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**South African Institute of Race Relations NPC
Submission to the
Portfolio Committee on Water and Sanitation
regarding the
Water Services Amendment Bill [B24-2025]
28 February 2026**

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1 Introduction

The Portfolio Committee on Water and Sanitation in the National Assembly (“the Committee”) has invited interested persons to submit public comments by 28 February 2026 on the Water Services Amendment Bill [B24-2025] (“the Bill”). This Bill seeks to amend the Water Services Act of 1997 (the “Services Act”) and give new powers to the minister responsible for water and sanitation (“the minister”) and officials of the Department of Water and Sanitation (“DWS”).

This submission is made by the South African Institute of Race Relations NPC (IRR), a non-profit organisation formed in 1929 to oppose racial discrimination and promote racial goodwill. Its current objects are to promote democracy, human rights, development, and reconciliation between the peoples of South Africa.

2 Inadequate public participation

Public participation in the legislative process is a vital aspect of South Africa's democracy, as the Constitutional Court has repeatedly reaffirmed in judgments spanning well over a decade. These include *Matatiele Municipality and others v President of the Republic of South Africa and others*, *Doctors for Life International v Speaker of the National Assembly and others*, *Land Access Movement of South Africa and others v Chairperson of the National Council of Provinces and others*, and *Mogale and others v Speaker of the National Assembly and others*.¹

In the *New Clicks* case in the Constitutional Court, Mr Justice Albie Sachs noted that there were many ways in which public participation could be facilitated. He added: "What matters is that...a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say". This passage was quoted with approval in *Doctors for Life*, the *Land Access* case, and in the recent *Mogale* judgment striking down the Traditional and Khoi-San Leadership Act of 2019.²

2.1 No socio-economic impact report

To help the public "know about the issues", as the *New Clicks* ruling and other judgments require, the Committee should have provided a comprehensive evaluation of the Bill and its likely socio-economic impact. A report of this kind is also what is needed under the government's own *Guidelines for the Socio-Economic Impact Assessment System (SEIAS)*.

The *Guidelines* were developed by the Department of Planning, Monitoring, and Evaluation in May 2015 and took effect in September that year. The aim of the SEIA system is to ensure that "the full costs of regulations and especially the impact on the economy" are fully understood before new rules are introduced.³ According to the *Guidelines*, the SEIA system must be applied at various stages in the policy process. Once new legislation has been proposed, "an initial assessment" must be conducted to identify different "options for addressing the problem" and making "a rough evaluation" of their respective costs and benefits. Thereafter, "appropriate consultation" is needed, along with "a continual review of the impact assessment as the proposals evolve."⁴

A "final impact assessment" must then be developed that "provides a detailed evaluation of the likely effects of the [proposed law] in terms of implementation and compliance costs as

¹ [2006] ZACC 12; 2007 (1) BCLR 47 (CC); 2006 (6) SA 416 (CC); 2016] ZACC 22; [2023] ZACC 14.

² Section 59(1), Constitution of the Republic of South Africa, 1996; *Minister for Health and another v New Clicks South Africa (Pty) Ltd and others*, [2005] ZACC 14, at para. 630, emphasis supplied by the IRR; *Doctors for Life*, at para. 145; *Land Access* judgment, at para. 59; *Mogale* judgment, at para. 34.

³ Department of Planning, Monitoring and Evaluation, "Socio-Economic Impact Assessment System (SEIAS), Revised Impact Assessment: National Health Insurance Bill," 26 June 2019 (2019 SEIAS Assessment); *SEIAS Guidelines*, p. 3, May 2015.

⁴ *SEIAS Guidelines* p. 7.

well as the anticipated outcome.” When a bill is published “for public comment and consultation with stakeholders,” this final assessment must be attached to it. A particularly important need is to “identify when the burdens of change loom so large that they could lead to excessive costs to society, for instance through disinvestment by business or a loss of skills to emigration.”⁵

The Bill offers no realistic solution to the water crisis confronting South Africa. Rather, it will deflect attention from the vital reforms urgently required to end water shedding, stop the pollution of rivers and dams by untreated or partially treated sewage, enhance the quality and availability of potable water – and ensure adequate supplies of safe water to all South Africans and also to all businesses operating within the country. If this is not swiftly achieved, the risks to the health and wellbeing of South Africans will be considerable. Many businesses could also disinvest, as they cannot function adequately in the absence of sufficient safe water. By sidestepping the reforms urgently required, the Bill is likely to generate “excessive costs” in the form of both emigration and disinvestment from agriculture and other sectors of the economy. Yet no proper SEIA assessment of the Bill has been made available to help the public develop an informed understanding of its likely ramifications.

2.2 Inadequate compliance with the National Policy Development Framework

The DWS is also expected to comply with the *National Policy Development Framework* (the *Framework*), which was approved by the Cabinet in December 2020 and is intended to help give effect to the *National Development Plan: Vision 2030*.

The *Framework* seeks to improve policy development by “ensuring meaningful participation” and “inculcating a culture of evidence-based policy making.”⁶ In a section dedicated to “Stakeholder Engagement in Policy Making,” the *Framework* states: “Chapter 10 of the Constitution prescribes that people’s needs must be responded to, and the public must be encouraged to participate in policy making. Therefore, the involvement of the public in policy making is a constitutional obligation that government institutions must respect and institutionalise.”⁷

The *Framework* goes on to list some of the key requirements for proper public participation. “Consultation with stakeholders should commence as early as possible,” it says. All relevant stakeholders should be identified, including “those who will benefit when [existing] problems are addressed” and “those who will bear the cost of implementation of the proposed intervention.” Policy makers must also identify and counter all “barriers to active participation” and ensure that “consultation is infused in all aspects of the policy making cycle.”⁸

According to the *Framework*, adequate thought must be given to “which policy solutions would best achieve the public policy objective” and “how best” the proposed policy solution can be implemented. Policy makers must “inform and engage stakeholders” on “the nature and

⁵ *SEIAS Guidelines*, p. 11.

⁶ *National Policy Development Framework*, 2020, p. 3.

⁷ *Ibid*, p. 19.

⁸ *Ibid*, pp. 19 – 20.

magnitude of a policy issue,” along with its likely “impacts and risks.” These assessments must be “informed by the best available evidence, data, and knowledge.”⁹

In addition, policy makers must be willing to adjust their proposals in the light of the feedback provided. “Policy makers must not impose their preconceived ideas...and pre-empt the outcome of the policy consultation process. They need to be willing to be persuaded and acknowledge the input of stakeholders with a view to creating a win-win policy outcome.” They must also avoid any impression that “the consultation process is staged, managed, cosmetic, token, and a mere compliance issue.” Instead, they must “strive to produce an outcome based on bargaining, negotiation, and compromise.”¹⁰

The *Framework*, with its emphasis on negotiation and compromise in the best interests of the country, is also being ignored. Instead, what the *Framework* expressly rejects – a tick-box approach to consultation – is already evident as regards the Bill.

2.3 A tick-box approach already evident

Though the Bill is likely to have many negative consequences (as further described in this submission), the Committee has nevertheless adopted a tick-box approach to public consultation. This has denied South Africans the comprehensive information and evaluation they require to “know about” the relevant issues and to have “an adequate say” on this key measure.

Moreover, the Committee has provided a scant four weeks for public comment on a complicated amendment Bill which cannot be understood without reading the lengthy principal statute it seeks to change. This is far too short a time. The deadline set is an unrealistic one, which seems calculated to inhibit – rather than “facilitate” – the public involvement in the legislative process that Section 59(1) of the Constitution requires.

It is also unconvincing to claim that “the Bill does not create new financial obligations” for the DWS, as the Memorandum on the Objects of the Bill asserts. The Memorandum adds that “all the activities in the Bill will be accommodated within the existing budget.”¹¹ Yet the DWS’s budget is already insufficient to finance crucial repairs to water infrastructure across the country, to expand such infrastructure to meet the needs of a growing population, and to adequately maintain it at all times. More personnel will inevitably be needed to implement the new licensing system proposed by the Bill. Still more staff may also be required to help implement and enforce other new provisions – and to serve as “authorised officers” with extensive powers of interrogation, search, and possible seizure of vehicles and other items.

If these additional expenses are indeed met from existing budgets, then spending on other, and more important needs, is likely to be curtailed. A comprehensive SEIA report could have interrogated the financial implications of the Bill. In the absence of one, legitimate concerns are being fobbed off with the bland statement that the Bill will require no additional revenue to

⁹ Ibid, p. 20.

¹⁰ Ibid.

¹¹ Para. 6, Memorandum on the Objects of the Bill.

implement. Again, this reflects a tick-box approach to public consultation, rather than a genuine attempt to help the public to “know about the issues” and then have “an adequate say.”

