

REPUBLIC OF SOUTH AFRICA

WATER RESEARCH AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 36754 of 16 August 2013)
(The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B 29—2013]

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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.

BILL

To amend the Water Research Act, 1971, so as to insert certain definitions and substitute others; to effect certain textual improvements and name changes; to provide for the appointment of members of the Board and the Chief Executive Officer; to regulate the governance of the Water Research Council; to align the Act with applicable legislation; and to provide for matters incidental thereto.

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

Amendment of section 1 of Act 34 of 1971, as amended by Act 16 of 1974

1. The following section is hereby substituted for section 1 of the Water Research Act, 1971 (Act No. 34 of 1971) (hereinafter referred to as the principal Act): 5

“Definitions

1. In this Act, unless the context otherwise indicates, any expression to which a meaning has been assigned in the **[Water Act, 1956 (Act No. 54 of 1956)]** National Water Act, 1998 (Act No. 36 of 1998), shall, when used in this Act, have the same meaning, and— 10

“Board” means the governing Board of the Water Research Council contemplated in section 4;

“CEO” means the chief executive officer appointed in terms of section 10(2)(a);

[“commission” means the Water Research Commission established by section 2;] 15

“Department” means the department responsible for water affairs;

“Director-General” means the Director-General of the Department;”;

“financial year” means the period from **[1 April 1974 to 31 December 1974 and thereafter the period from 1 January in any year to 31 December in the same year, in each case both days inclusive]** 1 April of a specific year and ending on 31 March of the following year; 20

“fund” means the Water Research Fund established by section 12;

“Minister” means the Minister responsible for Water and Environmental Affairs; 25

“**National Water Act**” means the National Water Act, 1998 (Act No. 36 of 1998);
 “**PFMA**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 “**research**” means the creation, sharing and application of water-centred knowledge in accordance with the objective in section 2(3);
 “**research contract**” means any contract entered into between the Department and the research provider which governs the performance of the work aimed at generating, applying and disseminating knowledge and building research capacity;
 “**research provider**” means any person or organisation that conducts research for or on behalf of the WRC;
 “**senior official**” means an official of the Department at the level of Deputy Director-General and above;
 “**university**” means a university established by Act of Parliament;
 “**water management institution**” means a water management institution as defined in section 1 of the National Water Act, 1998 (Act No. 36 of 1998);
 “**Water Services Act**” means the Water Services Act, 1997 (Act No. 108 of 1997);
 “**water use sectors**” means the water use sectors for which unit sectoral charges for raw water are determined in terms of the pricing strategy as contemplated in section 56(1) of the National Water Act; and
 “**WRC**” means Water Research Council established in terms of section 2.”.

Amendment of section 2 of Act 34 of 1971

2. Section 2 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“**Establishment and general [objects] objective of [Water Research Commission] WRC**”;

(b) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

“(1) There is hereby established a [commission] body to be known as the [Water Research Commission] WRC.

(2) The [Commission] WRC shall be a body corporate, capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the exercise of its powers and the performance of its functions and duties in terms of this Act.

(3) [The objects of the commission are to co-ordinate, to promote, to encourage or to cause to be undertaken, as determined by the Minister specifically or in broad outline, research in respect of—

(a) the occurrence, preservation, conservation, utilization, control, supply, distribution, purification, pollution or reclamation of water supplies and water;

(b) the use of water for—

(i) agricultural purposes;

(ii) industrial purposes; or

(iii) urban purposes.]

The objective of the WRC is to initiate, lead, co-operate, encourage, fund, undertake or cause to be undertaken, promote skills development and disseminate information, as determined or approved by the Minister specifically or in broad outline, relating to research in respect of water use, water resources and water services and any other aspects related to water.”.

