

authorisation does not replace or limit an entitlement to use water, such as an existing lawful water use or a licence, which a person may otherwise have under this Act.

General authorisations to use water

39. (1) A responsible authority may, subject to Schedule 1, by notice in the *Gazette* -

- (a) generally;
- (b) in relation to a specific water resource; or
- (c) within an area specified in the notice,

authorise all or any category of persons to use water, subject to any regulation made under section 26 and any conditions imposed under section 29.

(2) The notice must state the geographical area in respect of which the general authorisation will apply, and the date upon which the general authorisation will come into force, and may state the date on which the general authorisation will lapse.

(3) A water use may be authorised under subsection (1) on condition that the user obtains any permission or authority required by any other specified law.

(4) Before issuing a general authorisation, the responsible authority must -

- (a) publish a notice in the *Gazette* -
 - (i) setting out the proposed general authorisation; and
 - (ii) inviting written comments to be submitted on the proposed general authorisation, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the responsible authority considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a)(ii).

(5) An authorisation to use water under this section does not replace or limit any entitlement to use water which a person may otherwise have under this Act.

Part 7: Individual applications for licences

This Part sets out the procedures which apply in all cases where a licence is required to use water, but where no general invitation to apply for licences has been issued under Part 8. Water users who are not required to license their use, but who wish to convert the use to licensed use, may also use the procedure set out in this Part, but the responsible authority may decline to grant a licence when the applicant is entitled to the use of water under an existing lawful use or by a general authorisation. In considering an application a responsible authority may require additional information from the applicant, and may also require the applicant to undertake an environmental or other assessment, which assessments may be subject to independent review.

Application for licence

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

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

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

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

Procedure for licence applications

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

- (a) be made in the form;
- (b) contain the information; and
- (c) be accompanied by the processing fee,

144. For the purposes of ensuring that all persons who might be affected have access to information regarding potential flood hazards, no person may establish a township unless the layout plan shows, in a form acceptable to the local authority concerned, lines indicating the maximum level likely to be reached by floodwaters on average once in every 100 years.

Duty to make information available to public

145. (1) A water management institution must, at its own expense, make information at its disposal available to the public in an appropriate manner, in respect of -

- (a) a flood which has occurred or which is likely to occur;
- (b) a drought which has occurred or which is likely to occur;
- (c) a waterwork which might fail or has failed, if the failure might endanger life or property;
- (d) any risk posed by any dam;
- (e) levels likely to be reached by floodwaters from time to time;
- (f) any risk posed by the quality of any water to life, health or property; and
- (g) any matter connected with water or water resources, which the public needs to know.

(2) The Minister may, where reasonably practicable, establish an early warning system in relation to the events contemplated in subsection (1).

CHAPTER 15

APPEALS AND DISPUTE RESOLUTION

This Chapter establishes the Water Tribunal to hear appeals against certain decisions made by a responsible authority, catchment management agency or water management institution under this Act. The Tribunal is an independent body, whose members are appointed through an independent selection process, and which may conduct hearings throughout the Republic. A person may appeal to a High Court against a decision of the Tribunal on a question of law. This Chapter also provides for disputes to be resolved by mediation, if so directed by the Minister.

Establishment of Water Tribunal

146. (1) The Water Tribunal is hereby established.

(2) The Tribunal is an independent body which -

- (a) has jurisdiction in all the provinces of the Republic; and
- (b) may conduct hearings anywhere in the Republic.

(3) The Tribunal consists of a chairperson, a deputy chairperson and as many additional members as the Minister considers necessary.

(4) Members of the Tribunal must have knowledge in law, engineering, water resource management or related fields of knowledge.

(5) The chairperson, the deputy chairperson and the additional members of the Tribunal are appointed by the Minister on the recommendation of the Judicial Service Commission contemplated in section 178 of the Constitution.

(6) The chairperson and the deputy chairperson may be appointed in a full-time or part-time capacity while the additional members must be appointed in a part-time capacity.

(7) The Minister must determine the employment conditions and the remuneration of the chairperson, the deputy chairperson and all other members of the Tribunal in consultation with the Minister of Finance.

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

Operation of Water Tribunal

147. (1) Subject to section 146(4), after having considered the necessary field of knowledge for the purposes of hearing a particular matter, the chairperson may nominate one or more members of the Water Tribunal to hear a matter and a decision by such member or members constitutes a decision by the Tribunal.

(2) Administrative support for the Tribunal must be provided by officials of the Department designated by the Director-General, subject to the laws pertaining to the secondment of officers in the Public Service.

(3) The expenditure of the Tribunal must be defrayed out of money appropriated by Parliament for that purpose or from any other source.

(4) Neither the Tribunal, the chairperson, the deputy chairperson nor any other member is liable for an act or omission committed in good faith while performing a function in terms of this Act.

