisheries Act, 1973 (Act 58 of 1973), and shall not issue such a permit unless he is satisfied that-

- (i) the conditions to be imposed in connection with any such permit will be at least as effective for the purpose of preventing the pollution of public or other water, including sea water, as any conditions or requirements which may have been recommended by the South African Bureau of Standards; and
- (ii) any point so fixed by him is in such proximity to the sea that it is unlikely that any person will be prejudicially affected and that the dilution of such waste water, effluent or waste by sea water or other water will be such that neither aquatic nor marine fauna or flora in the public stream or the sea will be detrimentally affected.

[Para. (a) substituted by s. 3 (c) of Act 42 of 1975.]

(b) Any interested person, other than an applicant for a permit under paragraph (a), may after written notification to the Minister apply to a water court for the cancellation or modification of any permit issued under that paragraph, and the water court may make such order on the application as it may consider equitable.

(c) The Minister may at any time by notice in writing to the holder of any permit issued in terms of paragraph (a), withdraw that permit or amend it in such manner as he may deem fit.

(d) It shall be no defence in any prosecution for an offence in terms of section 16 (1) (j) of the Sea Fisheries Act, 1973 (Act 58 of 1973), that any act charged was performed under the authority of a permit issued under paragraph (a).

[Para. (d) added by s. 3 (d) of Act 42 of 1975.]

(6) (a) The Minister may, in prescribing any requirements under subsection (1) or imposing any conditions under subsection (5), also specify the steps to be taken by any person carrying on any mining or other industrial

operations, in order to prevent the pollution of public or private water, including underground water or the sea, by seepage or drainage from any area on which those operations are carried on, both while such operations are in progress and after the abandonment thereof.

[Para. (a) substituted by s. 3 (e) of Act 42 of 1975.]

(b) Any such person who fails to take the steps so specified within a period determined by the Minister and made known by notice in the *Gazette* or by notice in writing addressed to such person, shall be guilty of an offence.

(7) For the purposes of this section, a local authority which uses water for the purification or disposal of sewage or any effluent or waste referred to in sub-section (3), shall be deemed to use such water for industrial purposes.

(8) Any person who contravenes or fails to comply with any provision of this section or of any permit issued under subsection (5), shall be guilty of an offence.

[Sub-s. (8) substituted by s. 3 of Act 79 of 1967.]

## **22 Disposal of effluents by local authorities**

(1) Notwithstanding the provisions of the Public Health Act, 1919 (Act 36 of 1919), or any other law, but subject to the provisions of sub-section (2), a local authority having jurisdiction over the disposal of sewage may, after purifying the effluent derived from the treatment of such sewage in accordance with standards prescribed under sub-section (1) of section *twenty-one*, and with the permission of the Minister, use such effluent for any purpose approved by the Minister or dispose of such effluent for use by any person or discharge such effluent into a public stream.

(2) The Minister may in writing, and on such conditions as he may deem fit, exempt from compliance with the provisions of section *twenty-one*, any local authority which does not dispose of water used for any industrial purpose other than the purification or disposal of sewage.

(3) Any local authority which contravenes or fails to comply with any condition subject to which any exemption has been granted to it under sub-section (2) shall be guilty of an offence.

## **23 Prevention of pollution of water**

(1) (a) Any person who wilfully or negligently, and, where any provision of section 21 or 22 applies, contrary to that provision, does any act which could pollute any public or private water, including underground water, or sea water in such a way as to render it less fit-

- (i) for the purposes for which it is or could be ordinarily used by other persons (including the Government, the South African Railways and Harbours Administration and any provincial administration); or
- (ii) for the propagation of fish or other aquatic life; or
- (iii) for recreational or other legitimate purposes,

shall be guilty of an offence.

(b) If in any prosecution under paragraph (a) it is proved that the accused committed any act which could pollute water referred to in that paragraph in any manner mentioned therein, it shall be presumed, until the contrary is proved, that the accused committed such act wilfully or negligently.

[Sub-s. (1) substituted by s. 3 of Act 45 of 1972 and substituted by s. 4 of Act 42 of 1973.]

(2) (a) he Minister may out of moneys appropriated by Parliament for the purpose, take any steps which he may consider necessary to prevent the pollution, as a result of seepage or drainage from any area on which mining or other industrial operations have been carried on, of public or private water, including underground water, after such operations have been abandoned, and may in his discretion recover the cost or any part of the cost incurred in taking such steps from any person who carried on or is entitled to carry on such operations.

(b) The Minister or a person acting under his authority may at any time enter upon any land for the purpose of taking any steps referred to in paragraph (a), and may take with him on to such land any men, animals, vehicles, equipment, appliances, instruments, stores or materials, and may erect such camps and construct such works as may be necessary for that purpose.

(c) No compensation shall be payable to any person for any loss which may be sustained by him in consequence of any action taken under this subsection, except by order of a competent court.

**23A - 25** . . .

[Ss. 23A-25 not applicable in Namibia.]

## **26 Regulations as to permits and control of pollution of water**

The Minister may make regulations relating to-

- (a) the form of application for permits under section *twelve* and the particulars to be furnished in connection with any such application or under paragraph (a) of sub-section (1) of section *twelve*;
- (b) the form of any application under subsection (5) of section *twenty-one*, and the particulars to be furnished in connection with any such application;
- (c) the prevention of wastage or pollution of public or private water, including underground water, and the powers and duties of persons appointed to exercise control in respect thereof;
- (d) generally, any other matter which he considers it necessary or expedient to prescribe in order that the objects of sections *twenty-one* to *twenty-four*, inclusive, may be achieved.

### **CHAPTER III**

## **CONTROL AND USE OF SUBTERRANEAN WATER AND WATER FOUND UNDERGROUND**

### **27 Definition of subterranean water**



- In this Chapter 'subterranean water' means-
- (a) water which exist naturally underground;
  - (b) water other than public water which is derived in any manner whatsoever from natural underground sources,

and which is contained in an area declared to be a subterranean water control area under section 28.

[S. 27 substituted by s. 5 of Act 22 of 1985.]

## **28 State President may proclaim subterranean water control areas**

(1) The State President may from time to time by proclamation in the *Gazette* declare any area defined in the proclamation to be a subterranean water control area if the Minister is of opinion that it is in the public interest to do so, or that such area is a dolomite or artesian geological area or that the abstraction of water naturally existing underground in such area may result in undue depletion of its underground water resources, and may in like manner withdraw or amend such proclamation.

[Sub-s. (1) substituted by s. 5 of Act 42 of 1975.]

[Only sub-s. (1) of s. 28 is applicable in Namibia.]

## **29 . . .**

[S. 29 not applicable in Namibia.]

## **30 Use of subterranean water**

(1) Subject to the provisions of subsection (2), an owner of land is entitled to abstract or obtain any subterranean water thereunder, or derived therefrom, for his own use for any purpose on such land.

[Sub-s. (1) substituted by s. 6 (1) (a) of Act 22 of 1985.]

(2) The Cabinet may in relation to any subterranean water control area, or to any portion of such an area make such regulations as he may deem necessary for exercising control over the drilling of boreholes for the purpose of locating subterranean water for use for any purpose, the sinking of wells and the abstraction, use, protection against pollution and preservation of subterranean water contained in such area, or portion thereof including regulations limiting the number of boreholes or wells which may be sunk in any such area or portion thereof or the quantity of subterranean water which may be abstracted by means of any borehole or well, whether sunk before or after the commencement of this Act, or which otherwise be used, or prohibiting the sinking of such boreholes or wells or the use of subterranean water except with the consent of the Cabinet or a person acting under its authority and subject to such conditions as it or he may specify.

[Sub-s. (2) amended by s. 7 of Act 56 of 1961 and substituted by s. 6 (1) (b) of Act 22 of 1985.]

(2A) (a) The Minister may, after notice in writing to the owner of any privately owned water work situated within any subterranean water control area,

make such adjustments or repairs to such water work, or construct or erect such additional works, or in writing direct any such owner to make such adjustments or repairs or construct or erect such additional works, within a period stipulated by the Minister and at his own expense, as may, in the opinion of the Minister, be necessary for the proper measurement and regulation of any subterranean water abstracted or conveyed by, or flowing over, such works.

(b) The Minister may recover from any person who in his opinion derives or is likely to derive any benefit from any adjustments or repairs made by him under paragraph (a), or any additional works constructed or erected by him thereunder, such portion of the cost of such adjustments, repairs or works as he may deem equitable.

(c) If the owner in question fails to comply with any direction under paragraph (a) within the period mentioned therein, or such further period as the Minister may allow, the Minister may cause the adjustments or repairs specified in that direction to be made or, as the case may be, the additional works so specified to be constructed or erected by the department, and recover the cost thereof from the owner concerned.

[Sub-s. (2A) inserted by s. 6 of Act 42 of 1975.]

(3) An owner referred to in sub-section (1) shall not, without a permit issued by the Cabinet under sub-section (5), sell, give or otherwise dispose of subterranean water abstracted or obtained by him from under his land or derived therefrom in accordance with subsection (1) to any person for use on any other land or convey such water beyond the boundaries of his land for his own use.

[Sub-s. (3) substituted by s. 6 (1) (c) of Act 22 of 1985.]

(4) (a) The owner of any mine on which mining operations are being lawfully carried on may remove from the mining area any subterranean water whereof the removal is necessary for the efficient carrying on of such mining operations or the safety of persons employed therein, and may, unless the Minister otherwise directs, use such water in such mining operations or for domestic purposes connected therewith, and may, under permit from the Minister, use such water for other purposes or sell, give, exchange or otherwise dispose of such water.

(b) Any such owner who does not so use, sell, give or exchange any such water, shall dispose thereof in such manner as the Minister may direct.