Amendment of section 3 of Act 34 of 1971, as amended by section 2 of Act 16 of 1974 and section 1(1)(a) of Act 37 of 1975

3. Section 3 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“**Functions of [the commission] WRC**”;

- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“(1) The functions of the [**commission**] WRC shall be—”;
- (c) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5
“(a) to cause, by itself or in collaboration with [**the Council for Scientific and Industrial research established by section 2 of the Scientific Research Council Act, 1945 (Act No, 33 of 1945),**] any State department, [**university**] higher education or other [**institution**] institutions, research to be undertaken in respect of matters relating to water;”;
- (d) by the insertion in subsection (1) after paragraph (a) of the following paragraphs: 10
“(aA) to disseminate information engaging a wide range of research providers including individuals, higher education institutions and other relevant organisations; 15
(aB) on the instruction of the Minister, to undertake urgent investigative research on which the costs must not exceed 10% of its levy income;”;
- (e) by the substitution in subsection (1) for paragraphs (h), (i) and (j) of the following paragraphs, respectively: 20
“(h) to advise the Minister in respect of the levying of [**rates or**] charges under section 11;
(i) with the approval of the Minister, to purchase, hire or otherwise acquire and to hold such immovable property as the [**commission**] WRC may consider necessary for the performance of its functions, and to alienate or let any immovable property held by it; 25
(j) to take such other measures as the [**commission**] WRC may consider conducive to [**attainment of**] achieve its [**objects**] objective and functions;”;
- (f) by the addition to subsection (1) of the following paragraphs: 30
“(k) to develop a strategic framework setting out a five year national research plan, which shall be updated on an annual basis;
(l) to prepare annually, a shareholder compact to be signed by the Minister and the chairperson of the Board; 35
(m) to submit, within 30 days after the end of each quarter, a quarterly report to the Minister, in accordance with the PFMA; and
(n) to facilitate regular consultation with stakeholders to identify key areas of research and to inform the development of relevant research programmes.”; and 40
- (g) by the substitution for subsection (2) of the following subsection: 45
“(2) If progress reports on research by virtue of the provisions of subsection (1)(a), or on research, development work or the establishment of facilities, for the benefit of which any grant is made under subsection (1)(c), are not furnished by the person or body concerned as called for by the [**commission**] WRC from time to time, the payment or any part thereof for the research concerned, or the paying over of the grant concerned or any part thereof, may be withheld as the [**commission**] WRC may think fit.”.

Substitution of section 4 of Act 34 of 1971, as amended by section 3 of Act 16 of 1974 and section 1 of Act 93 of 1985 50

4. The following section is hereby substituted for section 4 of the principal Act:

“Board of WRC

4. (1) The Board of the WRC is hereby established.
- (2) The WRC shall be governed and controlled by the Board in accordance with this Act. 55
- (3) The Board consists of—
- (a) a chairperson;
- (b) not less than seven and not more than 10 members; and

- (c) the CEO of the WRC appointed in terms of section 10, as an *ex officio* member.
- (4) The Minister shall appoint the members of the Board after—
- (a) publishing a notice in the *Gazette* and two national newspapers circulating in the Republic calling upon members of the public to nominate persons contemplated in subsection (3)(a) and (b);
- (b) appointing a selection committee to compile a short list of not more than 20 persons from the nominees referred to in paragraph (a); and
- (c) the chairperson of the selection committee has submitted a short list of candidates together with their curriculum vitae to the Minister for selection.
- (5) The members of the Board contemplated in subsection (3)(a) and (b) are appointed by the Minister on the grounds of their knowledge and experience or skills related to the functions of the WRC.
- (6) The Minister shall appoint from the members of the Board a deputy chairperson of the Board.
- (7) The CEO referred to in subsection (3)(c) is an executive member of the Board by virtue of his or her appointment, but may not be the chairperson or deputy chairperson of the Board or any committee of the Board.
- (8) A member of the Board, excluding the CEO—
- (a) may hold office for a term of five years, which may be extended by a period of one year by the Minister if necessary;
- (b) may be re-appointed for one additional term of office; and
- (c) may be appointed upon such terms and conditions as the Minister may determine.
- (9) In addition to the members contemplated in subsection (2), the Minister shall appoint an official of the Department as *ex officio* member of the Board.
- (10) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may dissolve the Board on the grounds of mismanagement.
- (11) When the Minister dissolves the Board in terms of subsection (10), the Minister may appoint an interim body—
- (a) for the continued governance and control of the affairs of the WRC, on such conditions as the Minister may determine; and
- (b) such a body shall be appointed for a period not exceeding six months or until the new Board is appointed in terms of subsection (3).
- (12) Without limiting its function, the Board's responsibilities include—
- (a) determining the policy of the WRC;
- (b) retaining full and effective control over the WRC; and
- (c) identifying, developing, monitoring and evaluating the implementation of policies, strategies and plans.”.