3 The Content of the Bill

Given the short time allowed for public comment, the IRR has been able to focus on only some of the provisions in the Bill. These clauses deal with the compulsory licensing of water services providers; amended “compliance and rectification” provisions; changed “enforcement” clauses; the new powers to be given to “authorised persons;” the high penalties to be introduced; the additional powers to be given to the minister; and various other (unnecessary) changes. The Bill’s proposed amendments regarding the management and direction of the country’s water boards are important too. However, these provisions cannot be canvassed in this submission because the period allowed for comment is so short.

In describing the content of the Bill, new provisions are underlined while the IRR’s comments on these new sections are *italicised*.

3.1 The compulsory licensing of water services providers

3.1.1 The need for operating licences

The existing Services Act aims to give effect to “the right of access to basic water supply and the right to basic sanitation.”¹² Towards this end, the statute seeks to improve the efficiency of every “water services provider,” which it defines as “any person who provides water services to any consumer.”¹³

The Bill expands the Service Act’s objectives to include “the licensing of water services providers operating or intending to operate as municipal service delivery mechanisms.”¹⁴ A “municipal service delivery mechanism” is defined as “mean[ing] an internal or external municipal service delivery mechanism contemplated in section 76 of the Municipal Systems Act delivering water services.”¹⁵ *This new definition creates confusion, rather than clarity.*

Since the Services Act was adopted in 1997, all water services providers have had to be approved by “water service authorities.” The Bill amends the definition of such authorities – and greatly complicates it too – by describing a water services authority as “any municipality that has the legislative and executive authority in respect of water services within its area of jurisdiction in terms of section 156 and Part B of Schedule 4 to the Constitution of the Republic of South Africa, 1996, read with section 84 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and section 11 of the Municipal Systems Act.”¹⁶ *Complex cross-referencing of this kind makes it impossible for most South Africans to understand or comment on the significance of the changes being made. All the relevant rules referred to should thus have been set out in a footnote to this provision, or in the Memorandum on the Objects of the Bill.*

¹² Section 2(1), Water Services Act of 1997 (Services Act).

¹³ Section 1, Services Act.

¹⁴ Clause 2, Water Services Amendment Bill [B24-2025] (the Bill); Section 2, amended Services Act.

¹⁵ Clause 1, Bill; Section 1, amended Services Act.

¹⁶ Clause 1, Bill, Section 1, amended Services Act.

Under the Bill, water services providers still require the approval of water service authorities, but will also have to obtain “operating licences.” *Here, the wording of the Bill is even more confusing.* Though it does not change the definition of a “water services provider”, as set out in the Services Act, it nevertheless states, under a new Section 22A(2), that: “No person may operate as a municipal service delivery mechanism unless that person is licensed under this Act.”¹⁷

Further detailed provisions in the Bill set out the various powers and obligations of “the licensing authority.” This is defined, in an amended Section 1 of the Services Act, as “mean[ing] the Director-General or a person, or unit in the Department delegated or assigned by the Director-General to implement the licensing system.”¹⁸

3.1.2 Powers and functions of the licensing authority

A new Section 22(B) is confusing in its description of the powers and functions of the licensing authority responsible for “ensur[ing] that the licensing system...is given effect to”. According to the Bill, this licensing authority “must a) issue licences to water services providers operating or intending to operate as municipal service delivery mechanisms; and (b) determine the minimum competency for the municipal service delivery mechanism, with reference to appropriate technical, financial and governance requirements.”

In determining the “minimum competency” required, the licensing authority “must determine and apply application criteria with reference to paragraph (b) and may distinguish between different (i) categories of applicants for a licence taking into account whether the applicant is an existing municipal service delivery mechanism or not; and (ii) classes of licences and conditions for such licences.”¹⁹ *This wording is so convoluted – and often also so vague – as to make the provision difficult for the public to understand or for officials to apply in a consistent way.*

Little clarity is provided by a new Section 22(B)(3), under which the licensing authority “may” (but need not) “from time to time, develop guidelines that are designed to implement the licensing system; [and] (b) may, from time to time, publish in the Gazette, the application criteria that distinguish between categories of applicants and classes of licences.”²⁰ *The Bill provides no clue as to how helpful these “guidelines” might be in making sense of these opaque provisions. Nor does it attempt to clarify how these vague rules are to be understood by officials in the absence of any such guidelines.*

The rest of Section 22(B) finally includes some clear wording, which is relatively easy to understand. Under these provisions, the licensing authority “(c) must consider applications for licences made in terms of this Act; (d) may require reporting from the licensee; and (e) may publish information on compliance with the licensing system.” In addition, under sub-clause (4), “The licensing authority may delegate to an official of the Department any of its powers and

¹⁷ Clause 9, Bill, Section 22(A)(2), amended Services Act.

¹⁸ Clause 1, Bill, Section 1, amended Services Act.

¹⁹ Clause 9, Bill; Section 22(B)(1), (2), amended Services Act.

²⁰ Clause 9, Bill; Section 22(B)(3)(a), (b), amended Services Act.

functions listed in this Act.²¹ However, since the relevant criteria for the granting of licences are extremely vague, different officials of the licensing authority are sure to interpret these uncertain rules in different ways at different times. This contradicts the doctrine against vagueness of laws and is *prima facie* unconstitutional.

3.1.3 Application for water services licence

Under a new Section 22(C)(1), “Any person who intends to operate as a municipal service delivery mechanism must apply to the licensing authority for a licence in accordance with the manner and form prescribed by the licensing authority.”²² This application must be accompanied by the prescribed fee. It must also provide the following information: “(a) The name and details of the applicant; (b) the water services authority in whose jurisdiction the applicant intends to operate; (c) the operational scope of the applicant, not limited to technical, financial and governance information relevant to the application criteria; and (d) such other related information as may be required.”²³ *Much of this wording – and especially that in sub-section (c) – is confusing and difficult to understand.*

3.1.4 Issuing of water service licence

Under Section 22(D), the licensing authority must “assess and decide on the application” within 60 days of receiving it. In addition, the licensing authority “must issue a licence if the applicant meets the prescribed minimum score required for the category of licence applied for.” Where an application is declined, written reasons must be provided.²⁴

Where the licence is granted, it “must include” the following information: “(a) The class of the licence; (b) the conditions of the licence; (c) the process for the review of the licence; (d) the reporting required from the licensee; (e) the right of the licensing authority to monitor and enforce licence conditions; and (f) the right of the licensing authority to publish information on the performance of the licensee.”²⁵

These provisions create uncertainty as to how “minimum scores” will be computed, what licence conditions may be introduced, when and how licences will be subject to review, and the extent of the reporting requirements to be imposed.

Here, the Bill now before Parliament is significantly more uncertain than the draft Water Services Amendment Bill of 2023. The 2023 draft bill was generally far clearer in describing the content of the regulations to be drawn up by the minister within 12 months, and in providing for their review and updating at regular intervals.²⁶ The current Bill provides no clarity, for example, on how long operating licences will last, how often they will need to be reviewed, or what criteria will apply in conducting such reviews. Short licence periods and frequent reviews will impose heavy administrative burdens on both water services providers and officials of the DWS. Worse

²¹ Clause 9, Bill; Section 22(B)(3) (c) to (d), Section 22(B)(4), amended Services Act.

²² Clause 9, Bill, Section 22(C)(1), amended Services Act.

²³ Clause 9, Bill; Section 22(C)(3), amended Services Act.

²⁴ Clause 9, Bill; Section 22(D)(1), amended Services Act.

²⁵ Clause 9, Bill; Section 22(D)(2), amended Services Act.

²⁶ Clause 7, Services Bill; Section 22B, amended Services Act.

still, the licensing system will inevitably fail to resolve the underlying reasons for inadequate or defective water services delivery, as set out in the Ramifications of the Bill, below.

3.2 Compliance and rectification

Under Section 22(E) of the current Bill, “A licensee that contravenes any licence conditions imposed in terms of that licence is subject to section 62A,” as further described below. In addition, the licensing authority “must...(a) direct the licensee to comply with the conditions and requirements of the licence; or (b) where applicable, direct the licensee to rectify, within a reasonable time as specified by the licencing authority, any state of affairs that resulted from the non-compliance.”

Though this wording is clearer than that in other clauses of the Bill, it remains uncertain when a direction “to rectify” would be “applicable.” It is also uncertain what rectification of “any state of affairs” would require, as opposed to a directive to comply with all licence conditions. Again, different officials are likely to interpret the uncertain wording of the Bill in different ways at different times. This too contradicts the doctrine against vagueness of laws.