(5) The Minister may, subject to such conditions as he may deem fit-

- (a) on the application of an owner referred to in sub-section (1), issue a permit to such owner entitling him to convey, for his own use, subterranean water abstracted or obtained by him from under his land or derived therefrom in terms of that sub-section beyond the boundaries of the land on which it was abstracted or obtained or from which it has been derived, or to sell, give or otherwise dispose of such water to some other person for use on other land; or

[Para. (a) substituted by s. 6 (1) (d) of Act 22 of 1985.]

- (b) on the application of the owner of a mine referred to in sub-section (4),

issue a permit to such owner entitling him to sell, use, give, exchange or otherwise dispose of subterranean water removed from such mine in terms of that sub-section.

(5A) The conditions referred to in subsection (5) (b) may include conditions regarding the payment by the owner concerned of compensation, calculated on a basis, or determined in a manner, specified in such conditions, to any person who, in the opinion of the Minister, is or may be adversely affected by the removal from the mine concerned of the subterranean water.

[Sub-s. (5A) inserted by s. 4 of Act 36 of 1971.]

(6) ....

[Sub-s. (6) deleted by s. 4 of Act 45 of 1972.]

**30** ...

[S. 30 not applicable in Namibia.]

### **30A Disposal by Minister of water found underground**

(a) Notwithstanding the other provisions of this Chapter, the Cabinet may, within as well as outside a subterranean water control area, convey and supply any subterranean water which has been or is abstracted or obtained in any manner whatsoever, whether before or after the commencement of the Water Amendment Act, 1985, by the State to any person for use on any land for any purpose determined by mutual agreement by the Cabinet and such person, whether such water has been or is abstracted or obtained on land belonging to the Government of the territory of South West Africa or on other land: Provided that no water so abstracted or obtained shall be so conveyed or supplied by the Cabinet if it has been found on land not belonging to the Government of the territory of South West Africa unless the Cabinet has acquired a right to such water by agreement with the owner of the said land or by expropriation in accordance with the provisions of the laws on expropriation in force in the territory of South West Africa.

[Para. (a) substituted by s. 7 of Act 22 of 1985.]

(b) For the purposes of such expropriation the provisions of section 60 shall *mutatis mutandis* apply as if the borehole or other underground source concerned were situated within a Government water control area.

[S. 30A inserted by s. 5 of Act 45 of 1972.]

**31 - 33J** ...

[Ss. 31 - 33J not applicable in Namibia.]

### **34 Establishment of water courts**

(1) There is hereby established-

(a) a water court to be known as the Transvaal Water Court, which shall have jurisdiction in the province of the Transvaal;

- (b) a water court to be known as the Orange Free State Water Court, which shall have jurisdiction in the province of the Orange Free State;
- (c) a water court to be known as the Natal Water Court, which shall have jurisdiction in the province of Natal;
- (d) a water court to be known as the Cape Water Court, which shall have jurisdiction in that portion of the province of the Cape of Good Hope not included in the area referred to in paragraph (e) or (f) and, for the purposes of the application of the provisions of sections *one hundred and six and one hundred and seventy-four*, and until the water court referred to in paragraph (g) is established, also in the territory of South-West Africa;
- (e) a water court to be known as the Eastern Districts Water Court which shall have jurisdiction in that portion of the Province of the Cape of Good Hope in which the Eastern Districts Local Division of the Supreme Court of South Africa exercises jurisdiction;
- (f) a water court to be known as the Northern Cape Water Court, which shall have jurisdiction in that portion of the said province in which the Northern Cape Division of the Supreme Court of South Africa exercises jurisdiction; and;

[Para. (f) substituted by s. 19 of Act 15 of 1969.]

- (g) with effect from the date on which any provisions of this Act are applied to the territory of South-West Africa in terms of section one hundred and eighty, a water court to be known as the South-West Africa Water Court, which shall have jurisdiction in that territory.

[Para. (g) amended by s. 7 of Act 45 of 1972.]

(2) Any matter arising out of or in connection with the use or appropriation of the water of a public stream which forms a boundary or any part of a boundary between the areas of two or more water courts, shall be heard and determined by one or other of those water courts agreed upon between the parties or, failing agreement, determined by the Minister, and the decision of any such water court shall, in so far as it relates to the use or appropriation of the water of a public stream within the area of any other of those water courts, have effect as if it were a decision of that other water court.

### **35 Constitution of water court**

A water court shall be presided over by a water court judge who shall be a judge of the division of the Supreme Court of South Africa which exercises jurisdiction in the area of that water court, or, in the case of the South-West Africa Water Court, by a judge of the High Court of South-West Africa, and shall consist of such water court judge sitting alone or, if he so directs, with assessors, appointed as hereinafter provided.

### **36 Appointment of assessors**

(1) The assessors, if any, required for the hearing and determination of any matter arising for decision by a water court shall be appointed by the presiding judge, and shall-

- (a) in any matter relating to the amount of compensation payable under section 60, 94 or 112 be either one or two lay assessors, selected from the panel prepared under section 37 and having knowledge of the value of land in the area where the expropriated property is situated, and an engineer who shall not, if the Government is a party, be a person in the employment of the Government, or one or two such lay assessors or such an engineer;
- (b) in any other matter to which the Government is a party, be either an engineer who is not in the employment of the Government and a lay assessor selected from the panel prepared under section 37, or such an engineer or such a lay assessor; and
- (c) in any other case be either an engineer of the department nominated by the Minister and a lay assessor so selected, or such an engineer or such a lay assessor.

[Sub-s. (1) substituted by s. 1 of Act 11 of 1966.]

(2) The name of any assessor selected in accordance with sub-section (1) shall be notified to each of the parties to the matter to be investigated or determined and any such party may in accordance with regulation lodge an objection to such assessor with the presiding judge who shall decide on the objection and shall, if he upholds an objection, forthwith appoint another assessor.

(3) No assessor shall be qualified to serve at a hearing before a water court if he has any direct or indirect personal interest in the matter to be heard and determined, or is related within the third degree of consanguinity or affinity to any party to the suit, and every assessor shall before taking his seat declare upon oath administered by the presiding judge that he has no such interest and is not so related and that he will to the best of his ability give judgment upon the matter to be heard in accordance with the evidence submitted.

### **37 Preparation of panels of assessors**

(1) (a) The Minister shall by notice in the *Gazette* divide each water court area into wards as he may consider necessary and shall in respect of each of such wards nominate not less than five and not more than twelve persons as water court lay assessors, and shall in respect of each such ward prepare a panel containing the full christian names and surnames, the place of abode and the title, calling or business of every person so nominated.

(b) The Minister shall further in respect of each water court area nominate not more than fifteen engineers from amongst whom any engineer assessor required in any case to which the Government is a party shall be selected, and prepare a panel showing the full christian names and surname, place of residence and title of every person so nominated.

(2) No person shall be qualified to serve as a water court lay assessor nor

shall his name be inserted in any such panel of lay assessors unless he is not less than thirty years of age and owns immovable property of the value of not less than two thousand pounds, and no person shall sit as a lay assessor on any water court unless he owns, occupies and cultivates or has owned, occupied and cultivated land within the ward in which the matter before that court has arisen.

(3) The Minister may at any time in his discretion remove the name of any person from a panel prepared by him under sub-section (1), or include the name of any person in such panel, and if any person whose name is on the said panel ceases to be qualified in terms of sub-section (2) or becomes insolvent or of unsound mind, his name shall forthwith be removed from the said panel.

### **38 Rights of assessors in decision of water court**

(1) If a water court is constituted with assessors each assessor shall have an equal voice with the water court judge in any decision of such court on any matter of fact, and on all such matters of fact the decision of the majority of the members of the court shall be the decision of the court.

(2) Any matter of law arising out of the accepted facts for decision by such court, and any question as to whether a matter for decision is a matter of fact or of law, and any question as to costs, shall be decided by the water court judge and no assessor shall have a voice in such decision.

(3) If a water court is constituted with one or three assessors, the decision of the water court judge on any matter of fact shall, in the case of a difference of opinion and in the absence of a majority decision, be the decision of the court, and the judgment of the judge shall, in similar circumstances, be the judgment of the court.

[Sub-s. (3) added by s. 2 of Act 11 of 1966.]

### **39 Death of assessor or inability to sit**

(1) If after a water court has been constituted, an assessor nominated or selected thereto-

- (a) dies or becomes insolvent or of unsound mind during the hearing of an application by such court or so soon before such a hearing that the vacancy cannot be filled in time for the hearing; or
- (b) is unable to take his seat and another assessor cannot be nominated or selected in time for the hearing; or
- (c) having taken his seat is unable to continue to sit,

the parties to the application may agree to its being heard and decided by the remaining member or members of the court: Provided that in the case of a difference of opinion where the court consists of the water court judge and one assessor, the judgment of the judge shall be the judgment of the court.

(2) Any order or award made or judgment given in the circumstances described in sub-section (1) shall be deemed for all purposes to be an order, award or judgment of a water court.

(3) Whenever in the circumstances described in sub-section (1), the parties to an application do not agree to the hearing and decision of that application by the remaining members of the water court, the hearing shall be

adjourned by the water court judge for the nomination or selection, as the case may be, of an assessor in the place of the assessor who has died, become insolvent or of unsound mind or become unable to take his seat or continue to sit.

