



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Vol. 414

CAPE TOWN, 6 DECEMBER 1999

No. 20706

KAAPSTAD, 6 DESEMBER 1999

OFFICE OF THE PRESIDENCY

KANTOOR VAN DIE PRESIDENSIE

No. 1476. 6 December 1999

No. 1476. 6 Desember 1999

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 45 of 1999: National Water Amendment Act, 1999.

No. 45 van 1999: Nasionale Waterwysigingswet, 1999.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

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

ACT

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

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

Amendment of section 32 of Act 36 of 1998

1. Section 32 of the National Water Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (1) of the following subsection: 5

- “(1) An existing lawful water use means a water use—
- (a) which has taken place at any time during a period of two years immediately before the date of commencement of this Act and which—
- (i) was authorised by or under any law which was in force immediately before the date of commencement of this Act; 10
- (ii) is a stream flow reduction activity contemplated in section 36(1); or
- (iii) is a controlled activity contemplated in section 37(1); or
- (b) which has been declared an existing lawful water use under section 33 **[and which—** 15
- (i) **was authorised by or under any law which was in force immediately before the date of commencement of this Act;**
- (ii) **is identified as a stream flow reduction activity in section 36(1); or**
- (iii) **is identified as a controlled activity in section 37(1)].”.**

Amendment of section 33 of Act 36 of 1998

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

- “(1) A person may apply to a responsible authority to have a water use which is not one contemplated in section 32(1)[**(b)(i), (ii) or (iii)](a), declared to be an existing lawful water use. 25**
- (2) A responsible authority may, on its own initiative, declare a water use which is not one contemplated in section 32(1)[**(b)(i), (ii) or (iii)](a), to be an existing lawful water use.**
- (3) A responsible authority may only make a declaration under subsections (1) and (2) if it is satisfied that the water use— 30

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

*(Engelse teks deur die President geteken.)
(Goedgekeur op 2 Desember 1999.)*

WET

Tot wysiging van die Nasionale Waterwet, 1998, ten einde tekstuele verbeterings aan te bring; en die prosedure vir die aanstelling van lede van die Watertribunaal te verander; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 32 van Wet 36 van 1998

1. Artikel 32 van die Nasionale Waterwet, 1998 (hieronder die Hoofwet genoem), word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) 'n Bestaande wettige watergebruik beteken 'n watergebruik—

- (a) wat plaasgevind het te eniger tyd gedurende 'n tydperk van twee jaar onmiddellik voor die datum van inwerkingtreding van hierdie Wet en wat—
- 10 (i) gemagtig is by of kragtens enige wet wat van krag was onmiddellik voor die datum van inwerkingtreding van hierdie Wet;
- (ii) 'n stroomvloeiverminderingsbedrywigheid beoog in artikel 36(1) is; of
- (iii) 'n beheerde bedrywigheid beoog in artikel 37(1) is; of
- (b) wat kragtens artikel 33 as 'n bestaande wettige watergebruik verklaar is [en
- 15 (i) gemagtig is deur of kragtens enige wet van krag was onmiddellik voor die datum van inwerkingtreding van hierdie Wet;
- (ii) kragtens artikel 36(1) as 'n stroomvloeiverminderings bedrywigheid geïdentifiseer is; of
- (iii) kragtens artikel 37(1) as 'n beheerde aktiwiteit geïdentifiseer is.]”.

20 Wysiging van artikel 33 van Wet 36 van 1998

2. Artikel 33 van die Hoofwet word hierby gewysig deur subartikels (1), (2) en (3) deur onderskeidelik die volgende subartikels te vervang:

25 “(1) 'n Persoon kan by 'n verantwoordelike gesag aansoek doen om 'n watergebruik wat nie 'n watergebruik is soos beoog in artikel 32(1)[(b)(i), (ii) of (iii)](a) nie, as 'n bestaande wettige watergebruik te verklaar.