3.2.1 Suspension and revocation of a licence

Under Section 22(F), the licensing authority “may” suspend a licence “if the licensee no longer meets the minimum requirements for a licence”, or where investigation shows a licence was obtained “by mistake” or by means of “fraud, undue influence or misrepresentation.”²⁷

However, the licensing authority “must” revoke a licence within a reasonable period if “(a) if the licensee has persistently refused, failed or neglected to provide the services for which that licensee has been appointed by the water services authority; (b) if the licensee becomes insolvent or is declared bankrupt by a court of law; or (c) if the licensee has been directed to take specified steps to rectify the failure within a specified period and the licensee concerned has failed to do so to the satisfaction of the licensing authority.”²⁸

Under this new Section 22(F), the licensing authority will have to take various steps before revoking a licence. Among other things, it must “notify the licensee” and the water services authority, and give the licensee an opportunity to “make representations” to it (not necessarily in writing, it seems). In addition, it “must (c) require the water services authority...(i) to make interim arrangements to ensure the continuity of water services delivery” and “report to the licensing authority and the department responsible for local government on the interim measures that are in place between the water services authority and the municipal services delivery mechanism whose licence is to be revoked.”²⁹

This wording suggests that the necessary interim measures will probably be provided by the water services provider whose licence is about to be revoked. This underscores the practical

²⁷ Clause 9, Bill; Section 22(F)(1), amended Services Act.

²⁸ Clause 9, Bill; Section 22(f)(2), amended Services Act.

²⁹ Clause 9, Bill; Section 22(F)(3)(c), amended Services Act.

problems like to arise from revoking an operating licence. The clause is also unlikely to secure the continuity of water delivery after revocation has taken place.

The new Section 22F further provides that “A water services authority remains responsible in terms of Part 2 of Chapter 8 of the Municipal Systems Act to decide upon and approve any municipal service delivery mechanism.”³⁰ *Since “any” such mechanism may be approved, this may further encourage the water services authority to keep using the municipal service delivery mechanism whose licence the licensing authority is seeking to revoke.*

The new Section 22F also states: “Revocation of a licence under this section does not relieve a water services authority from performing its water services functions in a manner provided for in this Act and any relevant law, and may require a water services authority to ensure continuity of water services with an interim service delivery arrangement in compliance with this Act.”³¹

In practice, a water services authority which must ensure “continuity of services” is likely to be put in an extremely difficult position by these provisions. It is not clear whether the water services authority will then be compelled to outsource the water services delivery function to some other entity. The Bill seems simply to assume that such an entity can readily be found, that it will be prepared to take on the burden of delivery for what is likely to be an uncertain period, and that it can be granted the necessary operating licence at short notice. The Bill also omits to clarify whether the water services authority – and hence all its ratepayers and residents – will have to bear the financial costs of this outsourcing arrangement, but this seems likely.

Continuity of water services must, however, be maintained for the benefit of all consumers, both individuals and businesses. As described in the Synopsis, there are thus major practical problems in trying to use licensing obligations and possible licence revocations to improve poor performance by water services providers. The better approach by far is to ensure, right from the start, that any water services provider has the necessary competence, experience and financial resources to do a proper job (see Ramifications of the Bill, below). If its delivery in time deteriorates, better solutions can and must be found.

3.3 Enforcement

Under a new Section 62A, the Bill seeks to empower the minister to enforce the provisions of the Act against any “person” who contravenes them. “Person” is defined in the Services Act as “including a water services institution.” Such institutions are in turn defined in the Services Act as including water services authorities, water services providers, and water boards.

Under the new Section 62A, the minister “may, by notice in writing to a person who contravenes any provision of this Act, direct that person to take any action specified in the notice, to rectify the contravention.” Before issuing such a notice, the minister “must (a) give advance notice in writing of the intention to issue the notice to the person; and (b) afford the person a reasonable opportunity to make written representations as to why the notice should not be issued.”³²

³⁰ Clause 9, Bill; Section 22(F)(4), amended Services Act.

³¹ Clause 9, Bill; Section 22(F)(5), amended Services Act.

³² Clause 22, Bill; Section 62A(1)-(2), amended Services Act.

Any notice issued by the minister under the new Section 62A “must state the following: (a) The nature and extent of the contravention of the Act; (b) the effect and impact of the contravention on consumers or works; and (c) any other matter relevant to the non-compliance.”³³ The notice must also “require the person to comply with the directive within a time frame considered reasonable in the circumstances” and then “diligently continue with those measures as contained in the notice.”³⁴

If the person fails to comply within the specified time frame or “any longer period allowed upon representation received,” the minister may act under Section 62A(6). According to this subsection: “If the person to whom the notice is issued persistently fails to comply with the directive or this Act, the Minister may (a) bring an application before a relevant court to compel that water services institution to comply and the court may grant appropriate relief, taking into account the extent of the non-compliance; or (b) follow the procedure contemplated in section 63.”³⁵

Section 63 of the Services Act already gives the minister extensive powers to intervene and, if necessary, to take over the services that a water services authority is failing to provide (as set out below). However, a water services authority is different from a water services provider, which the Bill often also seems to redefine as a “municipal service delivery mechanism.” Under the current wording of the Bill, if it is a water services provider or municipal service delivery mechanism that is failing to uphold its obligations, the minister must go to court to seek appropriate relief against that provider or that mechanism. However, if it is a water services authority that is at fault, the minister may use the extensive powers already available to him or her under Section 63 of the Services Act.

Why water services authorities, but not other water institutions, should effectively be barred from the opportunity to obtain a court order setting out their rights and obligations is not explained. Prima facie, this differential treatment for water services authorities is at odds with the right to equality before the law in Section 9(1) of the Constitution, unless it can be justified under Section 36. However, it may be difficult for the minister to show that “less restrictive means” are not available as against water services authorities, when the Bill provides such means for other water services institutions.

3.4 Existing ministerial powers under Section 63 of the Services Act

According to Section 63 of the Services Act, if a water services authority has not “effectively performed any function” imposed on it, the minister may ask the relevant provincial administration to intervene under Section 139 of the Constitution. However, if a province “unjustifiably fails” to do so within a reasonable time, or if its intervention is ineffective, the minister may “assume responsibility for that function to the extent necessary (i) to maintain essential national standards; or (ii) to meet established minimum standards for providing

³³ Clause 22, Bill; Section 62A(3), amended Services Act.

³⁴ Clause 22, Bill; Section 62A(4), amended Services Act.

³⁵ Clause 22, Bill; Section 62(A)(6), amended Services Act.

services.” The minister must, however, “table a notice to that effect in the National Council of Provinces [NCOP] within 14 days” of the first sitting it holds after he or she has taken on that responsibility. In addition, the minister must terminate his or her assumption of responsibility if the NCOP fails to approve it within 30 days of its first such sitting.³⁶

Once the minister has taken responsibility, he or she “may issue a directive to the water services authority to perform that function effectively.” If the water services authority fails to comply with such a directive, the minister may provide it with “financial, managerial and technical advice and assistance” to help it do so. Alternatively, the minister may “take over” the relevant function, “on notice” to the water services authority. The minister must also give notice of this take-over to the NCOP within 14 days of the first sitting it holds after the minister has taken over the relevant function. The minister must also end the take-over if the NCOP does not approve it within 30 days of its first such sitting.

In the interim, “the Minister may, on behalf of that water services authority, exercise all the powers and carry out all the duties relating to that function,” while “the governing body of that water services authority” must cease any attempts to do so. The minister is empowered to “utilise all financial and other resources available to that water services authority relating to that function,” and may “appoint a water services institution to perform that function” instead. The minister’s take-over must end “when the water services authority is in a position to resume that function effectively.”³⁷

The power to take over the functions of a failing water services authority has thus been available to the responsible minister under the Services Act from as far back as 1997. Thus far, however, the minister has failed to use these powers to bring about noticeable improvements in the delivery of water and sanitation in most parts of the country. Instead, the quality of provision has steadily deteriorated for some 20 years (see Ramifications of the Bill, below).

3.5 Role of “authorised persons”

According to the Memorandum on the Objects of the Bill, “authorised persons” are to be appointed to “enforce compliance” with the amended Act. The powers of an authorised person are to include “the power to stop, enter and search vehicles on authority of a warrant where there is suspicion of the commission of an offence in terms of the...Services Act.”³⁸ *This is a misleading overview of the powers to be accorded these authorised persons, which will include the power to seize vehicles and other items.*

3.5.1 Appointment of authorised persons

Under a new Section 80A, “the minister may, in writing, appoint any suitable person as an authorised person to perform the functions contemplated in section 80,” as described below. An authorised person “must be provided with a certificate of appointment in which the nature of the authorised person’s functions is described.”³⁹

³⁶ Section 63(1)-(3), Services Act.

³⁷ Section 63(4)-(6), Services Act.

³⁸ Para. 3.12, Memorandum on the Objects of the Water Services Amendment Bill of 2025.

³⁹ Clause 23, Bill; Section 80A(1), (2), amended Services Act.