#### **40 Jurisdiction powers and authority of water court**

A water court shall have power-

- (a) to make orders and awards, including orders for the payment of money, where necessary, upon-
  - (i) applications in connection with disputes regarding the use, diversion or appropriation of public water;
  - (ii) applications under the proviso to section *five* as to the right to a reasonable share of water referred to in that proviso;
  - (iii) applications in connection with claims for servitudes by means of which rights to use or dispose of public water or subterranean water are or may be exercised;
  - (iv) applications as to any matter which in terms of this Act or any other law may be brought before a water court;
- (b) on the application of any interested person, to investigate, define and record the rights to the use of public water of any particular stream and, subject to the provisions of section *forty-two*, and to the due recognition of all rights to the public water in question which have been defined and any apportionment which has been made by order of a competent court or by arbitration or agreement or in any other lawful manner, to apportion such public water for any of the purposes recognized by this Act;
- (c) to enquire into and, in its discretion, determine any existing, future or contingent right or obligation in respect of the use of public water or any right of servitude by means of which public water or subterranean water is being used or disposed of, notwithstanding that no person can claim any relief consequential upon such determination;
- (d) to investigate, determine and record whether any particular stream is a public or a private stream;
- (e) to investigate, define and record the normal flow of a public stream at any point along the course of such stream;
- (f) to determine and fix the place or places, either upon land riparian to a public stream or upon any land higher up the course of such public stream, at which an owner of such land shall be entitled to divert water from such stream, and to determine, if required, the nature and extent of the right of use at such place or places, due regard being had to the rights of any other owners;
- (g) to investigate any application for the removal or alteration of any dam, weir or other obstruction in the course of a public stream and to make

orders and awards thereon;

- (h) to grant permission for the use of public water;
- (i) to give such directions for the erection, maintenance, control and supervision of devices for the proper measurement and division of the normal flow of any public stream and as to payment of the costs thereof as may be necessary to give effect to its orders or awards; and
- (j) generally to do any act or thing which may under this Act or any other law be done by a water court.

#### **41 Powers of certain judges as to water court matters**

(1) Any judge of any division of the Supreme Court of South Africa which exercises jurisdiction within the area of a water court, or, in the case of the territory of South-West Africa, of the High Court of South-West Africa, shall have power-

- (a) at any time after the lodging of an application for the hearing of a matter by that water court-
  - (i) to order substituted service of any process, including any application, on any particular person or class of persons;
  - (ii) to give any other directions as to the service of the application;
  - (iii) to decide any objection to an assessor;
  - (iv) to adjourn the hearing or the further hearing of the application;
  - (v) to grant leave to take evidence on commission or on affidavit;
  - (vi) to grant leave to an applicant to withdraw his application upon such terms as to notice to any other party to the application as to such judge may seem necessary;
  - (vii) to grant leave to any person to intervene as a party to a suit;
  - (viii) to grant leave to an applicant to join further persons as respondents in a suit;
  - (ix) to grant any order permitting an applicant, a respondent or any party directly interested in the application to make surveys or take gaugings upon the land of a respondent or an applicant; and
  - (x) to make any special supplementary order as to any costs, fees or expenses referred to in sub-section (3) of section *forty-seven*;
- (b) at any time, whether prior to or after the lodging of an application for the hearing of a matter by that water court-
  - (i) to decide whether a pending dispute is one cognisable by that water court or by some other court;



- (ii) to grant an interdict pending the decision of a matter by that water court; and
- (iii) to grant any interlocutory order he may deem fit, the generality of this provision not being limited by anything contained in the preceding paragraphs.

(2) Any judge of the Supreme Court shall prior to the lodging of an application for the hearing of a matter by a water court have concurrent jurisdiction within its area of jurisdiction to grant an interdict pending the decision of any matter by a water court.

(3) A judge referred to in sub-section (1) or (2) shall have power to make such orders as to costs as the said judge may deem just in connection with any order or direction made by him.

(4) Any judge referred to in sub-section (1) shall have power upon application to declare any agreement made between all the parties to a dispute affecting water rights to be an order of court: Provided that-

- (a) any such application shall state the full names of the parties affected by the making of such order, the particulars of the rights which are the subject of the dispute and the grounds of the dispute; and
- (b) the judge shall be satisfied that every party affected by the application has been duly served with notice thereof and that the said agreement is clear and comprehensible and that the terms thereof are reasonable and are not in conflict with any provision of this Act.

(5) Any proceedings in terms of this section, except proceedings under sub-section (2), shall be deemed to be proceedings before a water court, and any order made by a judge in respect of such proceedings shall be deemed to be an order of a water court, and no order made under this section shall be subject to appeal to any court.

#### **42 Apportionment suits and orders**

(1) Such part of any order made by a water court under paragraph (b) of section *forty* which determines the manner of distribution of the water apportioned in terms of the said order, shall be provisional and shall become final after the expiration of a period fixed by the said court in such order: Provided that if a variation of the said part of such order has before the expiration of the said period been sought and granted by the court, the court may make such order final.

(2) In respect of any application to a water court for the hearing of an apportionment suit and the distribution of water in terms thereof, it shall not be essential for the applicant to-

- (a) have searches made in a deeds registry of owners of land in respect of which an apportionment of public water of any particular stream is sought; or
- (b) take gaugings of the flow of such stream,

if the water court is satisfied by other evidence that sufficient proof has been submitted to it to enable it to adjudicate upon such application.

**42bis Minister may present certain evidence in apportionment suits**

(1) If the Minister is of the opinion that it is desirable in the public interest that any evidence available to him should be presented in any apportionment suit before a water court, he or any person authorized thereto by him may, without becoming a party to such suit and notwithstanding anything to the contrary in any law contained, through witnesses called by him present to the court any such evidence as is relevant to the proceedings before it.

(2) As soon as possible after it has been decided to present evidence in terms of sub-section (1) and in any event not later than the date fixed in terms of the water court regulations for the filing of exceptions, pleas or counter claims, the Minister shall cause to be sent to the registrar of the court and to each of the parties to the suit whose addresses can be ascertained from the documents filed of record or to his legal representative in the suit notice in writing informing him of the intention so to present evidence and indicating the nature of the evidence which is to be presented.

[S. 42bis inserted by s. 8 of Act 56 of 1961.]

**43 Original jurisdiction of water court as to water disputes**

Except as provided in this Act or with the written consent of all the parties concerned, no court other than a water court shall have jurisdiction in the first instance to hear and determine any dispute or claim arising out of or in connection with any matter referred to in section *forty*, and no process shall issue out of any other court.

**44 Appearance of irrigation board or local authority before water court in certain circumstances**

(1) .....

[Sub-s. (1) not applicable in Namibia.]

(2) A local authority which controls or distributes water within its area of jurisdiction to persons who are liable for the payment of rates or charges to such local authority and who have a right to the use of or use such water, shall be entitled to appear as applicant and be liable to be cited as respondent on behalf of such persons in connection with any proceedings in a water court: Provided that nothing in this sub-section contained shall be construed as preventing any such person from appearing in such proceedings.

**45 Representation in appearance before a water court**

In any proceedings before a water court-

- (a) a party to such proceedings may appear personally;
- (b) a local authority or a company or an irrigation board, if a party to such proceedings, or, in the case of a local authority or an irrigation board, entitled to appear in accordance with section *forty-four*, may appear by the person nominated by such local authority, company or irrigation board;
- (c) a person or body, being a party to such proceedings or otherwise entitled

under this Act to appear, may appear by an advocate or attorney.

#### **46 Summoning of witnesses and penalty for non-attendance**

(1) A party to an application before a water court or an irrigation board or a local authority entitled to appear in accordance with section *forty-four*, may procure the attendance of any witness, whether such witness resides within the water court area in which the said court has jurisdiction or not, in the manner prescribed by regulations made under section *fifty-five*.

(2) If any person who has been duly subpoenaed to attend the proceedings in a water court for the purpose of giving evidence or producing any book, record, document or thing in his possession or under his control, fails without reasonable cause to attend or to give evidence or to produce that book, record, document or thing according to the subpoena or, unless excused by the water court judge, to remain in attendance throughout the proceedings, the water court judge may, upon being satisfied upon oath or by return of the person by whom the subpoena was served, that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine not exceeding one hundred rand, or in default of payment, imprisonment for a period not exceeding three months.

[Sub-s. (2) substituted by s. 6 of Act 108 of 1977.]

(3) If any person so subpoenaed fails to appear or, unless duly excused, to remain in attendance throughout the proceedings, the water court judge may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure seems to him to exist, issue a warrant for the apprehension of that person in order that he may be brought up to give evidence or to produce any book, record, document or thing according to the subpoena, and on failure so to give evidence or produce that book, record, document or thing, to be dealt with in the manner prescribed in sub-section (2).

(4) The water court judge may on cause shown remit the whole or any part of any fine or imprisonment which he may have imposed under this section.

(5) The water court judge may order the costs of any adjournment occasioned by the default of a witness, or any portion of those costs, to be paid out of any fine imposed under this section.

(6) A penalty imposed under sub-section (2) or (3) shall be enforced *mutatis mutandis* as if it were a penalty imposed by a magistrate's court in circumstances such as are described in the relevant sub-section, and the provisions of any law which are applicable in respect of such a penalty imposed by a magistrates court shall *mutatis mutandis* apply in respect of a penalty imposed under either of the said sub-sections.

#### **47 Order or award of a water court and fixing of costs**

(1) A water court shall make such order or award in any proceedings brought before it as it may deem just, including any order as to costs of any such proceedings as it deems fit in accordance with a scale of costs prescribed by regulations made under section fifty five: Provided that a water court shall not in any order for the payment of costs include any sum as fees for appearance before it (other than witness fees) unless the person so appearing is an advocate

or an attorney referred to in paragraph (c) of section *forty-five*.

(2) Any order as to costs may include the costs of-

- (a) any necessary search made in a deeds registry;
- (b) making of surveys and plans;
- (c) taking gaugings of the flow of water;
- (d) transcripts of the evidence in the suit; or
- (e) necessary travelling expenses of parties or their representatives,

and any costs awarded by a water court shall be subject to taxation by the registrar of such court.