Insertion of section 4A in Act 34 of 1971

5. The following section is hereby inserted after section 4 of the principal Act. 45

“Disqualification of members of Board

- 4A.** (1) A person may not be appointed or continue as a member of the Board if such person—
- (a) in respect of the CEO, ceases to be the CEO;
- (b) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (c) is not a South African citizen or ceases to be a South African citizen;
- (d) commits an act of insolvency as contemplated in the Insolvency Act, 1936 (Act No. 24 of 1936);
- (e) is declared by a competent court of law to be of unsound mind;
- (f) is removed from a position of trust by a competent court of law; or
- (g) is declared by any competent court of law as an unrehabilitated insolvent.”.

Insertion of section 4B in Act 34 of 1971

6. The following section is hereby inserted after section 4 of the principal Act:

“Removal from office and vacation of office

4B. (1) The Minister may, after consultation with the Board, remove a member of the Board from office on account of— 5
 (a) misconduct;
 (b) inability to perform the duties of his or her office efficiently; or
 (c) absence from three consecutive meetings of the Board without the permission of the Board, except on good cause shown.
 (2) A member of the Board shall vacate his or her office if— 10
 (a) he or she is disqualified in terms of section 4A; or
 (b) he or she tenders his or her resignation to the Minister and the Minister accepts the resignation.
 (3) If a member of the Board vacates or is removed from office in terms of this section, the Minister may appoint a person who meets the criteria contemplated in section 4(5) in that member’s place for the remaining part of the term of office. 15
 (4) A member of the Board shall vacate his or her office if he or she has been absent for more than two consecutive meetings of the Board without the permission of the Board or without a written apology.”. 20

Repeal of section 5 of Act 34 of 1971

7. Section 5 of the principal Act is hereby repealed.

Substitution of section 6 of Act 34 of 1971, as amended by section 2 of Act 93 of 1985

8. The following section is hereby substituted for section 6 of the principal Act:

“Remuneration and allowances of members of Board 25

6. (1) Members of the Board shall receive such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.
 (2) Members who are employed by the state are not entitled to remuneration and allowances but shall be reimbursed for out of pocket expenses by the WRC. 30
 (3) All costs and expenses incurred for activities related to the duties of the Board shall be paid out of the funds of the WRC.”.

Substitution of section 7 of Act 34 of 1971

9. The following section is hereby substituted for section 7 of the principal Act: 35

“Meetings of Board

7. (1) The Board shall meet at least four times a year.
 (2) The first meeting of the Board shall be held at the time and place determined by the Minister.
 (3) The chairperson of the Board decides when the Board will meet, but a majority of members of the Board may request the chairperson in writing to convene a meeting at a time and place set out in the request. 40
 (4) In the event of the chairperson of the Board being absent or unable to perform his or her functions due to incapacity, the deputy chairperson shall act in his or her behalf. 45
 (5) If both the chairperson and the deputy chairperson of the Board are absent or unable to perform any function of the chairperson, the Minister shall designate any other member of the Board to act as chairperson during such absence or inability.

(6) A majority of the members of the Board constitute a quorum for a meeting of the Board.

(7) Decisions of the Board require a supporting vote of a majority of members present at a meeting.

(8) The Board shall keep minutes of its proceedings and decisions.

(9) A member of the Board may not be present at or take part in the discussion of or vote upon any matter before the Board in which the member, the spouse, family member, partner or employer of the member has, directly or indirectly, any vested interest.”.

Substitution of section 8 of Act 34 of 1971

10. The following section is hereby substituted for section 8 of the principal Act:

“Validity of decision taken by, or act performed under authority of [, the commission] Board

8. No decision taken by the **[commission] Board** or act performed under authority of the **[commission] Board**, shall be invalid by reason only of a defect in the appointment of a person purporting to be a member of, or the existence of a vacancy on, the **[commission] Board**, or of the fact that a person who was not entitled to sit and act as a member of the **[commission] Board**, or of the fact that a person who was not entitled to sit and act as a member of the **[commission] Board** sat or acted as a member of the **[commission] Board** at the time when the decision was taken or act was **[authorized] authorised**, if the decision was taken or the act was **[authorized] authorised** by the requisite majority of the members of the **[commission] Board** who were present at the time and entitled to sit and act as members.”.