 (2) 'n Verantwoordelike gesag kan, uit eie beweging, 'n watergebruik wat nie 'n watergebruik is soos beoog in artikel 32(1)[(b)(i), (ii) of (iii)](a) nie, as 'n bestaande wettige watergebruik verklaar.

30 (3) 'n Verantwoordelike gesag kan slegs 'n verklaring kragtens subartikels (1) en (2) [maak] doen, indien hy oortuig is dat die watergebruik—

- (a) took place lawfully more than two years before the date of commencement of this Act and was discontinued for good reason; or
- (b) had not yet taken place at any time before the date of commencement of this Act but—
 - (i) would have been lawful had it so taken place; and 5
 - (ii) steps towards effecting the use had been taken in good faith before the date of commencement of this Act.”.

Amendment of section 146 of Act 36 of 1998

3. Section 146 of the principal Act is hereby amended—
- (a) by the substitution for subsection (5) of the following subsection: 10

“(5) The chairperson, the deputy chairperson, and the additional members of the Tribunal are appointed by the Minister on the recommendation of the Judicial Service Commission contemplated in section 178 of the Constitution and the Water Research Commission established by section 2 of the Water Research Act, 1971 (Act No. 34 of 1971), in accordance with item 3 of Schedule 6.”. 15
 - (b) by the substitution for subsection (8) of the following subsection:

“(8) The Minister may, after consultation with the Judicial Service Commission or the Water Research Commission referred to in subsection (5), as the case may be, and after giving the member an opportunity 20 to make representations and considering such representations, for good reason terminate the appointment of any member of the Tribunal.”.

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

4. Item 3 of Schedule 6 to the principal Act is hereby amended by the substitution for subitems (1), (4), (5), (6) and (7) of the following subitems, respectively: 25
- “(1) Whenever necessary, the Minister must **[request the Judicial Service Commission to]**—
- (a) publish a notice in the *Gazette* calling for nominations for appointment to the Water Tribunal; and
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which **[the Commission]** he or she considers to be appropriate. 30
- (4) Each of **[The]** the Judicial Service Commission and the Water Research Commission—
- (a) must consider all valid nominations received before the date contemplated in subitem (2)(f); 35
 - (b) may prepare a short list of nominees;
 - (c) may interview all short-listed nominees; and
 - (d) must, subject to subitem (6), make recommendations to the Minister on the appointment of members of the Tribunal. 40
- (5) In recommending a nominee for appointment each of the Judicial Service Commission and the Water Research Commission must consider—
- (a) the criteria set out in section 146(4) of the Act;
 - (b) the reputation and integrity of the nominee; and
 - (c) any conflict of interests which the nominee may have. 45
- (6) (a) The Judicial Service Commission must recommend at least two persons qualified in law for appointment as chairperson of the Tribunal.
- (b) The Water Research Commission must recommend persons qualified in water resource management or engineering or with knowledge in related fields, for appointment as deputy chairperson and additional members of the Tribunal. 50
- (c) The Judicial Service Commission or the Water Research Commission, as the case may be, must recommend [a candidate] two candidates for appointment for every vacancy, including that of chairperson or deputy chairperson, where necessary.
- (7) The Department must pay all costs— 55
- (a) relating to the publication of notices in terms of subitem (1); and
 - (b) incurred by the Judicial Service Commission and the Water Research Commission in the performance of **[its task]** their tasks.”.

- (a) wettig plaasgevind het meer as twee jaar voor die datum van inwerkingtreding van hierdie Wet en om 'n goeie rede gestaak is; of
- (b) nog nie op enige tydstip voor die datum van inwerkingtreding van hierdie Wet plaasgevind het nie, maar—
- 5 (i) wettig sou gewees het indien dit aldus plaasgevind het; en
- (ii) dat stappe tot inwerkingstelling van die gebruik, voor die datum van inwerkingtreding van hierdie Wet te goeder trou gedoen is.”.