(3) Advocates' fees, the qualifying expenses of any professional witness and costs awarded in respect of any matter referred to in sub-section (2), shall not be included in the party and party costs of any proceedings of a water court unless a special order to that effect has been made by such court or by a judge in terms of sub-paragraph (x) of paragraph (a) of sub-section (1) of section *forty-one*.

#### **48 Contempt of a water court**

(1) If during the sitting of a water court, any person wilfully insults a member of such court or any officer thereof attending at such sitting, or wilfully obstructs or interferes with an officer of a water court in the execution of his duties, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where the court is held, the water court judge may order such person to pay a fine not exceeding one hundred rand or in default of payment to be imprisoned for a period not exceeding three months, or to be so imprisoned without the option of a fine.

[Sub-s. (1) substituted by s. 7 (a) of Act 108 of 1977.]

(2) Any order made under sub-section (1) shall be executed *mutatis mutandis* as if it were an order made by a magistrate's court under circumstances such as are described in that sub-section, and the provisions of any law applicable in respect of such an order made by a magistrate's court shall *mutatis mutandis* apply in respect of an order made under the said sub-section.

(3) Any person who wilfully disobeys an order of a water court or fails to carry out any order which a water court has required him to carry out, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding one thousand rand or, in default of payment, imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.

[Sub-s. (3) substituted by s. 7 (h) of Act 108 of 1977.]

#### **49 Appeals from orders or awards of a water court**

(1) Save as is provided in sub-section (5) of section *forty-one* and in section *fifty*, any party to proceedings before a water court in which such court has given a final judgment may appeal against such judgment to the Appellate Division of the Supreme Court.

(2) Any such appeal shall be prosecuted as if it were an appeal from a

decision of a provincial division of the Supreme Court, or in the case of an appeal from the South-West Africa Water Court, of the High Court of South-West Africa, and all the provisions applicable in relation to an appeal from any such decision shall *mutatis mutandis* apply in respect of an appeal under this section.

(3) Pending the determination of such an appeal, the judge who presided over the water court which granted the order or award in respect of which such appeal is pending or, if such judge is not available, any other judge attached to the same division of the Supreme Court of South Africa or, in the case of the South-West Africa Water Court, of the High Court of South-West Africa, shall have power to grant a stay of execution in whole or in part of such order or award upon such terms and conditions as to him appear just.

**50 Agreement to accept decision of water court as final, and settlements during proceedings**

(1) The parties to any dispute concerning the use, diversion or appropriation of water, may in writing agree to submit the matter in dispute for final decision to a water court, and thereupon any order or award made by the water court in regard to the matter in question shall be binding upon the said parties and shall not be subject to appeal to any court.

(2) If the parties to a dispute which is the subject of proceedings before a water court arrive at a settlement during the course of such proceedings, the water court may make such settlement an order of court, provided the water court is satisfied that the settlement is clear and comprehensible and that the terms thereof are reasonable and are not in conflict with any provision of this Act.

**51 Registration of orders and awards against title deeds of land concerned**

(1) Any order or award of a water court affecting rights to water which is final and which is not subject to appeal, or as to which no appeal has been noted within the prescribed time, or as to which an appeal has been noted but has not been prosecuted or has been dismissed, or any order or award made upon appeal to the Appellate Division of the Supreme Court under this Act shall, if the water court or the said Appellate Division, as the case may be, so directs, upon production of the said order or award, be registered by the registrar of deeds in charge of the deeds registry concerned against the title deed of any land to which the order or award refers and recorded in the appropriate registers, and the owner of any such land shall produce his title deeds for the purpose.

(2) The cost of such registration shall be borne by one or other of the parties to the proceedings in pursuance of which such order or award was made, as the water court or the said Appellate Division may direct.

(3) If the title deed of any such land cannot readily be produced for purposes of registration, the registrar of deeds concerned shall note the said order or award on the duplicate title deed filed in his registry and in the appropriate registers in that registry, and no further transaction relating to the said land shall be registered until registration of the said order or award has been completed by endorsement thereof on the title deed, and the said registrar of deeds is hereby authorized to impound the said title deed and to make the necessary endorsement thereon whenever it may for any reason be lodged in his

registry.

**52 and 53** . . .

[Ss. 52 and 53 not applicable in Namibia.]

**54 Procedure to be observed by a water court**

The procedure of a water court shall be in accordance with the provisions of this Act and regulations made under section *fifty-five*: Provided that if there be no such provisions or regulations applicable in any particular circumstances, a water court shall act in such manner and on such principles as it shall deem best fitted to do substantial justice and to carry out the objects and provisions of this Act.

**54A Allowances payable to members of water courts**

The members of a water court who are not in the full-time service of the State may be paid such allowances by the department as may be determined by the Minister in consultation with the Minister of Finance.

[S. 54A inserted by s. 8 of Act 42 of 1975.]

**55 Water court regulations**

The Minister may make regulations relating to-

- (a) the procedure in water courts, including the procedure to be adopted in connection with the registration of orders or awards in terms of section *fifty-one* and of servitudes in terms of section *one hundred and fifty-one*;
- (b) the fees which may be charged in water courts;

[Para. (b) substituted by s. 9 of Act 42 of 1975.]

- (c) the appointment of a registrar and other officers of a water court;
- (d) the forms of and service of notices and other documents required under this Act to be given or served in connection with proceedings in a water court; and
- (e) generally any other matters which he considers it necessary or expedient to prescribe in so far as the functioning of water courts is concerned.

**CHAPTER V  
GOVERNMENT WORKS**

**56 Construction and control of Government water works**

(1) The Minister may, out of moneys provided by Parliament for the purpose, and subject to the provisions of this Act, construct any Government water work which he may deem necessary or desirable for the purpose of conserving or utilizing any water or the drainage of land, or for abstracting, storing or preventing the waste of or controlling any water derived from any underground source.

(2) Any Government water work constructed or in the course of construction at the date of commencement of this Act shall be deemed to have been constructed or commenced under this section.

(3) Notwithstanding anything to the contrary contained in this Act, the

Minister may at any time and for such period and on such terms and conditions as he may deem fit supply or distribute water from any Government water work to any person, including any department of State, the South African Railways and Harbours Administration and any provincial administration, for use at any place and for any purpose approved by the Minister.

[Sub-s. (3) substituted by s. 5 of Act 36 of 1971.]

(4) The rights and privileges of ownership in any Government water work shall be vested in the State and shall be exercised by the Minister and shall not be transferred to any person except under the provisions of paragraph (b) of subsection (1) of section *sixty-nine*.

(5) The control of any Government water work and the power to regulate or prohibit the abstraction of any water from any area submerged as a result of the construction of such work or the use of or entry into such work or any such submerged area is vested in the Minister.

(6) Whenever the Government has constructed any road for or in connection with a Government water work, or in connection with any holdings which have been established by the Government for the purposes of land settlement in terms of the laws relating to land settlement, and the control of such road has not been assumed by any local authority or other like institution which is lawfully entitled to exercise control over that road, the Minister may exercise control over such road and over the use thereof and the regulation of traffic thereon, and shall have power to make any regulations which he deems necessary for that purpose and to prescribe penalties for any contravention of or failure to comply with any such regulation or any direction or order issued thereunder and made known in such manner as may be prescribed in such regulations.

**57 Construction by Minister of water works for any person**

(1) The Minister may, subject to any existing right, construct any water work for or on behalf of any person and may enter into agreements with such person relating to the construction of such work and any matter incidental thereto.

(2) .....

(3) .....

[Sub-s. (2) and (3) not applicable in Namibia.]

**58** .....

[S. 58 not applicable in Namibia.]

**59 Governor-General may declare control areas**

(1) .....

(2) Whenever, in the opinion of the Governor-General-

- (a) the flow of a public stream in any particular area should in the national interest be regulated or controlled by damming, cleaning, deepening, widening, straightening or altering the course of the channel or by taking such other steps as may be necessary for the prevention or control of silt or for the purpose of lessening the possibility of damage to land which is

riparian to such stream in the event of flood; or

- (b) any land is required for the protection of any portion of the catchment area of a public stream,

the Governor-General may, by proclamation in the *Gazette* declare the channel of any such stream or any portion thereof, together with such portion of the land on either side or on both sides of the said channel, or any other area situated within the catchment of such stream, as he may consider necessary for such purpose, and as may be defined in the proclamation, to be a catchment control area, and he may from time to time in like manner amend or repeal any such proclamation.

(3) .....

[Sub-ss. (1) and (3) not applicable in Namibia.]

**60** .....

[S. 60 not applicable in Namibia.]

**61 Suspension of owners rights in or over land in a catchment control area for certain purposes**

(1) Whenever any area has under sub-section (2) of section *fifty-nine*, been declared to be a catchment control area, the Minister may-

- (a) out of moneys provided by Parliament for the purpose, cause such work as he may deem necessary in connection with any of the purposes set out in the said sub-section to be carried out by the department on any land in that area;
- (b) by notice in writing suspend for a period to be specified in such notice (which period may from time to time in like manner be extended) all or any of an owner's rights in or over any land in the said area, and at the expiration of a period of three months from the date of such notice, enter upon and take possession of the land in order to carry out such work.

(2) The Minister may in respect of any land in a catchment control area in his discretion withdraw any suspension of rights under paragraph (b) of sub-section (1) in the case of an owner who has, within three months of the date of the notice referred to in that sub-section, entered into a written undertaking to construct or carry out at his own expense such works or measures (to be specified in the undertaking) as the Minister may require, and may if in his opinion an owner has failed to comply with the terms of any such undertaking, give that owner one month's notice in writing of the termination of such withdrawal.

(3) (a) The Minister may at any time by notice in writing cancel any suspension of rights under sub-section (1), and thereupon the suspended rights shall be restored to the owner or his successor in title subject to the provisions of paragraph (c) and to such conditions as to occupation and use of the land as the Minister may deem fit to impose, which conditions shall attach to the land and at the request in writing of the Minister be noted free of charge by the registrar of



deeds in charge of the deeds registry in which the title deed to the land concerned is registered on the title deed of the said land and in the appropriate registers.