Substitution of section 9 of Act 34 of 1971

11. The following section is hereby substituted for section 9 of the principal Act:

“Rules of Board

9. (1) The Board may make rules in relation to the procedure at meetings of the Board, on such matters as it may consider necessary or expedient for the due performance of the functions of the Board.

(2) The Board shall ensure that accurate minutes are taken at all Board meetings and records of such meetings are kept for five years.”.

Substitution of section 10 of Act 34 of 1971, as amended by section 4 of Act 16 of 1974 and by section 3 of Act 93 of 1985

12. The following section is hereby substituted for section 10 of the principal Act:

“CEO and employees of WRC

10. (1) The establishment of the WRC shall consist of the post of a CEO and such other posts as the Board may determine.

(2) (a) The Minister shall upon the recommendation of the Board, appoint the CEO on such terms and conditions of employment as the Board may determine; and

(b) the CEO shall be a person who is suitably qualified and experienced to manage the day to day affairs of the WRC, subject to the directions and instructions of the Board.

(3) The CEO is entitled to remuneration and allowance on recommendations of the Board, subject to the approval of the Minister with the concurrence of the Minister of Finance.

(4) (a) The CEO holds office for a period not exceeding five years and is eligible for reappointment on expiry of his or her term; and

(b) the CEO may not serve more than two consecutive terms.

- (5) (a) The CEO shall enter into a written performance agreement with the Board—
- (i) within a reasonable time after the appointment of the CEO; and
 - (ii) thereafter, annually within one month of the commencement of each financial year;
- (b) the performance agreement referred to in paragraph (a) shall include—
- (i) measurable performance objectives and targets that must be met relating to performance of his or her functions;
 - (ii) standards and procedures for evaluating performance and intervals for evaluating; and
 - (iii) the consequences of substandard performance.
- (6) The CEO shall, on such terms and conditions as the Board may determine, appoint employees of the WRC.
- (7) The WRC shall pay employees such remuneration and other benefits as the Minister, in consultation with the Minister of Finance, may determine.
- (8) The CEO shall be responsible for the administrative control, organisation and discipline of the employees of the WRC and for ensuring compliance with the applicable labour legislation.”.

Substitution of section 10A of Act 34 of 1971, as inserted by section 2 of Act 37 of 1975

13. The following section is hereby substituted for section 10A of the principal Act:

“Committees of [commission] Board

- 10A.** (1) (a) The [commission] Board may establish committees, consisting of members of the [commission] Board, for such purposes as it may deem fit, and may at any time dissolve any committee established by it;
- (b) the Board shall establish an audit committee chaired by a member of the Board who has appropriate financial skills; and
- (c) the chairperson of the audit committee may not be the chairperson of the Board or the CEO of the WRC.
- (2) The Board may co-opt any other person with suitable skills or experience in an advisory capacity as a member of such committee on terms and conditions that may be determined by the Minister.
- (3) The person referred to in subsection (2) may take part in the proceedings at any committee meeting of the Board but shall not be entitled to vote at meetings of the Board.”.

Substitution of section 10B of Act 34 of 1971, as inserted by section 2 of Act 37 of 1975

14. The following section is hereby substituted for section 10B of the principal Act:

“Delegation [or] of powers [by] of [commission] Board

- 10B.** The [commission] Board may delegate in writing any power conferred upon it by or under this Act to a member of the [commission] Board or to [an officer in full-time service of the commission] the CEO or to a committee established under section 10A, to be exercised by such member or [officer] CEO or committee, subject to such directions or conditions [(if any)] as the [commission] Board may give or determine from time to time.”.

Amendment of section 10C of Act 34 of 1971, as inserted by section 4 of Act 93 of 1985

15. The following section is hereby amended by the substitution for section 10C of the principal Act:

“Delegation of powers by [executive director] CEO 5

10C. (1) The [executive director] CEO may, with the approval of the [commission] Board, delegate any power conferred upon him or her by or under this Act to any [other officer or] employee of the [commission] WRC.

(2) Any delegation contemplated in subsection (1) shall be in writing and may be withdrawn at anytime.” 10

Substitution of section 11 of Act 34 of 1971, as amended by section 1 of Act 106 of 1977 and section 1 of Act 10 of 1982

16. The following section is hereby substituted for section 11 of the principal Act:

“Levying charges 15

11. (1) The Minister shall, upon the advice of the WRC, include in the Pricing Strategy for water use charges under the National Water Act, the quantum and mechanism for the calculation of a charge payable by some or all raw water user set, for research purposes by the WRC.

