



**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**  
**SYNOPSIS**

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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 in 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 the *New Clicks* case in the Constitutional Court, Mr Justice Albie Sachs stated: “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*".

To help the public "know about the issues," the Committee should have provided a comprehensive evaluation of the likely socio-economic impact of the Bill. A report of this kind is also what is needed under the government's own *Guidelines for the Socio-Economic Impact Assessment System (SEIAS)*. Instead, however, the Bill has been released for public comment without an accompanying final SEIA report.

Hence, no comprehensive evaluation of the Bill's implementation costs and likely economic impact has been provided. Nor has the public been informed that the Bill is unnecessary. This is because the existing Services Act already provides sound rules which need to be better enforced, rather than amended and extended. In addition, the Bill's implementation costs are likely to divert scarce revenues from water infrastructure needs to ineffective top-down bureaucratic controls unable to address the underlying reasons for water delivery failures. This is likely to exacerbate the mounting water crisis in the country. It will also result in worsening water cut-offs (similar to electricity load-shedding), which will cause great harm to all South Africans. Persistent water cut-offs could also lead to disinvestment, job losses, and increased poverty.

In addition, 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.

### **3 The Content of the Bill**

The detailed provisions of the Bill and the many difficulties these clauses are likely to generate are described in the IRR's full submission. The aim of this *Synopsis* is to provide a bird's eye view of what the existing Services Act already says; of the Bill's key requirement for new operating licences; and of the problems this new obligation is likely to cause. The *Synopsis* also highlights the primary reasons for South Africa's mounting water crisis. In conclusion, it makes recommendations as to how key problems can effectively be overcome.

#### **3.1 Background: what the existing Water Services Act provides**

Under the existing Water Services Act of 1997 all "water services authorities" (the City of Joburg, for instance) must ensure efficient, affordable and sustainable access to water services. They may deliver water services to consumers themselves, but they may also contract with "water services providers" (Joburg Water, for example) to do so. Any such water services provider must obtain the "approval" of the relevant water services authority and must enter into a contract with it. The minister has the power to "prescribe compulsory conditions to be included in such a contract," so as to ensure that "water services are provided on an efficient, equitable, cost-effective and sustainable basis," that "the terms of the contract are fair and equitable," and that there is "compliance with the Act."

Every water services authority must also make bylaws setting out conditions for the delivery of water services. These bylaws must cover "standards of service," including "quality standards,"

how water services works are to be installed, operated and inspected, and how tariffs are to be determined and payment enforced. These bylaws must also seek to prevent the “unlawful or wasteful use of water.”

The minister is already obliged to “monitor the performance of every water services institution,” including every water services provider, to ensure compliance with all relevant standards and other obligations. Under Section 63 of the Services Act, the minister also 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. 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. Since 1997, thus, the minister has had the power to take over the functions of poorly performing water services authorities – but has failed to use these powers to good effect.

### **3.2 The need for additional operating licences under the Bill**

Under the Bill, all water services providers (such as Joburg Water) will still need the approval of the relevant water services authority (the City of Joburg). The minister will still be able to prescribe the compulsory conditions to be included in such contracts, but will also have to ensure that these conditions deal expressly with various issues listed in the Bill, such as maintenance, planning, budgeting, and investment. However, all these issues are already dealt in the Services Act: either under the municipal bylaws that 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 the existing provisions of the Act and the minister’s new compulsory conditions are to be resolved.

In addition to obtaining the water services authority’s approval and entering into a contract that complies with the minister’s compulsory conditions as well as existing municipal bylaws and other relevant provisions in the Services Act, a water services provider will have to obtain an operating licence from a new licensing authority: the Director General of the DWS and his or her officials.

The Bill sets out relevant criteria for the granting of a licence, but much of its wording – regarding, for example, the “minimum competency” required of a water services provider – is vague. Licences will be granted to those with “prescribed minimum scores”, but it remains unclear how “minimum scores” will be computed, what licence conditions may be introduced, when and how licences will be subject to review, and what reporting requirements may be imposed.