(b) For the purpose of paragraph (a) the owner or other person in possession of the title deed to the land shall upon demand deliver such title deed to the secretary, and the said registrar of deeds shall, if requested thereto by the secretary and pending the noting of the said conditions on the said title deed, make a note of such conditions in the appropriate registers.

(c) The Minister may from time to time assess rates on any land within a catchment control area in which any work has been carried out by him under this section whether or not such work has been carried out on that land, and may recover any rates so assessed from the owner of that land.

(d) The cancellation of any suspension of rights in terms of paragraph (a) of this sub-section shall not be deemed to prevent the Minister at any time thereafter from again suspending any such rights in respect of the land in question in terms of paragraph (b) of sub-section (1).

(4) The provisions of section 4 (1), (4), (5) and (6) of the Expropriation Act 1965 (Act 55 of 1965) shall *mutatis mutandis* apply in respect of the service of any notice under sub-section (1) (b) or (2) of this section.

[Sub-s. (4) substituted by s. 11 of Act 42 of 1975.]

**62 - 65.....**

[Ss. 62 - 65 not applicable in Namibia.]

## **66 Levying of rates and charges**

(1) (a) Notwithstanding anything to the contrary contained in this Act or any other law, or any existing right or any other right to any water or to the use thereof, and notwithstanding any restriction imposed by or under any such law or right in respect of the powers of the Minister mentioned in this paragraph, the Minister may from time to time assess such rates as he may deem fit on land which may be irrigated with water abstracted, supplied or distributed from a Government water work, or from a public stream or natural channel which is in a Government water control area or into which water from such a work is released, or assess such charges as he may deem fit for water so abstracted, supplied or distributed for any purpose, or assess both such rates and such charges, and may recover the rates or charges so assessed from the owners of the said land or, as the case may be, from the persons entitled to use such water.

[Para. (a) substituted by s. 7 (a) of Act 36 of 1971 and substituted by s. 10 of Act 45 of 1972 and substituted by s.13 of Act 42 of 1975.]

(b) Rates or charges assessed in terms of paragraph (a) in respect of water used for agricultural purposes shall be a charge upon the land in respect of which they have been assessed, and any person who becomes the owner of any such land shall be liable for any such rates or charges which remain unpaid at the time when he becomes the owner.

(2) The Minister may, in addition to any action he may take in terms of paragraph (a) of subsection (1) for the recovery of any rates or charges assessed

by him under that paragraph and which have not been paid on due date, stop the supply of water from the Government water work in question to the land in respect of which such water is supplied or, as the case may be, to the person who is being supplied with water, until the said rates or charges, together with interest thereon at a rate not exceeding the rate which at due date applies in respect of loans under section 26 (1) of the Exchequer and Audit Act, 1975 (Act 66 of 1975), have been paid, and the Minister shall not be obliged, after the amount due has been paid, to supply any water so stopped or to pay compensation for any loss sustained by any person consequent upon the stopping of the said supply of water.

[Sub-s. (2) substituted by s. 2 of Act 27 of 1976.]

(3) .....

[Sub-s. (3) deleted by s. 7 (b) of Act 36 of 1971.]

(4) No suspension under sub-section (2) of the supply of water to the land or person referred to therein shall relieve any person from any liability in respect of the period of such suspension for any rates or charges assessed by the Minister under this section.

**67 and 68.....**

[Ss. 67 and 68 not applicable in Namibia.]

#### **69 Delegation of control or alienation of Government water works**

(1) The Minister may-

- (a) at any time and for such period and on such terms and conditions as he may deem fit, delegate all or any of the powers of control, operation, administration or maintenance of any Government water work or any electricity undertaking referred to in section *sixty-seven*, or of control, supply and distribution of water from such Government water work or of electricity by means of such undertaking, assigned to him under this Act or any other law, to any local authority, irrigation board or other statutory body or any department of State, including the South African Railways and Harbours Administration, or any provincial administration;
- (b) at any time, if authorized thereto by resolution of both Houses of Parliament and on such conditions as may be set forth in such resolution, sell or otherwise dispose of any Government water work to any local authority, or any such board, body, department or administration.

(2) The provisions of this Act or any other law relating to Government water works shall, save as otherwise provided in any conditions set forth in any resolution referred to in paragraph (b) of sub-section (1), continue to apply in relation to a Government water work which has been sold or disposed of under that paragraph, as if such sale or disposal had not taken place and for that purpose any reference in any such provision to the Minister shall be construed as a reference to the local authority, board, body, department or administration to which such water work has been sold or disposed of.

**70 Minister may make regulations in connection with Government water**

## **works**

The Minister may, in respect of any Government water work, Government water control area, subterranean water control area, catchment area or catchment control area, make regulations relating to-

- (a) the manner of regulating the flow of water into, the abstraction or distribution of water from, and the use of water in or from any portion of such work or area;
- (b) the protection or preservation of the work or area or any part thereof;
- (c) the control of and access to the work or any area submerged or to be submerged as a result of the construction of the work, including the use of boats of whatever description in or upon any such submerged area;
- (d) .....

[Para. (d) not applicable in Namibia.]

- (e) the method of assessing and recovering rates or charges under section *sixty-one, sixty-six or sixty-seven*;
- (f) .....

[Para. (f) not applicable in Namibia.]

- (g) .....

[Para. (g) not applicable in Namibia.]

- (h) .....

[Para. (h) not applicable in Namibia.]

- (i) the supply and distribution of electricity under section *sixty-seven*; and
- (j) generally any other matters which he considers it necessary or expedient to prescribe in order that the objects of this Chapter may be achieved.

[S. 70 amended by s. 15 (a) of Act 42 of 1975.]

**71 - 138.....**

[Ss. 71 - 138 not applicable in Namibia.]

## **139 Definition of servitudes**

In this Chapter-

**'servitude of abutment'** means the right to occupy by means of a dam, weir, protecting wall or embankment, pump, turbine or power house and its appurtenances, the bed or banks of a public stream or land adjacent thereto belonging to another;

**'servitude of aqueduct'** means the right to occupy so much of the land belonging to another as may be necessary for or incidental to the passage of water, and includes a right to use, share in the use of, or construct on such land

works, including ancillary diversion works, necessary for the passage of water over, under or alongside another work, or to enlarge and extend an existing work;

**'servitude of drainage'** means the right to occupy so much of the land belonging to another as may be necessary for or incidental to the drainage of land or disposal of water whether into the nearest public stream or natural channel or otherwise, as may be practicable or desirable in the circumstances;

**'servitude of storage'** means the right to occupy land belonging to another by submerging it with water by means of a dam, weir or other work, whether or not such dam, weir or other work has been constructed on such land.

#### **140 Point on a public stream at which water may be taken**

(1) (a) Any person entitled to the use of the water of a public stream may, subject to the provisions of this Act, acquire the right to divert such water at such point on the course of that stream as may be reasonably necessary to enable him to exercise his right to use the said water.

(b) A local authority shall, with the consent of the Minister, be entitled to construct and maintain any water works on or over any land for drainage purposes or for the purpose of conveying water to the area of jurisdiction of the said local authority for urban use in that area.

(2) Any such local authority shall in connection with the construction or maintenance of any such water works have the same powers as are by section *ninety-four* vested in an irrigation board, and for that purpose the provisions of that section shall *mutatis mutandis* apply.

#### **141 Rights of servitudes and of owners of dominant and servient tenements**

(1) Any person who, having a right to or to the use of public water or subterranean water (as defined in section *twenty-seven*), or being entitled to supervise or control the use or disposal of public or subterranean water, desires to employ it or to increase its employment for or in connection with any purpose for which such water may be used in accordance with the provisions of this Act, or to dispose of such water, whether by drainage or in any other manner shall be entitled to claim under this Act, temporarily or in perpetuity, such servitudes of abatement, aqueduct, drainage or storage as may be necessary for or incidental to the said purpose or for the disposal or drainage of such water: Provided that-

- (a) no such person, other than an owner of land or the owner of a mine to whom a permit has been issued in terms of paragraph (a) or (b) of subsection (5) of section *thirty*, shall be entitled to a servitude of drainage over any land situated within the area of jurisdiction of a local authority (other than a divisional council) referred to in paragraph (a) of the definition of 'local authority' in section one, except with the consent of such local authority;
- (b) a temporary servitude shall not endure for a longer period than three years;
- (c) no proceedings shall be taken for the acquisition of any servitude while a dispute exists as to the right to the water in respect of which the servitude is claimed and proceedings to determine the dispute are

pending in a competent court, but if both such proceedings to acquire any servitude and to determine the said dispute are capable of decision by or are actually pending before the same court, nothing herein contained shall prevent both matters being decided at one and the same time;

- (d) no such servitude shall give the person acquiring it any right or interest in the land on, over or through which the servitude is acquired other than the rights connected with such servitude.

(2) Whenever a servitude of abutment, aqueduct, drainage or storage has been acquired by agreement or an order of a competent court, or has otherwise been lawfully acquired under this Chapter or under any prior law, and the owner of the dominant tenement desires for any reason to alter or extend the water works in respect of which such servitude was acquired, such owner shall, notwithstanding any terms or conditions which may have been imposed in connection with the acquisition of the said servitude, be entitled to claim under this Act such new or additional servitudes as may be necessary for the said purpose.

(3) Any servitude acquired under this Chapter shall include the right of access to the area in respect of which the servitude has been acquired for the purpose of constructing, enlarging, renewing, replacing, fencing, inspecting, maintaining, repairing or cleaning the water work in respect of which the said servitude has been acquired or for any other purpose necessary for the effective enjoyment of the servitude.