(2) The Minister shall, on an annual basis, after consultation with the Minister of Finance, publish by notice in the *Gazette* in respect of the charges to be levied for water research according to the Pricing Strategy for the following financial year. 20

(3) The charges contemplated in subsection (1) on a water use shall be recovered from the user by the water management institution under whose area of jurisdiction the water use takes place. 25

(4) (a) The charges referred to in subsection (2) shall be collected from the relevant water management institution on behalf of the WRC by a party mutually agreed upon by the Department and the Board;

(b) the amount of such charges collected in terms of paragraph (a) shall be paid over to the Director-General; 30

(c) the Director-General shall deposit the amount of charges collected and paid to him or her as contemplated in paragraph (b) into WRC banking account; and

(d) duly audited statements in support of the amounts referred to in subsection(2) shall be submitted annually to the Director-General. 35

(5) Any notice referred to under subsection (2) may, in respect of the charges, differentiate between different water use sectors and may exempt any particular sector or sub-sector from liability for the payment of any charge. 40

(6) (a) The Minister may charge interest on any charges referred to in subsection (1), which are due and payable but unpaid, as from the date fixed for payment thereof, at a rate not exceeding the standard interest rate which at that date applies in respect of loans granted by the State;

(b) the amount of any charge referred to in paragraph (a) which is unpaid shall, for the purposes of this Act, be increased by the amount of interest accrued in respect thereof; and 45

(c) no interest is payable on accrued interest.

(7) The Minister may from time to time write off any charges which must be recovered in terms of subsection (2) or any interest charged under subsection (5), if such charges or interest for any reason cannot be recovered. 50

(8) The provisions of this section bind all organs of state.”

Substitution of section 12 of Act 34 of 1971

17. The following section is hereby substituted for section 12 of the principal Act:

“Establishment of Water Research Fund

12. There is hereby established a fund to be known as the Water Research Fund, into which shall be deposited all moneys which become payable to the **[commission] WRC.**”.

Amendment of section 13 of Act 34 of 1971, as amended by section 5(a) and (b) of Act 16 of 1974

18. Section 13 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 10

“(1) The fund shall consist of—

(a) moneys appropriated by Parliament for the benefit of the fund;

(b) **[rates and]** charges levied under section 11;

(c) donations, bequests or contributions **[which the commission may receive from any other source].**”.

(b) by the substitution for subsection (2) of the following subsection:

“(2) Subject to the provision of subsection (6), the **[commission] WRC** shall **[utilize]** utilise the moneys in the fund for defraying expenses, in connection with the performance of its functions, which are not defrayed from other sources. 20

(c) by the deletion of subsection (3); and

(d) by the substitution for subsections (4), (5), (6) and (7) of the following subsections, respectively:

“(4) The **[commission] WRC** shall **[utilize]** utilise any donations, bequests or contributions contemplated in subsection (1)(c) in accordance with the conditions (if any) imposed by the donor, testator or contributor in question[.] : Provided that those conditions may not be inconsistent with the objective of WRC as contained in section 2(3). 25

(5) The **[commission] WRC** shall in each financial year, **[at a time determined by the Minister,]** in accordance with the PFMA, submit a statement of its estimated income and expenditure during the following financial year to the Minister for his approval **[in consultation with the Minister of Finance].**

(6) The **[commission] WRC** may invest any **[unexpended portion of its moneys with the Public Debt Commissioners or in such other manner as may be determined by the Minister in consultation with the Minister of Finance]** of its funds not immediately required— 35

(a) subject to any investment policy that may be prescribed in terms of section 7(4) of the PFMA; and

(b) in a manner that the Minister may approve. 40

(7) The **[commission] WRC** shall cause proper books to be kept of all moneys deposited in or paid out of the fund.; and

(e) by the deletion of subsections (8) and (9).”.

Substitution of section 14 of Act 34 of 1971

19. The following section is hereby substituted for section 14 of the principal Act: 45

“Auditing and annual report

14. (1) The Auditor-General shall audit the accounts of the WRC annually.

