

# Environmental Law

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## South Africa

- South Africa's 2026 National Water Amendment Bill: What the proposed ban on private water trading means for water rights



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## South Africa's 2026 National Water Amendment Bill: What the proposed ban on private water trading means for water rights

South Africa's growing water insecurity has moved from an environmental concern to a central economic and regulatory challenge. Deteriorating infrastructure, recurring supply disruptions, unlawful water use and increasing pressure on strategic water resources continue to strain the country's water governance framework. Against this backdrop, the 2026 National Water Amendment Bill (NWA Amendment Bill), introduced to the National Assembly on 21 January 2026, proposes the most significant overhaul of the National Water Act 36 of 1998 (NWA) in over a decade.

For sectors that rely on predictable access to water, such as agricultural and industrial water users, the NWA Amendment Bill signals a decisive policy shift. The bill proposes broad changes, including the prohibition of private water trading, the expansion of regulatory powers, as well as strengthened compliance and enforcement provisions. The effect of these changes could reshape how water rights are held, transferred and used across all sectors.

In light of these changes, we need to consider, from an environmental legal perspective, the manner in which the proposed NWA Amendment Bill could affect water-use rights, licences and commercial operations.

### **The proposed prohibition of private water trading**

Currently, section 25 of the NWA allows for the temporary transfer of water use authorisations. For instance:

- a person authorised to use water for irrigation may temporarily allow the use of that water for a different purpose or on another property in the same vicinity for a similar purpose; or
- a person authorised to use water may surrender that water use entitlement to facilitate a third party's licence application.



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In connection with these provisions, the 2023 Constitutional Court judgment in *Minister of Water and Sanitation and Others v Lotter N.O. and Others* (CCT 387/21) [2023] ZACC 09, confirmed that (in the absence of any clear prohibition) private persons may engage in “private water trading” by agreeing on fees for the surrender of water use entitlements under section 25 of the NWA.

The 2026 NWA Amendment Bill directly intervenes in this practice by proposing an explicit prohibition against trading in water-use entitlements. Under the amended framework, all surrendered entitlements would revert to the Minister of Water and Sanitation (Minister) for reallocation in the public interest.

The amendments further propose capping the period of temporary transfers at 24 months, and that surrenders of water use entitlements may only facilitate the holder’s own licence application for the use of water in respect of other land belonging to the holder, as opposed to third-party applications.

## Existing lawful water uses

The NWA Amendment Bill also proposes the repeal of section 33 of the NWA, which currently allows persons to apply for certain historical water uses to be declared as existing lawful water uses (ELWUs).

The NWA Amendment Bill seeks to end this transitional mechanism, which was established in 1998 and requires all users who have not yet obtained licences or general authorisations to regularise their water use through formal processes.

The responsible authority will further be empowered to impose new conditions on the continuation of ELWUs by bringing such water uses within the ambit of the licensing/general authorisation framework of the NWA, introducing greater regulatory oversight over historical water uses and limiting the extent to which such uses automatically attach to land.

## Reallocation powers and strategic water source areas

The NWA Amendment Bill empowers the Minister to reallocate water use authorisations between water sectors, provinces or catchments in the public interest. This would centralise decision-making authority over the allocation and redistribution of water resources at a national level and reinforce the state’s role as the national custodian of water resources. For water users, active and efficient utilisation of authorised volumes will become critical, as unused or underutilised allocations may become vulnerable to reduction or reallocation.

The bill further introduces a framework for the identification and protection of strategic water source areas. The Minister will be empowered to gazette a list of these areas and to regulate activities within and around them. Critically, water use licences may not be granted for certain activities within identified strategic water source areas, including opencast and underground mining, forestry plantations and certain agricultural activities. These provisions signal an increased focus on protecting catchment areas considered critical to South Africa’s long-term water security, with direct implications for the mining, forestry and agricultural sectors.



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## Penalty provisions and director liability

The NWA Amendment Bill significantly escalates the consequences of non-compliance. Current penalty provisions, which provide for unspecified fine amounts and imprisonment of up to five years, will be replaced with fines of up to R10 million and imprisonment of up to 10 years for the most serious offences.

The new provisions also introduce personal liability for directors of companies and municipal managers who fail to take all reasonable steps to prevent offences under the NWA. Courts may further order the recovery of rehabilitation costs and any financial benefit derived from the offence. In practical terms, these amendments further emphasise that environmental liability can no longer simply be absorbed as a corporate cost of doing business.

## What should affected organisations do now?

Stakeholders across all affected sectors, particularly agriculture, mining and industry, may encounter material commercial and operational impacts as a result of these proposed amendments. The proposed restrictions on tradable water use entitlements, together with the Minister's expanded reallocation powers, are likely to reduce the flexibility historically associated with water rights and affect projects reliant on long-term water access.

In anticipation of these amendments, organisations that depend on water-use entitlements, licences or water trading arrangements should take proactive steps to assess the potential impact on their businesses and their current water use and licencing arrangements.

Early engagement, strategic planning and specialist legal advice will be critical in navigating South Africa's evolving water regulatory landscape.

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