Appeals to Water Tribunal

148. (1) There is an appeal to the Water Tribunal -

- (a) against a directive issued by a catchment management agency under section 19(3) or 20(4)(d), by the recipient thereof;
- (b) against a claim by a catchment management agency for the recovery of costs under section 19(5) or 20(7) by the person affected thereby;
- (c) against the apportionment by a catchment management agency of a liability for costs under section 19(8) or 20(9), by a person affected thereby;
- (d) against a decision of a water management institution on the temporary transfer of a water use authorisation under section 25(1), by a person affected thereby;
- (e) against a decision of a responsible authority on the verification of a water use under section 35 by a person affected thereby;
- (f) against a decision of a responsible authority on an application for a licence under section 41, or on any other application to which section 41 applies, by the applicant or by any other person who has timeously lodged a written objection against the application;
- (g) against a preliminary allocation schedule published by a responsible authority under section 46(1), by any interested person;
- (h) against the amendment of a condition of a licence by a responsible authority on review under section 49(2), by any person affected thereby;
- (i) against a decision of a responsible authority on an adjudication of claims made under section 51(1), by any person affected thereby;
- (j) against a directive issued by a responsible authority under section 53(1), by the recipient thereof;
- (k) against a claim by a water management institution for the recovery of costs under section 53(2)(a), by the person against whom the claim is made;
- (l) against a decision by a responsible authority on the suspension, withdrawal or reinstatement of an entitlement under section 54, or on the surrender of a licence under section 55, by the person entitled to use water or by the licensee; and
- (m) against a declaration made by, directive given by or costs claimed by the Minister in respect of a dam with a safety risk under section 118(3) or (4).

(2) An appeal under subsection (1) -

- (a) does not suspend a directive given under section 19(3), 20(4)(d) or 53(1); and
- (b) suspends any other relevant decision, direction, requirement, limitation, prohibition or allocation pending the disposal of the appeal, unless the Minister directs otherwise.

(3) An appeal must be commenced within 30 days after -

- (a) publication of the decision in the *Gazette*;
- (b) notice of the decision is sent to the appellant; or
- (c) reasons for the decision are given, whichever occurs last.

(4) The procedure for lodging, hearing and deciding -

- (a) an appeal under subsection (1); and
- (b) an application for the determination of compensation under section 22, is contained in Part 2 of Schedule 6.

(5) The chairperson may make rules which -

- (a) govern the procedure of the Tribunal, including the procedure for lodging and opposing an appeal or an application and the hearing thereof by the Tribunal;
- (b) may provide for application or appeal fees payable by a claimant or appellant; and
- (c) must be approved and published in the *Gazette* by the Minister.

Appeals from decisions of Water Tribunal

149. (1) A party to a matter in which the Water Tribunal -
- (a) has given a decision on appeal under section 148, may, on a question of law, appeal to a High Court against that decision; or
 - (b) has determined the liability for compensation or the amount of compensation under section 22(9), may, on a question of law, appeal to a High Court against that determination.
- (2) The appeal must be noted in writing within 21 days of the date of the decision of the Tribunal.
- (3) The notice of appeal must -
- (a) set out every question of law in respect of which the appeal is lodged;
 - (b) set out the grounds for the appeal;
 - (c) be lodged with the relevant High Court and with the Water Tribunal; and
 - (d) be served on every party to the matter.
- (4) The appeal must be prosecuted as if it were an appeal from a Magistrate's Court to a High Court.

Mediation

150. (1) The Minister may at any time and in respect of any dispute between any persons relating to any matter contemplated in this Act, at the request of a person involved or on the Minister's own initiative, direct that the persons concerned attempt to settle their dispute through a process of mediation and negotiation.
- (2) A directive under subsection (1) must specify the time when and the place where such process must start.
- (3) Unless the persons concerned have informed the Minister at least seven days before the date specified in terms of subsection (2) that they have appointed a mediator, the Minister must appoint a mediator.
- (4) Notwithstanding subsection (3), the parties may at any time during the course of mediation or negotiation proceedings, by agreement between them, appoint another person to act as mediator.
- (5) A person appointed by the Minister in terms of subsection (3) must either be an official of the Department or an independent mediator.
- (6) Where the Minister or the Department is a party to the dispute, the mediator may not be an official of the Department.
- (7) The contents of all discussions which took place and of all submissions made as part of a mediation process under this section are privileged in law, and may not be received in evidence by any court of law, unless the parties agree otherwise.
- (8) The fees and expenses of a mediator must be paid by -
- (a) the Department, if the Minister has appointed the mediator; or
 - (b) the parties, if they have appointed the mediator.

CHAPTER 16

OFFENCES AND REMEDIES

In common with other Acts of Parliament which aim to make non-compliance a criminal offence, this Chapter lists the acts and omissions which are offences under this Act, with the associated penalties. It also gives the courts and water management institutions certain powers associated with prosecutions for these offences, such as the power to remove the cause of a stream flow reduction.

Offences

151. (1) No person may -
- (a) use water otherwise than as permitted under this Act;
 - (b) fail to provide access to any books, accounts, documents or assets when required to do so under this Act;
 - (c) fail to comply with any condition attached to a permitted water use under this Act;
 - (d) fail to comply with a directive issued under section 19, 20, 53 or 118;
 - (e) unlawfully and intentionally or negligently tamper or interfere with any waterwork or any seal or measuring device attached to a waterwork;