3.5.2 Existing powers of “entry and inspection” under the Services Act

Under the existing Section 80 of the Services Act, “any person authorised in writing” by the minister, the province or “any water services institution” may “at any reasonable time and [generally] without prior notice, enter any property and inspect any water services work in order to ascertain whether this Act or any regulation or directive made under it is being complied with.”⁴⁰

Moreover, once “reasonable notice” has been given to the owner or occupier, the persons so authorised may also bring people, vehicles, equipment and material on to a property to “repair, maintain, remove or demolish any water services work,” to “remove vegetation interfering with any water services work,” to “establish the suitability of any water source or site for the construction of a water services work,” or to “carry on any activity necessary for the recovery or measurement of water.”⁴¹ However, “a dwelling may only be entered (a) where it is necessary in terms of this Act to do so; and (b) on reasonable notice; and (c) at a reasonable time.”⁴²

Again, these provisions will continue in force and seem perfectly adequate, raising questions as to why the Bill seeks to provide for the appointment, in addition, of “authorised persons” with investigative and other powers of a policing kind.

3.5.3 Proposed “General powers of authorised persons”

Under a new Section 80B(1) of the Bill, “an authorised person...on the premises of a water services work or at a place where a water services activity is conducted” may:

- a) “question any person” about any “offence in terms of the Act” or “a breach of a term or condition of an authorisation;”
- b) “inspect, or question a person about, any document, book or record;”
- c) “copy, make extracts from...or remove” any such document, book or record;
- d) “require a person to produce or deliver” any such document, book or record for inspection; and
- e) inspect, question a person about, and if necessary, remove any specimen, article, substance, or other item which, on reasonable suspicion, may have been used” in committing an offence or breaching any term or condition.⁴³

Under the new Section 80B, an authorised person may also “bore into the soil”, “take samples” and “remove any waste or other matter deposited or discharged in contravention of this Act or a term or condition of an authorisation.” In addition, an authorised person may “issue a lawful instruction in the execution of his or her mandate.” or “carry out any other prescribed duty not inconsistent with this Act.”⁴⁴

⁴⁰ Section 80(1)(a), Services Act.

⁴¹ Section 80(1)(b), Services Act.

⁴² Section 80(3), Services Act.

⁴³ Clause 23, Bill; Section 80(B)(1)(a) - (e), amended Services Act.

⁴⁴ Clause 23, Bill; Section 80(B),(1)(f) – (j), amended Services Act.

Moreover, an authorised person may issue any other person with a notice “requir[ing] that person to answer specified questions either orally or in writing.”⁴⁵ Anyone who refuses to answer a question “commits an offence.” except where this would be self-incriminating.

An authorised person must issue receipts for any documents, articles or other items taken and return them within a reasonable period unless they are forfeited at the end of a criminal trial. Moreover, an authorised person, “in addition to the powers set out” in the Bill, “may exercise the powers conferred on a peace officer by the Criminal Procedure Act, 1977 (Act No. 51 of 1977), provided that the authorised person is declared a peace officer.”⁴⁶

3.5.4 *Powers to stop, enter and search vehicles*

Under a new Section 80C, an authorised person, “on the authority of a warrant,” may also “stop, enter and search any vehicle...on the premises of a water services work or at a place where a water services activity is conducted in terms of this Act, on reasonable suspicion that that vehicle...is being or has been used” to commit an offence; to contravene “a condition of a licence;” or to contravene “norms and standards issued in terms of this Act.” These powers also apply where there is a “reasonable suspicion” that the vehicle “contains...a thing which may serve as evidence of such offence or breach.”⁴⁷

In addition, “an authorised person may seize a vehicle...or anything contained in...such vehicle” which is:

- a) “on reasonable grounds believed to be involved in the commission of an offence;”
- b) “may provide evidence of the commission...of an offence;”
- c) “on reasonable grounds believed to be intended to be used in the commission of an offence;” or
- d) “on reasonable grounds, being utilised in a manner that is likely to cause significant pollution, impact or degradation of the environment.”⁴⁸

*This is an extraordinarily broad provision. What makes it even more disturbing is the absence of a clause expressly requiring an authorised officer to obtain a warrant prior to such seizure. The Bill states that a warrant is generally needed to stop and search a vehicle, but it has no equivalent provision regarding the seizure of a vehicle or anything in it. That a judge or magistrate, in issuing a warrant, may “specify the parameters within which the authorised person may perform the entry, search or seizure,” is not a sufficient safeguard.*⁴⁹

The warrant required under sub-section 80C(1) to stop and search a vehicle may also be dispensed with if the driver is “on the premises of a water services work...and consents to the stop and search.” In addition, if the authorised person is “of the opinion, based on reasonable grounds, that a warrant would be issued...and the delay of obtaining the warrant would defeat

⁴⁵ Clause 23, Bill; Section 80(B),(2), (3), amended Services Act.

⁴⁶ Clause 23, Bill; Section 80B(4),(5), amended Services Act.

⁴⁷ Clause 23, Bill; Section 80C (1), amended Services Act.

⁴⁸ Clause 23, Bill; Section 80C (2), amended Services Act.

⁴⁹ Clause 23, Bill; Section 80C (6)(b), amended Services Act, emphasis supplied by the IRR.

the purpose of the seizure or removal,” then a warrant need not be obtained. Instead, “the authorised person may (i) order the driver of the vehicle to stop; or (ii) if necessary and possible, force the driver to stop.” He or she may then “exercise on or in respect of such vehicle any of the powers mentioned in section 80A.”⁵⁰

Section 80A refers to the powers provided in the existing Section 80 of the Services Act, which does not deal with vehicles but rather with the inspection of properties and water works. Moreover, why the people to be appointed as “authorised officers” – who will lack the training provided to the police and may sometimes act without prior warrants – should be given the power to “force” drivers to stop is not explained.

Under a new Section 80C(5), the warrant generally needed to stop and search a vehicle must be issued by a judge or magistrate, on “the written application” of the authorised person. This application must set out, among other things, that “there are reasonable grounds to suspect” a contravention of the Act, and that “there is a need” to stop and search the vehicle, as “the search is necessary for the purpose of enforcing the Act.”⁵¹ *These last two grounds are essentially the same.*

The new Section 80C also seeks to give authorised persons some of the powers of police officers, provided certain conditions are met. Here, the relevant clause says: “Subject to subsection (5) and the relevant approval under subsection (9) and section 80B(5), an authorised person has all the powers of a member of the South African Police Service in terms of section 13(8) of the South African Police Service Act, 1995, when performing a function in terms of this section.”⁵²

Section 13(8) of the South African Police Service Act empowers the national commissioner of police or his provincial counterparts to authorise in writing the setting up of roadblocks on specified roads for certain periods. The police officers manning such roadblocks may, in certain circumstances, search people and vehicles without warrants and seize certain items.⁵³

To obtain these policing powers, an “authorised person” under the Bill must obtain a warrant to stop and search a vehicle (under sub-clause 80C(5) of the Bill), apply to the police for permission to erect a roadblock (under sub-clause 80C(9)) and be registered as a peace officer under the Criminal Procedure Act (under Clause 80B(5)). In exercising these additional powers, an authorised person “may be accompanied and assisted by one or more police officers”, but this is not obligatory.⁵⁴

Neither the Bill itself, nor the Explanatory Memorandum accompanying it, provides reasons as to why these additional policing powers are needed for the “authorised persons” to be appointed under the Bill.

⁵⁰ Clause 23, Bill; Section 80C (3), (4), amended Services Act.

⁵¹ Clause 23, Bill; Section 80C (5), amended Services Act.

⁵² Clause 23, Bill; Section 80C (10), amended Services Act.

⁵³ Section 13(8), South African Police Act of 1995.

⁵⁴ Clause 23, Bill; Section 80C (11), amended Services Act.

3.6 Greatly increased penalties

Section 82 of the existing Services Act makes it an offence, in essence, to:

- a) “continue the wasteful use of water after being called upon to stop” by the minister, a province or a water services authority;
- b) “unlawfully and intentionally or negligently interfere with any water services work;”
- c) “intentionally” use water services or dispose of effluent in prohibited ways;
- d) “intentionally obstruct” any person seeking to enter and inspect property;
- e) “fail or refuse to give information” as required, or “give false or misleading information;”
or
- f) “fail to provide access to any books, accounts, documents or assets,” as required.⁵⁵

The Bill amends Section 82 by adding another offence to the list of offences set out above (from (a) to (f)). Under the Bill, it will also be an offence (under sub-clause (g)) to “fail to comply with any obligation, instruction or directive under the Act, after being directed to do so.”⁵⁶ This makes it an offence, for example, to continue operating as a water services provider without the operating licence to be introduced under the Bill.

Under the Services Act, those convicted of the six offences it sets out are punishable by fines of an unspecified amount, by prison terms of an unspecified duration, or by both.⁵⁷ Under the Bill, by contrast, maximum penalties for all these offences, including the new one to be created, are inserted and are likely to result in much more severe punishments.