(4) The owner of any land which is subject to a servitude of aqueduct or drainage may pass any water to which he is entitled or of which he wishes to dispose along the water work in respect of which such servitude has been acquired, on payment of such proportion of the cost of constructing, enlarging and maintaining the said work, and on such other terms as may be agreed upon or failing agreement as may be determined by a water court: Provided that the said owner shall not be entitled to pass any water along such water work in such a manner as to prevent or hinder the person who has acquired the said servitude from exercising his rights under such servitude.

(5) The owner of land over which a servitude of drainage exists, shall be entitled to use on such land the water contained or flowing in any water work constructed on such land or in any drain or other channel other than a public stream, used for the purpose of disposing of the said water, and the said owner shall be entitled to claim that any water work constructed in the exercise of the said servitude of drainage shall be so constructed as to make available for his use any water flowing therein on his land: Provided that no such water work shall be so constructed as to raise the water level to the detriment of an upper owner and that any additional expense which may be incurred for the purpose of making the said water available for use by the said owner shall be borne by such owner.

(6) (a) Whenever a person requires a perpetual servitude of storage or a perpetual servitude of abutment, the owner of the land over which such servitude

is required may, before the servitude has been acquired, pay or give security for the payment of a share of the cost of acquiring such servitude and of the cost of construction of the water work in connection with which the said servitude is required, as determined by agreement between such owner and the person acquiring the servitude or in the absence of such agreement, by a water court, and shall thereupon, after completion of the said water work, so far as is consistent with the provisions of Chapter II, be entitled to receive the benefit of such work by using water therefrom to the extent so determined: Provided that no such benefit may be claimed by the owner of the servient tenement if the use of the said water by him would seriously impair the usefulness of the said water work to the person desirous of acquiring the servitude or if the said servitude was acquired by a local authority for the purpose of supplying the inhabitants within the area of its jurisdiction with water: Provided further that any dispute as to the usefulness of the water work in question, or the proportion of the water which the said owner of the servient tenement may use, or the total cost of the water work, or each party's proportionate share of such cost, shall be determined by a water court at the instance of either of the said owners.

(b) If the owner of a servient tenement has not acquired a right in terms of paragraph (a), he shall not be entitled to abstract or use any water from the water work in respect of which the said servitude of storage or abutment has been acquired, without the permission of the owner of the dominant tenement.

(7) A person who desires to construct a water work for the conveyance or the drainage or disposal of water shall not construct such work across a road for the construction, maintenance, repair or control of which a provincial administration, divisional council or other lawfully constituted body is responsible unless he has obtained the written permission of the said administration, council or body, and the said person shall construct such water works in accordance with such conditions as to construction, maintenance and repair as the said administration, council or body may impose in granting the said permission.

(8) Subject to the provisions of section *one hundred and forty-two*, a servitude of storage shall not, unless it be a condition of any agreement or order of a competent court establishing it, deprive the owner of the land subject to such servitude of the use of that part of the land which is not submerged, so long as such use is not detrimental to the enjoyment of the said servitude by the person in whose favour it has been granted or acquired.

#### **142 Servitude includes the right to take materials for water works**

(1) Any servitude acquired under this Chapter shall, unless otherwise provided in the deed of servitude or order of a water court, as the case may be, include a right-

(a) to take from the land subject to the servitude, any material or substance which may reasonably be required for the purpose of constructing, enlarging, renewing, replacing, maintaining or repairing any water work or any portion thereof in respect of which such servitude has been acquired, whether such material or substance is used on such land or elsewhere;

(b) to cut down from the land subject to the servitude or remove and use any

tree, bush, vegetation or other obstacle which may be detrimental to the enjoyment of the servitude by the person in whose favour it has been granted or acquired;

- (c) to deposit on the land subject to the servitude, any material or substance excavated or removed from the water work in respect of which the servitude has been acquired in the process of constructing, enlarging, renewing, replacing, repairing, maintaining or cleaning such work;
- (d) to occupy temporarily so much land subject to the servitude as may be reasonably required during the period of construction of the water work in respect of which the servitude has been acquired, for the construction of camps or roads or for the erection on such land of such houses, plant, reservoirs or other buildings or structures as may be necessary in connection with the construction of the work, and to occupy permanently so much land as may be reasonably required for the residence of such persons and for workshops or storage purposes as may be necessary in connection with the control, operation and maintenance of the water works in question.

(2) (a) The taking of any material or substance in terms of paragraph (a) of sub-section (1), or the removal and use of any tree, bush, vegetation or other obstacle in terms of paragraph (b) of the said sub-section, or the depositing of any material or substance in terms of paragraph (c) of the said sub-section, or the occupation temporarily or permanently of land in terms of paragraph (d) of the said sub-section, shall be subject to an obligation to pay compensation to the owner of the land in question, unless such material or substance is taken or such tree, bush, vegetation or other obstacle is cut down or removed or such material or substance is deposited, within the defined area of the servitude, or such occupation is restricted to the defined area of the servitude.

(b) Compensation to be paid in terms of paragraph (a) shall in the absence of agreement be determined by a water court.

#### **143 Right to use a water work subject to obligation to contribute towards repairs**

Any person who, by paying a proportionate share of the cost of constructing any water work in terms of sub-section (4), (5) or (6) of section *one hundred and forty-one*, or by agreement or in any other lawful manner, has acquired a right to use such work, shall be liable to pay a like proportion of the cost of the maintenance and repair of such work, unless such person has by notice in writing to the owner of the dominant tenement surrendered such right.

#### **144 Duty of person acquiring servitude to construct access bridges etc**

Every person who, under this Chapter, constructs water works for the passage, drainage, diversion or disposal of water which prevent any owner passing freely over or on to his land, or check the circulation of water in the irrigation or drainage of such land, shall at his own expense construct and maintain in repair such bridges and other works as will make communication reasonably safe and convenient, and such culverts, aqueducts and other works

as are necessary to secure the free circulation of such water, unless he be exempt from such duty by agreement or otherwise.

#### **145 Mode of acquiring servitudes under this Chapter**

(1) (a) Any person who proposes to claim a servitude of abutment, aqueduct, drainage or storage, may after notice to the owner of the land in question, enter upon that land and make any investigation and undertake any operations thereon which he may consider necessary for the purpose of determining the extent and nature of the servitude required, and shall in any notice claiming such a servitude set forth, according to the nature of the servitude-

- (i) the line of passage along which the water is to be conducted or diverted;
- (ii) the locality on which the water is to be stored and the approximate area which will be submerged;
- (iii) the nature and locality of any works, including works, if any, referred to in section *one hundred and forty-four*, which it is proposed to construct;
- (iv) the quantity and nature of the material required from the said land for the purpose of constructing water works and the place from which it is proposed to take such material;
- (v) the land required temporarily for construction camps and permanently for the residence of persons and for workshops or storage purposes necessary in connection with the operation and maintenance of the works in question;
- (vi) the compensation which is offered;
- (vii) whether a temporary or permanent servitude is claimed and, if temporary, the period of time during which he wishes to enjoy the servitude.

(b) The provisions of sub-sections (3) and (4) of section *one hundred and ten* shall *mutatis mutandis* apply in connection with any entry, investigation or operations referred to in paragraph (a) of this sub-section.

(c) There shall be attached to any notice under sub-section (1) in which a servitude is claimed, a plan showing the position, locality and nature of any proposed works in respect of which that servitude is claimed and, in the case of a servitude of aqueduct or a servitude of drainage, the line of passage of the aqueduct or drain to be constructed.

(2) If the owner does not within one month after the service of a notice claiming a servitude, agree to the claim, or to any particulars stated in the notice, or to any other matter necessary for the servitude, and consent to the embodiment of such particulars and other matters in a deed of agreement and to execute such deed notarially, the claimant may apply to a water court for the settlement of the several matters in dispute.



(3) The person claiming any such servitude shall when serving notice thereof upon the owner of the land affected transmit by registered post to every person shown upon the title deed of such land, or in the records of the Registrar of Mining Titles or of any other Government office in which rights granted under any law relating to prospecting or mining are recorded, to have any interest in such land and whose whereabouts he can readily ascertain, a copy of that notice and of every annexure thereto.

**146 Jurisdiction of water court as to claims for servitudes**

(1) A water court may, upon the hearing of a claim to any servitude under this Chapter-

- (a) award the same with or without modifications, and subject to such conditions as it deems just;
- (b) award or refuse to award compensation for the right of servitude granted;
- (c) if the land on which the servitude is claimed is subject to a lease, mortgage, usufruct or other encumbrance, and the lessee, mortgagee, usufructuary or other person in whose favour the land is encumbered claims a share of any compensation awarded, determine the claim of the lessee, mortgagee, usufructuary or such other person and the amount (if any) of his share of the compensation;
- (d) dismiss the claim, but on the following grounds only, namely-
  - (i) that the servitude claimed does not fall within the provisions of this Chapter;
  - (ii) that the object for which the servitude is claimed could be better obtained in another manner;
  - (iii) that the claim is not made in good faith or that the person claiming such servitude has not satisfied the water court that he has taken all reasonable steps to ascertain the whereabouts of every person on whom any copy of a notice referred to in section *one hundred and forty-five* is, in terms of sub-section (3) of that section, required to be served, or to serve such a copy on any such person;
  - (iv) that the works appertaining to the servitude claimed are not of sufficient utility to justify the acquisition of the servitude;
  - (v) that the works appertaining to the servitude will seriously interfere with any Government water work or with any water work of the Rand Water Board or an irrigation board or a water board; or
  - (vi) that the damage likely to be caused by the proposed works would be greater than the benefits that would be derived therefrom.

(2) In fixing the amount of compensation a water court may deduct such amount as it thinks reasonable in consideration of any advantage which the owner, lessee or usufructuary, as the case may be, of the land on which the

servitude is acquired may derive by reason of the servitude.