(2) In compliance with subsection (1), the WRC shall submit its books, records of account and financial statements to the Auditor-General. 50

(3) The WRC shall after the end of every financial year, prepare an annual report on—

(a) its activities and performances of its functions during the financial year; and

(b) the audited financial statements for the financial year.

(4) The WRC shall submit the report referred to in subsection (3) to the Minister not later than 90 days after the end of each financial year in question.

(5) The report referred to in subsection (3) shall be in compliance with the requirements of the PFMA.

(6) The Minister shall table in Parliament the annual report contemplated to in section (3).”.

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Repeal of section 14A of Act 34 of 1971, as inserted by section 14A of Act 10 of 1982

20. Section 14A of the principal Act is hereby repealed.

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Transitional arrangements

22. (1) The Water Research Commission (hereinafter referred to as commission) established in terms of section 2 of the principal Act is hereby disestablished.

(2) The Minister shall—

(a) appoint members of the Board contemplated in section 4 to assume duties on the day that this Act is brought into operation; and

(b) on recommendation of the Board, appoint the CEO contemplated in section 10 to assume office on the day this Act is brought into operation.

(3) Anything done by the commission which could have been done by the WRC in terms of this Act shall be deemed to have been done by the WRC.

(4) Decisions, rules, directions and procedures made and adopted by the commission which are in force on the commencement date of the Act, remain in force until repealed or amended in so far as they deal with any matter in respect of which the Board may make rules and decisions.

(5) (a) From the commencement date, all contractual rights, obligations, assets and liabilities of the commission vest in and are transferred to the WRC;

(b) any litigation resulting from any cause of action in relation to the assets, rights, obligations or liabilities transferred to the WRC in terms of paragraph (a) which arose—

(i) before the commencement date, must be conducted by or against the commission; and

(ii) on or after the commencement date must be conducted by or against the WRC.

(6) (a) From the commencement date, all employees of the commission are transferred to the WRC; and

(b) all the rights and obligations between the commission and its employees before the commencement date continue to be in force after the commencement date as if they had been rights and obligations between the WRC and its employees.

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Substitution of long title of Act 34 of 1971

23. The long title in the principal Act is hereby amended by the substitution of the word “**commission**” for “**Council**”.

Short title and commencement

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24. This Act is called the Water Research Amendment Act, 2013, and comes into operation on a date fixed by the President by Proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE WATER RESEARCH AMENDMENT BILL, 2013

1. PURPOSE OF BILL

The main purpose of the Bill is to amend the Water Research Act, 1971 (Act No. 34 of 1971) (“Act”), and bring it in line with the policy on water science and environment in order to capture a new vision and mandate of the water research institution in line with modern changes. The Bill also seeks to capture a new vision and mandate of the water research institutions in line with new water research needs and requirements and modern approaches around those research institutions.

2. CONTENTS OF BILL

- 2.1 Clause 1 of the Bill seeks to amend the definitions in the Act to bring them in line with the current legislation, such as National Water Act, 1998 (Act No. 36 of 1998), Water Services Act, 1997 (Act No. 108 of 1997), and Public Finance Management Act, 1999 (Act No. 1 of 1991) (PFMA).
- 2.2 Clause 2 of the Bill seeks to substitute the reference to Water Research Commission to Water Research Council and to amend its objective.
- 2.3 Clause 3 of the Bill seeks to delete specific institutions such as the Council for Scientific and Industrial Research (CSIR) and to enable the WRC to work with a wide range of institutions. Clause 3 of the Bill also seeks to align the wording of the legislation with the changes proposed in Clause 2.
- 2.4 Clause 4 of the Bill seeks to establish the Board of the WRC by bringing it in line with contemporary governance requirements and current requirements under the PFMA. One of the key elements of Clause 4 relates to the appointment of the Board. Clause 4 seeks to align the appointment of Board of the WRC with other institutions in which the Minister is responsible, in order to standardise procedures across such institutions. A key issue in relation to governance relates to the membership of the Board. Currently the Director General of the Department of Water Affairs is an ex-officio member of the Board. This position, however, raises a potential conflict of interest in the Director-General, both sitting on the Board and being responsible for the Departmental oversight and regulatory role. Therefore, Clause 4 of the Bill seeks to remove the Director General as a member of the Board.
- 2.5 Clause 5 of the Bill seeks to insert section 4A in the Act so as to provide for the disqualification of members of the Board on the Act.
- 2.6 Clause 6 of the Bill seeks to insert 4B in the Act so as to provide for the removal of the members of the Board.
- 2.7 Clause 7 of the Bill seeks to repeal section 5 of the Act. Section 5 of the Act provides for the establishment of the Advisory Council which is going to advise the Commission in the expertise related to water issues. Clause 7 of the Bill seeks to repeal section 5 as Clause 13 of the Bill provides for the cooption of the persons to the committees of the Board who are not members of the Board.
- 2.8 The role that is to be played by the person to be coopted to the committees of the Board in terms of Clause 13 of the Bill is similar to the role that is played by the Advisory Council as provided in section 5 of the Act which the Bill seeks to repeal. It is the reason why the Bill seeks to repeal section 5 of the Act so as to avoid repetition.
- 2.9 Clause 8 of the Bill seeks to amend section 6 of the Act so as to provide for the remuneration and allowances of members of the Board.