According to the Bill, “a person convicted of an offence in terms of subsection (1)(a), (b), (c), (e), (g) or (h) [sic] is liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.”⁵⁸ *The numbering here is incorrect, in that there is no sub-section 82(1)(h) under either the Bill or the Services Act. Since an offence under para (e) is expressly listed here, those who simply fail to provide information – as well as those who “give false or misleading information” – will also be subject to these very high fines and/or prison terms.*

The Bill further amends Section 82 by providing that: “Any person convicted of an offence in terms of subsection (1)(d) or (f) is liable—
(a) in the case of a first conviction, to a fine not exceeding R1 million or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment; and
(b) in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.”⁵⁹

These are extraordinarily high penalties for “intentionally obstructing” the inspection of a property, or for failing to provide access to documents, books or other items.

⁵⁵ Section 82(1), Services Act.

⁵⁶ Clause 24, Bill; Section 82(1)(g), amended Services Act.

⁵⁷ Section 82(2), Services Act.

⁵⁸ Clause 24, Bill; Section 82(2), amended Services Act.

⁵⁹ Clause 24, Bill; Section 82(4), amended Services Act.

3.7 *Liability of directors*

A new Section 82A seeks to impose personal liability on company directors and municipal managers for offences under the Services Act. Here, the relevant clause states: “Any person who is or was a director of a business entity at the time of the commission by that firm of an offence under this Act or a person who is or was a municipal manager of a municipality at the time of the commission by that municipality of an offence under this Act is, himself or herself, guilty of such offence and liable on conviction to the penalty specified in the relevant law, including an order under subsection (3), if—

(a) that person had knowledge of the commission of the offence by the business entity or municipality; and

(b) the offence in question resulted from the failure of the director or municipal manager to take all reasonable steps that were necessary to be taken by that director or municipal manager under the circumstances in order to prevent the commission of the offence.”⁶⁰

The high fines and/or lengthy prison terms earlier described may thus be imposed on such directors or municipal managers, unless it is clear they took “all reasonable steps” to prevent the offence in issue. Here, the Bill needs to clarify what “reasonable steps” would comprise in circumstances where most municipal water infrastructure is known to be ageing and defective – and dysfunctional municipalities cannot in practice provide either the engineering and technical skills or the financial resources needed to repair or replace this failing infrastructure.

Directors and municipal managers may also be held personally liable for any resulting damage as well as any financial benefits they may have received. Here, a new Section 82A(3) states: “Upon the conviction referred to in subsection (1), the court may make the following orders: (a) recovering the amount of loss or damage to rehabilitate or prevent damage; or (b) determination of monetary value of any advantage gained as a consequence of the offence in question and recovery thereof.”⁶¹

This wording indicates, for example, that a municipal manager may face a fine of up to R10 million and/or imprisonment for up to ten years if the municipality he heads has, for example, “continued the wasteful use of water after being called upon to stop” by the minister, a province or a water services authority, as set out in Section 82(1) of the Services Act. In addition, if the municipal manager knew about the wasteful use and failed to take “all reasonable steps” to resolve it, he could also be held liable for resulting losses suffered, for example, by businesses which then suffer water shedding and cannot meet their obligations to their customers. If the municipal manager also contracted, say, with a company providing water tankers to municipal residents affected by water shedding – and if the municipal manager derived a financial advantage from this contract – then the manager might also have to pay over the relevant amount.

⁶⁰ Clause 25, Bill; Section 82A(1), amended Water Services Act.

⁶¹ Clause 25, Bill; Section 82A(3), amended Water Services Act.

Many people would probably welcome these provisions in the Bill as a way to hold corrupt municipal managers to account. However, it is questionable whether such provisions will have much impact in practice. South Africa has many existing laws against fraud and corruption, all of which have proved ineffective in ending these scourges. This is partly because the government terminated the country's most effective anti-corruption entity (the Scorpions) in 2009. In addition, the National Prosecuting Authority (NPA) has limited capacity. It has also failed to mount successful prosecutions against those implicated in large-scale corruption by the Zondo commission of inquiry. Hence, the problem is not a lack of relevant rules against corruption, but rather a persistent failure to use the existing rules effectively to stamp it out.

3.8 Additional ministerial powers

3.8.1 Minister's power to set potable water standards

Under Section 9 of the Services Act, the minister already has extensive powers to “prescribe compulsory national standards” relating, for example, to “the quality of water taken from or discharged into any... water resource system;” the “nature, operation, sustainability, operational efficiency and economic viability of water services;” and the overall “obligations of the National Government as custodian of water resources.”⁶²

Under the Bill, the minister will also have the power to prescribe compulsory national standards regarding the “quality and management of potable or drinking water.”⁶³ According to the Memorandum on the Objects of the Bill, “the Minister will prescribe standards of the quality of drinking water so that drinking water is of acceptable standard.”⁶⁴

This illustrates one of the core problems in the Bill – the government's apparent belief that refining existing rules to make explicit what is already implicit within them will magically overcome major practical problems. Standards for potable water are already in place and, if the minister now reiterates or adds to these under the Bill, this will not suffice to ensure that “drinking water is [then] of an acceptable standard”, as the Memorandum seems to assume.

The key reasons why potable water is often below standard are to be found in damaging government policies, such as cadre deployment, employment equity and preferential procurement rules – all of which contribute to skills shortages and defective delivery. Unless these damaging policies are terminated, further ministerial statements regarding the required quality of drinking water will make no difference in practice.

3.8.2 Minister's power to prescribe sanitation standards

According to the Memorandum on the Objects of the Bill, “the Minister will prescribe standards for sanitation across the sanitation value chain to ensure safe handling of human excreta and minimize public health risks.”⁶⁵

⁶² Sections 9(1)(b)(c), 9(3)(h), Services Act.

⁶³ Clause 4, Bill; Section 9(1)(h), amended Services Act.

⁶⁴ Para 3.3, Memorandum on the Objects of the Bill.

⁶⁵ Para 3.3, Memorandum on the Objects of the Bill.

Here, the Bill is so badly drafted that the relevant clause dealing with sanitation standards is impossible to find. However, the Memorandum’s assumption that the laying down of additional standards will somehow stop the daily release of some 5 billion litres of untreated or partially treated sewage into South Africa’s dams and rivers is absurd. It also highlights the government’s inability to solve the water problems that its own policies have created over at least two decades.

3.8.3 Minister’s powers to “review” water tariffs

The Services Act already gives the minister extensive powers to “prescribe norms and standards in respect of tariffs for water services,” in concurrence with the minister of finance. These rules are well-drafted and take into account a comprehensive list of relevant considerations. These include the “financial sustainability of the water services” in a given area; the “recovery of costs reasonably associated with providing the water services;” “the need for a return on capital invested for the provision of water services;” “social equity;” and the role of tariffs in “promot[ing] or achiev[ing] water conservation.”⁶⁶

The existing rules also state that “no water services institution may use a tariff which is substantially different from any prescribed norms and standards.” Under the Bill, this is to be changed to read: “No water services institution may use a charge or tariff which is inconsistent with any prescribed norms and standards.”⁶⁷

This makes for confusion, rather than clarity. How is “inconsistency” to be assessed? Is any variation, no matter how small, at odds with this new wording? The Bill provides no answer.

The Bill also inserts a new Section 10(5), which states: “The Minister may request any water services institution or water services intermediary providing water services in terms of this Act to submit their water services charge or tariff to the Minister for review.”⁶⁸

The Memorandum on the Objects of the Bill provides no guidance as to what such “review” might entail. It is also unclear whether such a review would be merely advisory, or whether it would override municipal tariff decisions. If the latter is what is intended, then this could undermine the budgetary and tariff setting powers of municipal councils on matters they have the right to administer under Section 156 and Part B of Schedule 4 of the Constitution.

3.8.4 Minister’s additional powers over contracts with water service providers

Section 19 of the Services Act already empowers a water services authority to “perform the functions of a water services provider itself” or to “enter into a written contract with a water services provider.” However, a water services authority may contract with “a private sector water services provider” only “after it has considered all known public sector water services providers which are willing and able to perform the relevant functions.” Before concluding or renewing a contract with a water services provider, a water services authority must “publicly

⁶⁶ Section 10, Services Act.

⁶⁷ Clause 5, Bill; Section 10(4), amended Services Act.