(3) Compensation awarded by a water court for a temporary servitude shall not exceed an annuity equal to the rental value (as nearly as can be ascertained) of the land to be actually occupied by the work contemplated, together with such amount for actual inconvenience or loss likely to be suffered by the exercise of the right of servitude as a water court may in its discretion determine.

(4) Compensation awarded by a water court for a permanent servitude shall not exceed an amount assessed in accordance with the provisions of paragraph (b) of sub-section (3) of section sixty.

(5) In fixing the amount of compensation in the case of a servitude of aqueduct in respect of existing works, the water court shall take into account the cost of such works, including any ancillary diversion works, and the cost of acquiring any servitudes in respect of such works, and such compensation shall include a proportionate share of the cost or the value of such works, as the court deems equitable.

#### **147 Conversion of temporary servitude into permanent servitude**

(1) A person who has under this Chapter or a prior law acquired a temporary servitude, shall be entitled to have such servitude converted into a permanent servitude on payment to the owner of the land of such compensation as may be agreed upon or failing agreement determined by a water court upon application made thereto.

(2) The provisions of section *one hundred and forty-six* shall, as far as possible, be applied in determining the amount of such compensation, but the water court shall in making any award of compensation have due regard to the amount previously paid in respect of the temporary servitude aforesaid.

#### **148 Construction and maintenance of works in respect of which servitude has been obtained**

Subject to the provisions of this Chapter, works required for the enjoyment of a servitude acquired under this Chapter or any prior law shall be constructed and properly maintained solely at the cost of the person acquiring the servitude.

#### **149 Lapse of a servitude**

A servitude acquired under this Chapter or any prior law in terms of an order of a water court, shall lapse if the work proposed to be executed be not completed and the water be not utilized within three years from the date of the order, or within such further period as the said water court may have fixed, or within any extended period agreed upon between the parties concerned.

#### **150 Repair and cleaning of channels constructed across the land of another person**

(1) If any canal, furrow or other channel constructed under this Act or any prior law across the land of another person for the purpose of conveying, draining or disposing of water be out of repair or require cleaning, the person having or claiming the right of aqueduct, drainage or disposal in respect of such canal, furrow or other channel shall if required in writing by the owner of the land to repair or clean the said canal, furrow or channel, carry out the necessary operations within a reasonable time, and if he fails to do so, the owner may

cause all such work to be done and recover in a competent court the cost thereof from the person having or claiming such right aforesaid.

(2) Any person having or claiming such a right who knowingly allows or suffers any such canal, furrow or other channel to be out of repair or to be in such a state as to require cleaning, shall be liable for all damage which may arise therefrom.

### **151 Registration of servitudes**

(1) (a) A servitude acquired under this Chapter or any similar servitude acquired under any prior law, other than a servitude acquired by expropriation by the Government, the Rand Water Board, an irrigation board or a water board, shall not be recognized until registered in manner prescribed by regulation against the respective title deeds of the land against and in favour of which it has been so acquired, and the registrar of deeds in charge of the deeds registry in which the title deed to any such land is registered shall, upon production of a duly executed notarial agreement or an order of a water court, register the said servitude against the title deeds of such land.

(b) The provisions of sub-section (3) of section *fifty-one* shall *mutatis mutandis* apply in respect of the registration of servitudes under this sub-section.

(2) For the purposes of the registration of a servitude acquired under this Chapter, and notwithstanding the provisions of any other law, the registrar of deeds concerned shall, if ordered thereto by a water court, accept such plans showing the position of the servitude on the land subject to such servitude as may be indicated by the said court.

### **152 Saving in favour of the Railways and Harbours Administration**

Nothing in this Chapter contained shall be construed as affecting servitudes or other rights lawfully acquired by expropriation or otherwise, either before or after the commencement of this Act, by the South African Railways and Harbours Administration.

### **153 - 161.....**

[Ss. 153 - 164 not applicable in Namibia.]

### **162 Subsidies on waterworks**

(1) Subject to the provisions of sub-sections (2) and (3), the Minister may, on application, out of the moneys provided by the Parliament for the purpose, and on such conditions as he may deem fit impose, grant to any person a subsidy towards the cost of constructing a water work, whether such work is constructed by such person or by the Minister in terms of section fifty-seven.

(2) Unless the total cost of the said water work and the amount of the subsidy and of any loan under this Chapter to be granted on respect thereof have been separately specified in the estimates of expenditure approved by Parliament-

- (a) no subsidy shall be granted in respect of any water work the total cost of which in the opinion of the Minister, is likely to exceed two hundred thousand rand;

[Para. (a) amended by s. 6 (a) of Act 71 of 1965 and by s. 13 (a) of Act 36 of 1971 and substituted by s. 21 of Act 108 of 1997.]

- (b) the amount of the subsidy to be granted to any irrigation board or local authority shall not exceed thirty-three and one-third per centum of the cost of the work in respect of which it is granted;
- (c) the amount of the subsidy to granted to any other person or body, other than an irrigation board or a local authority, shall not exceed thirty-three and one third per centum of the cost of the work in respect of which it is granted, or the amount determined by the Minister for he purpose of this paragraph by regulation, which ever amount is the lesser: Provided that if a group of persons desire to construct a joint water work and the Minister is of the opinion that their purpose may be conveniently and efficiently achieved without the establishment of an irrigation district and the constitution of an irrigation board to carry out the said work, such group of persons may, subject to the provisions of paragraph (a), be granted a subsidy not exceeding the amount so determined, in respect of each such person, but not exceeding in the aggregate thirty-three in one-third per centum of the cost of such work.

[Para. (c) amended by s. 6 (b) of Act 71 of 1965, by s. 11 of Act 77 of 1969 and by s.21 of Act 42 of 1975 and amended by s. 6 of Act 27 of 1976.]

(3) A subsidy shall not be granted under this section to a local authority unless the Administrator of the province within which such local authority has been established, has recommended the grant of such subsidy, and an Administrator shall not so recommend unless he is satisfied that such local authority would not, for financial reasons, be able to construct the water work in respect of which the subsidy is required if such subsidy were not granted to it.

(4) Any board or other body constituted by any special law and empowered and required by such law to exercise such powers and carry out such duties as are or may be conferred and imposed upon irrigation boards and control and maintain water works used for the irrigation of land within the area of jurisdiction of the board or body aforesaid and to distribute the water from such works to such land, shall, for the purposes of this Chapter, be deemed to be an irrigation board, and the provisions of section 63 (8) (a) and (b) and (9) and (10) and of sections 93, 95 and 95A shall *mutatis mutandis* apply in respect of any such board or body were an irrigation board.

[Sub-s. (4) substituted by s. 13 of Act 36 of 1971.]

(5) No part of the subsidy granted under this section shall be expended for any purpose other than the carrying out of the water work in respect in which it is granted.

(6) .....

[Sub-s. (6) deleted by s.18 of Act 56 of 1961.]

**162bis - 164.....**

[Ss. 162bis - 164 not applicable in Namibia.]

**164bis            Establishment of water sport control areas**

(1) The State President may by proclamation in the *Gazette* declare any area defined in the proclamation in question to be a water sport control area if in his opinion, such area or any portion thereof is or is from time to time or is likely to become submerged, whether naturally or artificially, by water of any kind whatever, and such water is or would be navigable or suitable for the practice of any water sport.

(2) Notwithstanding the provisions of this Act or any other law, and notwithstanding any existing right or other right in respect of water or land in any such water sport control area, the rights to and the control of the use of such water or land for the purposes of navigation or any sport which is practised in or upon water, or any activities arising therefrom or incidental thereto, shall vest in the Minister.

(3) The provisions of paragraph (a) of sub-section (1) of section *sixty-nine* shall *mutatis mutandis* apply in respect of the powers conferred upon the Minister by sub-section (2).

(4) For the purposes of sub-section (1) 'area' includes any portion of the sea-shore as defined in section one of the Sea-Shore Act, 1935 (Act 21 of 1935).

[S. 164*bis* inserted by s. 7 (b) of Act 71 of 1965.]

#### **164ter Making of regulations in respect of water sport control areas by Minister**

(1) The Minister may in respect of any area which in terms of section *one hundred and sixty-four bis* has been declared a water sport control area, make regulations as to-

- (a) the control over, and the use of such area for, navigation or any sport which is practised upon or in water;
- (b) the control over and the use of craft and appliances of whatever nature, upon or in water in such area;
- (c) the control in such area of any activity arising from or incidental to the use of such area for navigation or any sport contemplated in paragraph (a);
- (d) the use of the land in such area between the surface of the water therein and the boundary thereof for any activity contemplated in paragraph (c);
- (e) the fees payable in respect of the use of such area for any activity referred to in paragraph (a) or (c), or in respect of the use therein of craft or appliances as contemplated in paragraph (b); and
- (f) generally, any other matter in respect of which he considers it necessary or expedient to make regulations in order that the objects of section *one hundred and sixty-four bis* may be achieved.

(2) If the provisions of any regulation so made conflict with the provisions of any law, the provisions of such regulation shall apply.

(3) Regulations in terms of paragraph (e) of sub-section (1) shall only be made after consultation with the Minister of Finance.

[S. 164~~ter~~ inserted by s. 7 (b) of Act 71 of 1965.]

**CHAPTER X  
GENERAL AND MISCELLANEOUS**

**165 Delegation of Ministers powers**

The Minister may by notice in the *Gazette* delegate to the secretary or any other officer in the department any of the powers conferred upon him by this Act.