A licensee that contravenes any of its licence conditions may be instructed to rectify these defects. Those that persistently fail to do so “must” have their licences revoked. However, the delivery of water services must nevertheless continue when revocation occurs. This is likely to impose impossible burdens on water services authorities such as the City of Joburg.

If Joburg Water has its licence revoked, the City of Joburg must still ensure that potable water continues to be delivered on a daily basis to its 6 million or so residents and to all businesses too. Yet the City of Joburg will not have an operating licence to do this.

The City of Joburg will then, it seems, be compelled to outsource the water services delivery function to some other entity. The Bill assumes 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 omits to clarify whether the City of Joburg – and hence all its ratepayers and residents – will have to bear the financial costs of this outsourcing arrangement, but this seems likely.

Many other complications arise. Joburg Water will still have its contract with the City of Joburg, under which it will still be obliged to deliver water services, even though the DG of the DWS has stopped it from doing so by revoking its operating licence. How is the resulting breach of contract by Joburg Water to be resolved?

There are also important constitutional issues to consider. Under Section 156 and Part B of Schedule 4 of the Constitution, the City of Joburg has the right to provide certain water services, including the delivery of potable water, and to administer them too. Effectively, moreover, Joburg Water is part of the metropolitan authority. Requiring one part of 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.

In addition, there is no need to introduce the operational licence for which the Bill provides. All relevant service obligations are already covered in municipal bylaws, the compulsory contract conditions the minister already has the power to lay down, and various other provisions of the Services Act. If the City of Joburg fails to ensure adequate water delivery by Joburg Water, the minister already has the power to ask the Gauteng provincial administration to intervene. If this fails to bring about improvements, the minister already has the power to take over the water delivery function until relevant deficiencies have been rectified.

This is a more sensible solution than demanding that Joburg Water obtain an additional operating licence on conditions that may conflict with those already in place under the Services Act. In practice, moreover, the supposed “remedy” that the Bill proposes – the compulsory revocation of its operating licence by the DWS – is likely to precipitate an even greater water delivery crisis. It could well spark a major constitutional dispute too. It could also put the DWS in breach of the “cooperative governance” provisions in Chapter 3 of the Constitution.

### **3 The reasons for South Africa’s mounting 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 retired or resigned to help make way for the deployed cadres of the African National Congress (ANC) 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 insufficient maintenance. 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. 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.”

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.”

According to SAICE president Chris Roth (as *Business Day* reported in February 2026): “Effective oversight [of water services] 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.”

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.”

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. But, as independent water expert Professor Anthony Turton points out, annual budgetary allocations are generally well below this sum. In addition, many municipalities and other state entities either under-spend their budgets or fritter much of the money away: often through rampant tender corruption.

In addition, almost half [46%] the country’s treated water is “non-revenue” water. “Non-revenue” water is 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. This primarily 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 notes: “[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.”

## **5 The way forward**

The Bill cannot address any of the underlying reasons for South Africa’s 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.

Many of the officials thus appointed to the DWS 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 or friends of officials, who are then unable to complete their job promptly or adequately.” The Bill will further promote this trend, rather than help bring it to an end.

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;
- 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.”

Dr Phillips has also given 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.”

All these factors make it clear that the Bill should simply be scrapped. There is no need for the new licensing system it proposes, which will add to costs, centralised control and regulatory complexity without achieving any improvements in water services delivery.

The key focus should instead fall on developing a new and far more effective model for water services provision. This, as Dr Phillips says, should encourage competition between water

services 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 have 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 in 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 race-based targets in employment, management, procurement and elsewhere. These policies worsen skills shortages and encourage corruption. In addition, they benefit only a small and often politically connected black elite, while greatly harming the great majority of black South Africans.

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**

**28 February 2026**