⁶⁸ Clause 5, Bill; Section 10(5), amended Services Act.

disclose its intention to do so.” The water services provider must also disclose relevant information, such as “any rate of return on investment it will or may gain” by concluding the contract.⁶⁹

Under the current Services Act, moreover, the minister has the power to “prescribe” the matters which “must be regulated” by such a contract. Moreover, the minister may prescribe “compulsory provisions to be included” in such a contract in order to ensure, among other things, “that water services are provided on an efficient, equitable, cost-effective and sustainable basis.”⁷⁰

Under a new Section 19(5)(aA), the minister will be able, after consultation with the minister responsible for local government), to prescribe “the manner in which a municipal service delivery mechanism may be regulated by the water services authority.”⁷¹ In addition, the minister’s existing powers to prescribe “compulsory provisions to be included” in a contract with a water services provider will be replaced by a more detailed clause setting out the compulsory provisions that will have to be concluded.

Under this new Section 19(5)(b), the minister will be able to prescribe “compulsory provisions to be included in such contract relating to the technical, financial and governance requirements of water services providers and their functions, including but not limited to—
(i) water services systems operations and maintenance;
(ii) water services works asset management, including rehabilitation, replacement and investment in existing and new infrastructure;
(iii) water services funding, billing and revenue management and associated activities;
(iv) management and administrative activities and accountability, including, without limitation, water services planning, water services infrastructure planning, budgeting, procurement, human resources management, fleet management and other corporate and support services necessary for water services; and
(v) accountability, disclosure and reporting.”⁷²

However, all these issues are already dealt in the Services Act: either under the municipal bylaws water services authorities must make or in other sections of the Act. The Bill thus adds no value here. It is also silent as to how potential conflicts between municipal bylaws, for example, and the minister’s new compulsory conditions are to be resolved.

It is unlikely that these more detailed rules will address the many problems in water provision. These stem, not from a lack of sufficient regulation, but from policies such as cadre deployment and Black Economic Empowerment (BEE), which worsen the skills deficit and undermine performance. In addition, the autonomy which municipal councils have under the Constitution to administer specified “water and sanitation services” under Section 156 and Part B of

⁶⁹ Section 19 (1)-(4), Services Act.

⁷⁰ Section 19(5), Services Act.

⁷¹ Clause 6, Bill; Section 19(5)(aA), amended Services Act.

⁷² Clause 6, Bill; Section 19(5)(b), amended Water Services Act.

Schedule 4 will be curtailed on issues such as “human resources management.” This raises questions as to the constitutionality of some of the minister’s additional powers.

3.9 Other significant changes

3.9.1 Water services authority acting as water services provider

Again, the existing Section 20(1) of the Services Act is clear and adequate in stating: “When performing the functions of a water services provider, a water services authority must manage and account separately for those functions.”⁷³

The Bill nevertheless requires that this provision be replaced by a new Section 20(1), which states: “When performing the functions of an internal municipal service delivery mechanism, a water services authority must—

(a) manage and account separately for those functions;

(b) set performance requirements; and

(c) undertake performance management of the internal municipal service delivery mechanism in terms of a performance management agreement with senior management of the water services provider and in compliance with the regulations issued in terms of section 19.”

There is little to be gained in practice from these more detailed provisions, which cannot address the bad policies and implementation failures underlying current water delivery shortcomings. In addition, water services authorities are already obliged, under Section 21 of the Services Act, to make bylaws dealing with important issues such as “the standard of services” to be provided, along with the “technical conditions of supply, including quality standards;” the “installation, alteration, operation, protection and inspection of water services works and consumer installations;” and the “prevention of unlawful connections to water services works and the unlawful or wasteful use of water.”⁷⁴ Where the wording of the existing Section 21 dealing with these bylaws overlaps with the terms of the new Section 20(1), the result will be confusion, rather than better regulation. Officials are also likely to interpret these overlapping provisions in different ways at different times, which contradicts the doctrine against vagueness in laws and prima facie breaches the Constitution.

3.9.2 Approval to operate as water services provider

Section 22(1) of the existing Services Act already requires this approval, for it states: “No person may operate as a water services provider without the approval of the water services authority having jurisdiction in the area in question.” In addition, under the existing Section 22(2): “Any approval in terms of subsection (1) ... (a) must be for a limited period; and (b) may be granted subject to conditions.”⁷⁵

The Bill nevertheless proposes to amend Section 22(2) so that it reads: “Any approval granted by the water services authority in terms of subsection (1)—

(a) must be for a limited period;

⁷³ Section 20(1), Services Act.

⁷⁴ Section 21(1), Services Act.

⁷⁵ Section 22(1),(2), Services Act.

(b) may be granted subject to conditions that require progressive, efficient and sustainable improvement in water services;
(c) must take into account the financial and environmental sustainability of the water services provider;
(d) must comply with Part 2 of Chapter 8 of the Municipal Systems Act;
(e) must comply with section 19; and
(f) must require compliance with the licensing system.⁷⁶

Again, there is little need for this new wording, as the existing Services Act is perfectly adequate. Adding many more words to the statute will not result in better or more reliable water services. The Memorandum on the Objects of the Bill implicitly recognises this, moreover, for it provides no explanation as to why these changes to the existing Section 22 are necessary. Again, moreover, there is a risk that these new clauses will overlap with the capacity of water services authorities to issue municipal bylaws under the existing Section 21 of the Services Act, or with other provisions of the statute. Overlapping provisions will, again, make for confusion, vagueness and possible unconstitutionality.

3.10 Transitional provisions

Since existing water service providers will need operating licences, in addition to approval by water services authorities, transitional provisions are included. Clause 28(1) of the Bill thus states: “Upon the commencement of this Act, any person operating as a municipal service delivery mechanism must continue to do so until licensed in accordance with subsection (3).” The Bill also requires the minister, “as soon as reasonably practical and after the commencement of this Act,” to publish a notice in the Gazette “prescribing the procedures of the licensing system, and the requirement to apply.” Any person who needs “to be licensed” under the amended Act “must apply for a licence within 12 months of the publication of th[is] notice.” The minister may “extend” this 12-month period for “not longer than six months.”⁷⁷

The new licensing requirement will impose a considerable administrative burden on the new licensing authority: the Director General of Water and Sanitation and his or her officials. More than 140 water services authorities will need the new licences. Moreover, each will have to approved within a 60-day period, according to the Bill. These requirements are likely to result in a major administrative bottleneck, as has happened with water use licences in the past. In practice, the DWS will probably battle to issue all the necessary operating licences within the maximum period of 18 months laid down in the Bill. Considerable backlogs could result, making for debilitating uncertainty for water services providers and their staff as well as for all water consumers, both individuals and businesses.

4 Ramifications of the Bill

4.1 The extent of the water crisis

The Bill does nothing to cure the water crisis that South Africa has long confronted. This is now looming ever larger as persistent water shedding spreads from rural areas to Johannesburg and

⁷⁶ Clause 8, Bill; Section 22(2), amended Services Act.

⁷⁷ Clause 28, Bill.

other metropolises. In his 2026 *State of the Nation Address*, President Cyril Ramaphosa acknowledged that frequent and prolonged water outages have become one of the most important concerns facing all South Africans. Mr Ramaphosa thus announced the formation of a National Water Crisis Committee, which he will chair, to coordinate a comprehensive response to the mounting problem. In addition, R156 billion will be allocated over the next three years for water and sanitation infrastructure. This will be on top, it seems, of the R54 billion incentive to metros, announced in 2025, which is intended to encourage them to reform their water, sanitation and electricity services. As Mr Ramaphosa put it, this incentive “will ensure that revenue from water usage is put straight back into fixing pipes, reservoirs and pumping stations.”⁷⁸

In his 2026 *State of the Nation Address*, Mr Ramaphosa also said: “The Water Services Amendment Bill will enable government to hold water services providers accountable for their performance and withdraw their licences if they fail to deliver. Additionally, those who neglect their responsibility of supplying water to communities will be held to account. Government has already laid criminal charges against 56 municipalities that have failed to meet their obligations. Charges will be laid against municipal managers in their personal capacity for violating the National Water Act of 1998.”⁷⁹

This description of the Bill suggests that the government currently lacks mechanisms to hold water services providers to account. However, this is not so. On the contrary, as earlier described, the existing provisions of the Services Act already give the minister extensive powers to intervene against water services authorities – most of which are also water services providers – that fail adequately to deliver.

As earlier noted, under Section 63 of the Services Act, the minister already has the power to intervene if a water services authority is not “effectively performing” any of its functions. In this situation, the minister must start by asking the relevant provincial administration to intervene.⁸⁰ If this does not solve the problem, the minister already has the power to take over the functions of the water services authority until such time as it is able to perform them.⁸¹ Imposing a new licensing system, backed by the power to revoke licences, is unnecessary when the minister’s existing powers to take over the functions of water services authorities – which date all the way back to 1997 – have yet to be used to good effect.