**166 Right of entry upon land**

(1) Any person authorized thereto in writing by the Minister or by the secretary may, after reasonable notice to the owner or occupier of any land, enter upon such land with such men, animals, vehicles, appliances and instruments and do all such acts thereon as may be necessary for the purpose of complying with any provision of this Act, or for the purpose of making any enquiries or undertaking any investigations with a view to determining the feasibility of constructing any water work, or for the purpose of erecting construction camps or other preliminary works which the Minister may consider necessary in connection with the construction of any contemplated water work, or for the purpose of ascertaining whether any provision of this Act or any regulation made or condition imposed thereunder is being complied with and may, for the purpose of gaining access to such land, after like notice, enter upon and cross any other land with the necessary men, animals, vehicles, appliances and instruments: Provided that-

- (a) no such entry shall be made into any building, or upon any enclosed space attached to a dwelling, except with the consent of the occupier thereof;
- (b) as little damage as possible shall be caused in the exercise of the powers granted under this section, and such compensation as may be agreed upon or failing agreement determined by a competent court shall be paid for any damage, loss or inconvenience so caused.

[Sub-s. (1) amended by s. 19 of Act 56 of 1961 and substituted by s. 14 of Act 36 of 1971.]

(2) The provisions of sub-section (1) shall *mutatis mutandis* apply in relation to any member of an irrigation board or a water board or a person authorized thereto in writing by the chairman of an irrigation board or a water board.

(3) A member of a water court may enter upon any land for the purpose of making any inspection which it may consider necessary in connection with the performance of its functions under this Act.

(4) Any person who prevents any entry or the exercise of any powers authorized by this section or wilfully obstructs or hinders any person so entering in carrying out such person's powers or duties under this Act or the regulations made thereunder, shall be guilty of an offence.

**167 - 169A.....**

[Ss. 167 - 169A not applicable in Namibia.]

## 170 Offences and penalties

(1) Any person who, without lawful right or authority, the proof whereof shall lie upon him-

- (a) constructs, alters, enlarges or obstructs a water work, or destroys, defaces or moves any level mark, beacon or other structure or appliance erected or made in connection with any such work;
- (b) interferes with, or alters the flow of the water contained in or flowing in or from a water work, or interferes with, or alters the flow of the water of a public stream, or interferes with the distribution of any such water, or takes water in excess of the quantity he is entitled to take or at a time when he is not entitled to do so, or impounds, stores, abstracts, supplies or uses water contrary to the provisions of a notice published in the *Gazette* in terms of section 9A or uses water in a manner or for a purpose contrary to this Act or regulations made thereunder or such a notice;

[Para. (b) substituted by s. 7 of Act 79 of 1967.]

- (c) while using or being liable for the maintenance of a water work, wastes or does not take due precaution to prevent waste of water from any such work, or fails to maintain the work and keep it in repair;
- (d) being an owner of land in respect of which rates or charges have been assessed in terms of paragraph (a) of sub-section (1) of section *sixty-six*, paragraph (a) of sub-section (1) of section *ninety*, sub-section (2) of section *one hundred and seventeen* or sub-section (1) of section *one hundred and twenty*, takes or uses water from the water works in connection with which such rates or charges have been assessed, after the supply of water from such works to the said land has been stopped by the Minister or, as the case may be, by the irrigation board or water board concerned by reason of a default on the part of the said owner to pay any such rates or charges;
- (e) wastes public water;
- (f) without the written permission of the Minister, alters or in any way interferes with any work referred to in paragraph (a) of sub-section (1) of section *sixty-one*;
- (g) aids or abets or permits any act or default referred to in any of the preceding paragraphs;
- (h) contravenes or permits the contravention of or fails to comply with any provision of paragraph (c) of sub-section (1) of section *sixty-two* or any condition referred to in paragraph (a) of sub-section (3) of section *sixty-one*,

shall be guilty of an offence and liable, in the case of a first conviction, to a fine

not exceeding five hundred rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

[Sub-s. (1) amended by s. 22 (a) of Act 108 of 1977.]

(2) Any person who is convicted of an offence under section 21, 22 or 23 shall be liable, in the case of a first conviction, to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of not less than one thousand rand or to imprisonment for a period of not less than six months or to both such fine and such imprisonment.

[Sub-s. (2) substituted by s. 22 (b) of Act 108 of 1977.]

(3) Any person who contravenes or fails to comply with any regulation made under this Act or any by-law made under this Act by an irrigation board or a water board, or commits any offence against the provisions of this Act for which no penalty is expressly provided, shall be liable on conviction to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Sub-s. (3) substituted by s. 22 (c) of Act 108 of 1977.]

(4) Any person who has been convicted of any offence under this Act, and who after such conviction persists in the course of conduct which constituted the said offence, shall be guilty of a continuing offence and liable on conviction, in the case of an offence referred to in subsection (2), to a fine not exceeding one hundred rand, and, in the case of any other offence, to a fine not exceeding twenty-five rand, in respect of every day that he so persists or has so persisted.

[Sub-s. (4) substituted by s. 22 (d) of Act 108 of 1977.]

(5) If in any proceedings under paragraph (b) of sub-section (1) in which it is alleged that-

- (a) a person has interfered with the distribution of water contained or flowing in or from a water work or a public stream, or has taken more water than he is entitled to or has taken water at a time when he was not entitled to take it, it is proved that the said distribution was interfered with or that more water was taken than the said person was entitled to, or that the said water was taken at a time when such person was not entitled to take it, the said person shall be presumed, until the contrary is proved, to have interfered with the distribution of the said water or to have taken more water than he was entitled to or to have taken it at a time when he was not entitled to take it;
- (b) a person has taken water at a time when he was not entitled to take such water, it is proved that such water was running on to or found on any land or running into or found in any dam belonging to such person, the



onus of proving that the said person was entitled to such water or that it was so taken or used without his knowledge shall be upon that person.

(c) .....

[Para. (c) not applicable in Namibia.]

(5A) (a) Whenever any manager, agent or employee of any person (in this subsection hereafter called the employer) does or omits to do any act which it would be an offence under this Act for the employer to do or omit to do, then unless it is proved that-

- (i) in doing or omitting to do that act the manager, agent or employee was acting without the connivance or the permission of the employer; and
- (ii) all reasonable steps were taken by the employer to prevent any act or omission of the kind in question; and
- (iii) it was not under any condition or in any circumstances within the scope of the authority or in the course of the employment of the manager, agent or employee to do or omit to do acts, whether lawful or unlawful, of the character of the act or omission charged,

the employer shall be presumed himself to have done or omitted to do that act and shall be liable to be convicted and sentenced in respect thereof, and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, by itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

(b) Whenever any manager, agent or employee of any such employer does or omits to do an act which it would be an offence under this Act for the employer to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the employer.

(c) Any such manager, agent or employee may be so convicted and sentenced in addition to the employer.

[Sub-s. (5A) inserted by s. 12 of Act 77 of 1969.]

(6) A magistrate's court shall have power to impose any penalty prescribed by this Act.

### **171 Award of damages against an accused in criminal proceedings**

(1) Whenever any person is convicted of an offence under this Act or the regulations thereunder or a by-law made by an irrigation board or a water board and it appears that such person has by that offence caused loss or damage to any irrigation board, water board or owner, the court may in the same proceedings at the written request of the board or owner concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused.

(2) Upon proof of such amount, the court shall give judgment therefor in favour of the irrigation board, water board or owner concerned and against the convicted person, and such judgment shall be of the same force and effect and

be executable in the same manner as if it had been given in a civil action duly instituted before such court: Provided that judgment shall not be given under this section for a sum exceeding two hundred pounds.

**172 - 179.....**

[Ss. 172 - 179 not applicable in Namibia.]

### **180 Application of Act to South West Africa**

(1) The State President may, by proclamation in the *Gazette*, apply any of or all the provisions of this Act to the territory of South-West Africa or any portion thereof.

(2) The provisions of sections 1 to 4, inclusive, shall be deemed to have been applied to the said territory in terms of subsection (1) of this section as from the date of commencement of the Water Amendment Act, 1969, and for the purposes of such application the expression 'commencement of this Act' occurring in the said section 4 shall be construed as meaning the commencement of the said Water Amendment Act, 1969.

(3) The State President may, in addition, from time to time make such regulations applicable in such territory, or any portion thereof, as he may deem necessary to enable the Minister to exercise the powers vested in him by sections 2 and 3 with a view to the preservation, conservation, control, supply, distribution or utilization for domestic, agricultural, urban or industrial purposes of the water resources or water of the said territory or portion, in the best interests of the inhabitants thereof, and may from time to time amend or withdraw any such regulations.

(4) No such regulation shall be of force and effect unless it has been approved by the resolution of the Senate and of the House of Assembly.

(5) Notwithstanding the provisions of subsection (4) the Water Ordinance, 1932 (Ordinance 13 of 1932), and the Artesian Water Control Ordinance (Ordinance 35 of 1955), of the said territory shall be deemed to be regulations made in terms of subsection (3), and any reference in-

- (a) either of the said Ordinances to the 'Administration' shall, except in section 24 of the said Water Ordinance, 1932, be construed as a reference to the department;
- (b) either of the said Ordinances to the 'Administration' shall, except in the definition of 'owner' in section 1 and in section 25 of the said Water Ordinance, 1932, and in section 2 (2) of the said Artesian Water Control Ordinance, 1955, be construed as a reference to the Minister;
- (c) section 19*bis* of said Water Ordinance, 1932, to the 'Department' shall be construed as a reference to the 'Branch' as defined in section 1 of the said Ordinance; and
- (d) either of the said Ordinances to the 'Legislative Assembly' shall be construed as a reference to Parliament;

and anything done by any provision of either of the said Ordinances prior to the commencement of the Water Amendment Act, 1969, shall be deemed to have

been done by the corresponding authority under such provision of such Ordinance as so construed.

[S. 180 substituted by s. 13 of Act 77 of 1969.]

**181** .....

[S. 181 not applicable in Namibia.]

**182 Short title**

This Act shall be called the Water Act, 1956.