Wysiging van artikel 146 van Wet 36 van 1998

3. Artikel 146 van die Hoofwet word hierby gewysig—

- 10 (a) deur subartikel (5) deur die volgende subartikel te vervang:
- “(5) Die voorsitter, ondervoorsitter en die bykomende lede van die Tribunaal word deur die Minister op aanbeveling van die Regterlike Dienskommissie in artikel 178 van die Grondwet beoog, en die Waternavorsingskommissie ingestel by artikel 2 van die Waternavorsingswet, 1971 (Wet No. 34 van 1971), ooreenkomstig item 3 van Bylae 6, aangestel.”.
- 15 (b) deur subartikel (8) deur die volgende subartikel te vervang:
- “(8) Die Minister kan na oorlegpleging met die Regterlike Dienskommissie of die Waternavorsingskommissie bedoel in subartikel (5), na gelang van die geval, en nadat die lid 'n geleentheid gebied is om verhoë te rig en sodanige verhoë in aanmerking geneem is, om goeie redes, die aanstelling van enige lid van die Tribunaal beëindig.”.
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Wysiging van item 3 van Bylae 6 by Wet 36 van 1998

4. Item 3 van Bylae 6 by die Hoofwet word hierby gewysig deur subitems (1), (4), 25 (5), (6) en (7) deur onderskeidelik die volgende subitems te vervang:

- “(1) Wanneer ook al nodig, moet die Minister [**die Regterlike Dienskommissie versoek om**]—
- (a) 'n kennisgewing in die *Staatskoerant* [**te**] publiseer waarin [**nominasies**] benoemings vir aanstelling op die Watertribunaal gevra word; en
- 30 (b) die verdere stappe [**te doen**] wat gepas is om die inhoud van die kennisgewing onder die aandag van belanghebbendes te bring, oorweeg en [**om**] die stappe [**te**] doen wat [**die Kommissie**] hy of sy gepas ag.
- (4) [**Die**] Beide die Regterlike Dienskommissie en die Waternavorsingskommissie—
- 35 (a) moet alle geldige benoemings wat voor die datum beoog in subitem (2)(f) ontvang is, oorweeg;
- (b) kan 'n kortlys van benoemdes opstel;
- (c) kan alle benoemdes wat gekortlys is, ondervra; en
- (d) moet, behoudens subitem (6), aanbevelings aan die Minister doen oor die
- 40 aanstelling van lede van die Watertribunaal.
- (5) By die aanbeveling van benoemdes vir aanstelling moet beide die Regterlike Dienskommissie en die Waternavorsingskommissie—
- (a) die maatstawwe in artikel 146(4) van die Wet uiteengesit;
- (b) die aansien en integriteit van die benoemde; en
- 45 (c) enige konflik van belange wat die benoemde mag hê, in ag neem.
- (6) (a) Die Regterlike Dienskommissie moet ten minste twee persone, wat in die regte gekwalifiseerd is, aanbeveel vir aanstelling as voorsitter van die Tribunaal.
- 50 (b) Die Waternavorsingskommissie moet persone aanbeveel wat gekwalifiseerd is in waterbronbestuur of ingenieurswese of met kennis in verwante terreine, vir aanstelling as ondervoorsitter en addisionele lede van die Tribunaal.
- (c) Die Regterlike Dienskommissie of die Waternavorsingskommissie, na gelang van die geval, moet [**'n kandidaat**] twee kandidate vir aanstelling vir elke vakature aanbeveel, met inbegrip van dié van die voorsitter en ondervoorsitter, waar nodig.
- 55 (7) Die Departement moet alle koste betaal—
- (a) rakende die publikasie van kennisgewings ingevolge subitem (1); en
- (b) aangegaan deur die Regterlike Dienskommissie en die Waternavorsingskommissie in die uitvoering van hul pligte.”.
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Kort titel

5. Hierdie Wet heet die Nasionale Waterwysigingswet, 1999.