In addition, the enforcement powers to be given to the minister under the Bill are more limited than those available under the existing Act. Under the Bill, the minister may give notice to a failing water services provider that it must improve its performance and then direct it to do so. However, if it fails to improve, the minister may not simply take over its functions until such

⁷⁸ Ramaphosa, M, C, “State of the Nation Address – 2026 Highlights,” 19 February 2026, p. 11. <https://www.gcis.gov.za/sites/default/files/docs/resourcecentre/multimedia/SoNA%20Highlights-2026.pdf>; Kaziboni, A, “SA’s water crisis is institutional before it is environmental,” *Daily Maverick*, 24 February 2026. <https://www.dailymaverick.co.za/article/2026-02-24-sas-water-crisis-is-institutional-before-it-is-environmental/>.

⁷⁹ Ramaphosa, “State of the Nation Address – 2026 Highlights”, op. cit., p. 11.

⁸⁰ Section 63(1)-(3), Services Act.

⁸¹ Section 63(4)-(6), Services Act.

time as it improves its performance. Instead, the minister must seek appropriate relief from the courts, which is sure to take considerable time.

Mr Ramaphosa also said in his *State of the Nation Address* that the government had “already laid criminal charges against 56 municipalities that have failed to meet their obligations.” He added that “charges would also be laid against municipal managers in their personal capacity for violating the National Water Act of 1998.”⁸² Again, this shows that appropriate criminal sanctions are already available under existing legislation against delinquent municipalities – and that municipal managers that fail to discharge their key obligations can already be prosecuted in their personal capacities. Again, this further confirms that the Bill is not necessary to hold failing municipalities to account.

Moreover, the main effect of the Bill will *not* be to resolve the water crisis but rather to make it more difficult to overcome. Adding further layers of top-down regulation and bureaucratic control cannot address the underlying reasons for the steady decline in the quality of the country’s water services. If anything, it will distract attention from the real issues, particularly the many bad policies that lie at the heart of the escalating malaise.

The Bill will also lead to many more jobs for the deployed cadres of the African National Congress (ANC). It will add substantially to administrative and enforcement costs without achieving any compensatory gains. Scarce revenue that is vitally required to extend, improve and maintain water infrastructure will be diverted from where it is most needed to the expansion of a costly and ineffective bureaucracy. This will help the ANC expand its patronage machine in the run-up to key elections (the municipal one in late 2026 or early 2027, and the national/provincial one in 2029), which is presumably a key objective underpinning the Bill. However, it will do nothing to benefit the country or resolve its worsening water crisis.

4.2 The underlying reasons for the water crisis

Water treatment has two facets: the treatment of effluent to acceptable standards so that it can be discharged safely into rivers, dams, and oceans; and the conversion of what is often dirty water to potable standards. Since the state took custodianship of the country’s water resources in 1998, standards of treatment in both spheres have declined precipitously.

Performance has deteriorated for various reasons. The complex infrastructure involved in the capture, storage, transfer, treatment, and distribution of water needs constant and expert maintenance. This has faltered badly, however, as skilled engineers and technical staff have resigned or retired, thereby helping to make way for ANC cadres and other employment equity appointees.

A marked deterioration in the maintenance of all water infrastructure is increasingly evident. The 2022 “Infrastructure Report Card” compiled by the South African Institution of Civil Engineering (Saice) – the most recent such report available – gives the country’s bulk water resources a grade of D-. This low grade indicates a risk of failure, brought about largely by

⁸² Ramaphosa, “State of the Nation Address – 2026 Highlights”, op. cit., p. 11.

insufficient maintenance.⁸³ Sanitation, including wastewater treatment, received a C- (satisfactory for now) in major urban areas but an alarming E- (unfit for purpose) in all other areas.⁸⁴ Commented SAICE: “Over the last decade there has been a major loss of senior engineering personnel from the DWS, mainly due to the retirement of staff – currently more than 100 senior level engineering posts are vacant.” This exodus had cost the department much of its “institutional knowledge and strong technical skills base” and put its capacity under “extreme pressure.”⁸⁵

In 2021 the Department of Planning, Monitoring and Evaluation in the Presidency cautioned that only three out of the country’s nine water boards – the state-owned entities responsible for bulk water supply to metros and municipalities – were still technically efficient. In addition, “at least a third of the 144 municipalities that were water services authorities were regarded as dysfunctional and more than half had no, or very limited, technical staff.” Moreover, “out of 278 municipalities in South Africa, 202 were without civil engineers.” This assessment seems too optimistic, however, for the 2022 SAICE report indicates that almost all municipalities lack engineers and hence can no longer draw on their crucial “problem-solving skills and depth of knowledge.”⁸⁶

The DWS tends, however, to discount the importance of engineering expertise. Soon after Mr Ramaphosa’s *State of the Nation Address* in February 2026, *Business Day* reported that “engineers or water specialists accounted for just 21% of non-executive directors across seven water boards, raising questions about whether those charged with safeguarding the country’s ageing bulk water infrastructure possessed the technical know-how as taps ran dry.” Even when executive directors were also taken into account, the report added, “engineers averaged just three seats on a 12-member board.”⁸⁷

The DWS seemed unconcerned, however, telling the newspaper that “board members are appointed primarily to provide strategic oversight and governance, not to perform operational or technical functions.” This underestimates the importance of engineering skills in resolving water problems.

According to SAICE president Chris Roth (as *Business Day* reports): “Effective oversight requires the ability to interrogate technical designs, validate specifications, assess workmanship quality, and confirm compliance with applicable contractual standards... Without in-house engineering expertise, institutions cannot adequately supervise external service providers and provide contract management. This increases the risk of poor workmanship, cost overruns, and long-term performance failures.”⁸⁸

⁸³ SAICE, 2022 Infrastructure Report Card, pp, 6, 8. <https://saice.org.za/downloads/SAICE-2022-Infrastructure-Report-Card.pdf>

⁸⁴ Ibid, pp. 6, 8.

⁸⁵ Ibid, p. 23.

⁸⁶ <https://www.businesslive.co.za/bd/national/2021-03-25-presidency-supports-calls-for-independent-water-regulator/>; SAICE, 2022 Infrastructure Report Card, pp17, 18.

⁸⁷ Khumalo, K, “Technical skills dry up in SA’s water boards,” *Business Day*, 23 February 2026. <https://www.businessday.co.za/news/2026-02-23-technical-skills-dry-up-in-sa-water-boards/>.

⁸⁸ Ibid.

SAICE CEO Sekadi Phayane-Shakhane further sums up the need for engineering expertise, saying (again as *Business Day* reports): “Engineering judgement is required to prioritise upgrades based on risk exposure, redundancy requirements and system vulnerability modelling. In the absence of technical expertise, capital expenditure may be driven by short-term affordability or political pressure rather than engineering risk mitigation.”⁸⁹

Other technical skills are badly needed too. In the words of Dr Sean Phillips, Director General of the DWS: “Water and wastewater treatment are technical, industrial processes. They need skilled operators, engineers, and managers who follow strict procedures. Where municipalities do not employ people with the right qualifications, systems start to slip. Maintenance is delayed. Standards are not met. Over time, infrastructure degrades and service quality drops.”⁹⁰

The shortage of engineering and other technical skills is largely to blame for the steady deterioration of wastewater treatment plants. By 2015 these plants were functioning so poorly that more than 3.6 billion litres of untreated or partially treated sewage were being returned to rivers and dams every day. That total has since gone up to some 5bn litres a day as wastewater treatment has further deteriorated, says independent water expert Professor Anthony Turton.⁹¹ The state – which has appointed itself the “custodian” of all water resources and claims to be safeguarding them for the benefit of all South Africans – has thus become the single largest polluter of water in the country.⁹²

The daily discharge of large quantities of poorly treated sewage holds major health risks. Among other things, it is driving the eutrophication of many dams and promoting the growth, as Professor Turton warns, of a dangerous form of blue-green algae known as cyanobacteria.⁹³ One of the most common species of cyanobacteria produces a potent toxin, called microcystin, which has long reached levels in South Africa that are “amongst the highest ever measured in the world”. Adds Professor Turton: “Microcystin toxin levels become a concern in developed countries at three orders of magnitude *below* the levels commonly found in South Africa.”⁹⁴

Limited revenue is also a major constraint. The 2019 Master Plan for water estimated that R90bn a year would be needed over the next decade to overcome the maintenance backlog and start meeting other needs.⁹⁵ But, as Professor Turton points out, annual budgetary allocations are generally well below this sum, while many municipalities and other state entities either

⁸⁹ Ibid.

⁹⁰ Centre for Enterprise and Development (CDE), “Water Services: A discussion with Dr Sean Phillips, DG Water and Sanitation,” Johannesburg in Brief, February 2026. <https://cde.org.za/johannesburg-in-brief-water-services/#>.

⁹¹ Turton, “Sitting on the horns,” p. 11; <https://www.dailymaverick.co.za/article/2023-02-02-when-crises-collide-water-is-south-africas-next-perfect-storm/>.