- 2.10 Clause 9 of the Bill seeks to amend section 7 of the Act by providing for the meetings of the Board.
- 2.11 Clause 10 of the Bill seeks to amend section 8 of the Act by providing for the validity of decision taken by, or act performed under authority of Board.
- 2.12 Clause 11 of the Bill seeks to amend section 9 of the Act by providing for the rules of Board.
- 2.13 Clause 12 of the Bill seeks to amend section 10 of the Act and deals with issues pertaining to the CEO and staff of the WRC. Clause 12 makes reference to the CEO, rather than the executive director as referred to in section 10 of the Act and it seeks to clarify the appointment process.
- 2.14 Clause 12 of the Bill seeks to provide that the Minister appoints the CEO on recommendation from the Board, for a period of not more than five years, with a possible reappointment for a second term of office. The proposed amendment would also mean that termination of the employment of the CEO would be done by the Minister after consultation with the Board. The clause seeks to align the Act with the National Water Act regarding the conditions of employment of the CEO'S of the other institutions established by the Minister.
- 2.15 Clause 12 of the Bill seeks to amend section 10 of the Act and also provides for the requirement of an annual performance agreement to be signed by the CEO, and to ensure that the CEO is accountable to the Board. The Board is also to be given the responsibility for the determination of conditions of employment of WRC employees. This clause further seeks to amend sections 10B and 10C of the Act so as to align them with the PFMA.
- 2.16 Clause 13 of the Bill seeks to amend section 10 A of the Act by providing for the committees of the Board.
- 2.17 Clause 14 of the Bill seeks to amend section 10B of the Act by providing for the delegation of powers of the Board.
- 2.18 Clause 15 of the Bill seeks to amend section 10C of the Act by providing for the CEO of the WRC to delegate his or her powers to an employee of the WRC, only with the approval of the Board.
- 2.19 Clause 16 of the Act seeks to amend section 11 of the Act by providing for levying of rates and charges to bring it in line with the National Water Act, and the section on the Pricing Strategy and the institutional arrangements in particular, so that the determination and collection of the charges is done in accordance with the requirements of the National Water Act.
- 2.20 Clause 17 of the Bill seeks to amend section 12 of the Act by providing that all moneys of the Water Research Fund must be deposited to the WRC.
- 2.21 Clause 18 of the Bill seeks to amend section 13 of the Act so that the WRC may use its funding outside the Republic of South Africa for research purposes. Further amendments are proposed to tighten up on investment options and to ensure alignment with the PFMA. This is to ensure benchmarking on water resources in the concept of Integrated Water Resources Management (MRM) which considers water resources on the basis of catchment and not cross border.
- 2.22 Clause 19 of the Bill seeks to amend section 14 of the Act to improve the financial reporting and auditing requirements in line with current best practice and regulatory requirements.
- 2.23 Clause 20 and 21 of the Bill provide for the disestablishment of the Water Research Commission.

2.24 Clause 22 of the Bill provides for the transitional arrangements.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

None.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. DEPARTMENTS/BODIES/PERSONS CONSULTED

The following stakeholders were consulted—

- Department of Energy;
- National Treasury;
- Water Research Commission;
- Agricultural Research Council;
- University of South Africa;
- South African National Parks;
- Bird Life South Africa and Chemical and Allied Industries' Association; and
- The Forum of South African Director-Generals.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Water and Environmental Affairs are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities

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