⁹² Turton, “Water Pollution,” pp. 6 – 8.

⁹³ *Farmer’s Weekly*, 31 August 2018.

⁹⁴ Turton, “Sitting on the horns,” p. 14; Turton, “Water pollution,” pp. 7 – 8.

⁹⁵ Master Plan, p. 48. <https://www.businesslive.co.za/bd/opinion/2022-03-03-mike-muller-there-are-no-water-supply-backlogs-just-difficult-decisions/>.

under-spend their budgets or fritter much of the money away – often through rampant tender corruption.⁹⁶

In December 2023 (and for the first time since 2014) the DWS finally released what are supposed to be annual “Blue” Drop, “Green” Drop, and “No” Drop reports, dealing respectively with drinking, waste, and non-revenue water. As the *Financial Mail* reported, these assessments (which remain the most recent compiled by the DWS) show that:⁹⁷

- “47% of drinking water systems are in a poor or critical state of performance;”
- “66% of wastewater treatment works are in the high or critical risk category;” and
- “almost half [46%] of the country’s treated water is considered non-revenue water.”

“Non-revenue” water means water which is either lost to leaks – generally from poorly maintained control valves, transfer pipelines, reservoirs, and reticulation systems – or is never billed or paid for because of meter manipulation or other forms of water theft.⁹⁸ That almost half the water supplied by water services institutions now leaks away or is never paid for helps explain why water consumption in South Africa averages 237 litres per person per day, almost 40% higher than the global average of 173 litres. It also brings many further problems. As Dr Phillips explains: “[It] leaves many water services operating at a loss. When revenue does not cover costs, maintenance is deferred. Skilled staff are not hired or retained. Infrastructure continues to deteriorate.”⁹⁹

Other revenue problems also need to be resolved. All payments made to municipalities for water services should be ring-fenced for water provision, not siphoned off for other purposes. This is also what Section 20(1) of the Water Services Act already requires, which means this rule needs to be properly enforced rather than replaced by others, as the Bill envisages.¹⁰⁰

In addition, municipalities need to be far more effective in collecting the large sums owed to them, which totalled R416bn in March 2025. That sum was well up on the R347bn that had remained unpaid the previous year.¹⁰¹ The problem of unpaid municipal debt is thus escalating, rather than diminishing – largely because there is no political will to address it.

⁹⁶ Turton, “Sitting on the Horns,” p. 19.

⁹⁷ <https://www.businesslive.co.za/fm/opinion/on-my-mind/2023-12-14-shirley-de-villiers-frightening-future-as-safe-water-dries-up>

⁹⁸ Master Plan, pp. 10, 60; <https://www.moneyweb.co.za/news/south-africa/gautengs-biggest-cities-are-out-of-water-while-the-dams-are-full/>; <https://www.engineeringnews.co.za/article/you-think-load-shedding-is-bad-water-shedding-is-far-worse-2022-03-17/r>; <https://www.biznews.com/interviews/2023/12/06/sa-could-have-no-safe-drinking-water-in-5-years>

⁹⁹ CDE, (CDE), “Water Services: A discussion with Dr Sean Phillips,” op. cit.

¹⁰⁰ CDE, “Water Services: A discussion with Dr Sean Phillips,” op. cit. Here, Dr Phillips might seem to be suggesting that additional rules are needed to achieve this. This is not so, however, since Section 20(1) of the Services Act already contains the necessary provisions. If the existing rules are not being adequately forced, then this is the problem that needs to be resolved.

¹⁰¹ “Households owe most of R416bn in municipal debt as collections fall short,” *Bizcommunity.com*, 19 June 2025. <https://www.bizcommunity.com/article/households-owe-most-of-r416bn-in-municipal-debt-as-collections-fall-short-582040a>; Puchert, D, “Municipalities urged to collect R347bn to settle Eskom debt,” *BizNews*, 30 August 2024. <https://www.biznews.com/energy/2024/08/30/municipalities-r347bn-eskom-debt>.

The World Bank has identified water deficiencies as one of the three biggest risks for doing business in South Africa. As the Democratic Alliance has commented: “The escalating water and sanitation crisis (as illustrated by the latest Blue, Green [and No] Drop reports) is the direct result of poor governance, financial mismanagement, and widespread corruption brought about by the ANC’s policy of cadre deployment applied in every [state] structure or entity.... While the government acknowledges these failures, it remains impotent in solving them.”¹⁰²

4.3 The Bill cannot help solve the growing water crisis

The Bill cannot address any of the underlying reasons for the growing water crisis. Poorly performing water services institutions which are critically short of engineering, technical, financial, and other skills will not magically improve their performance once many more onerous and unnecessary rules have been added to the generally sound provisions of the Water Services Act of 1997.

The revenue needed for essential water services – which is already being whittled away by non-revenue water, wasteful spending, corruption, and the diversion of money from infrastructure to salaries – will not expand under the Bill. On the contrary, much of this scarce revenue will instead be allocated to the salaries and benefits of the hundreds of additional officials who will no doubt be appointed to administer the new licensing and enforcement systems. Some of the officials thus appointed could also start milking the collapsing system for their own benefit: perhaps through inflated prices in procurement contracts for water tankers and the like. As the South African Human Rights Commission reported back in 2013, “[water] tenders are often awarded to the family members of friends of officials, who are then unable to complete their job promptly or adequately.”¹⁰³ The Bill will further promote this trend, rather than help bring it to an end.

The Bill will also result in more centralised control over water services, from the national executive down. Its proposed licensing system, in particular, raises concerns as to how this system will align with section 156 and Part B of Schedule 4 of the Constitution, under which municipalities are entrusted with important water services functions. Such concerns are particularly pressing where the municipality itself acts as both water services authority and water services provider, as is often the case. Requiring a municipality to be “licensed” to perform what is in substance its own constitutional function is nonsensical. It also risks subordinating municipal executive authority to national administrative approval.

Dr Phillips has made valuable suggestions as to what reforms are needed. In a recent discussion with the Centre for Development and Enterprise (CDE), a civil society organisation, he emphasised (as CDE reports) that “the critical issue is to replace current, dysfunctional structures with effective ones. In his view, any model will fail unless it incorporates three elements:

- competition, which leads to the best providers being rewarded with contracts and customers, and the worst losing out;

¹⁰² <https://www.politicsweb.co.za/politics/sas-water-and-sanitation-crisis-is-a-crime>

¹⁰³ *Mail & Guardian* 21 July 2017

- incentives that ensure that companies will increase their revenue if they supply cleaner water at a lower cost to more customers; and
- regulations that hold operators to clear standards.”¹⁰⁴

Dr Phillips also gave examples of water services that are operating well, saying: “Cape Town’s water utility...[is] a publicly owned entity that remains within the municipality but is fully in control of its core functions and reinvests the money it generates into the service.” In addition, in the Ilembe District Municipality in KwaZulu-Natal and at Mbombela in Mpumalanga, “long-term concessions with private operators have been established and have generated impressive improvements in the supply of drinkable water.”

5 The way forward

The Bill should be scrapped. There is no need for the licensing system it proposes, which will add to costs, centralised control and regulatory complexity without achieving any improvements in water services delivery. If anything, it will make existing problems worse by wasting scarce revenue on the deployment of hundreds more cadres, while failing to overcome skills shortage and increasing the scope for wasteful spending and corruption.

In addition, the government already has the power to intervene in failing water services authorities under the Water Services Act of 1997, which is a largely sound statute covering all key needs. It also already has the power to prosecute failing municipalities and charge municipal managers in their personal capacities, as Mr Ramaphosa noted in his 2026 *State of the Nation Address*.

The key focus should instead fall on developing a new and far more effective model for water services delivery. This, as Dr Phillips says, should encourage competition between water providers and incentivise companies to “supply cleaner water at a lower cost,” under regulations that are clear and effectively enforced where necessary.

Municipalities which already the capacity to provide efficient water services should be left to get on with the job. Where municipalities lack engineering, technical and other capacities, the solution lies not in more top-down bureaucratic control but rather on entering into effective public/private partnerships. These must be concluded under open and transparent tendering processes that are freed from preferential procurement obligations and achieve “value-for-money” in every contract concluded, as the Zondo commission recommended.

The many other damaging policies contributing to water delivery failures must also be terminated. These include the ANC’s cadre deployment policy, along with all race-based targets in employment, management, procurement and elsewhere. These policies worsen skills shortages and encourage corruption. They also benefit only a small and often politically connected black elite, while greatly harming the great majority of black South Africans.

¹⁰⁴ CDE, “Water Services: A discussion with Dr Sean Phillips,” op. cit.

It is time to call a halt to all these policies and to abandon a Bill that is unnecessary and harmful. Instead, the aim must be to usher in the efficient, competitive and innovative water delivery mechanisms the country so badly needs.

South African Institute of Race Relations NPC

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