PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
SECTION 1 - PURPOSE OF THE ACT	
A. CHESTNUTS FARMING PARTNERSHIP The right to use water being divorced from property ownership is not accepted	This is one of the accepted principles which cannot be reopened for debate.
B. ASSOCIATION OF IRRIGATION BOARDS - KWAZULU NATAL Clause 1 1.1 Integrated Catchment Management One of the signle achievements emerging from the process of formulating and drafting the Bill has been the recognition of the vital necessity of integrated catchment management to ensure sustainable quantities of water of acceptable quality, yet the preamble to the Bill and the Bill itself lack specific reference to what should be the cardinal principle of the new legislation. The preamble refers only to the formation of "integrated management" instead of recording that the integrated management of entire catchments is a primary objective of legislation which seeks to preserve and extend the provision of sustainable quantities of water of suitable quality. It is axiomatic that the latter objectives cannot be attained unless entire catchments are managed from the sources of all their water resources to the sea.	For purposes of the preamble, the reference to "integrated management" is regarded as sufficient. The water management strategies are dealt with in detail in a separate chapter where reference is also made to water management areas.
1.2 A more positive approach to the wording of Section 1(1)c would be: "preventing the application of racial and gender discrimination in respect of access to water".	The wording of the Constitution has been followed.
1.3 Because of the immense benefit to communities and the critical fluctuation in the yields of water resources (ranging from severe scarcity in times of drought and hugely excessive volumes in times of flood, as well as seasonal fluctuations) it is essential for Section 1 to be amplified to include a reference to water storage in the following terms:- "recognising the need for and encouraging the storage of water against times of water shortage."	It is not practical to add to the preamble all the dimensions of effective water management. The storing of water is one of the recognised water uses. (clause 21)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
C. JUKSKEI RIVER CATCHMENT WATER QUALITY STEERING COMMITTEE (JUKSKEI) Section 1 (1)(c) The Task Team felt that, as the Preamble already addresses the issue of fair and equitable access to water, and that this is also ensconced in the Constitution, this statement is superfluous. The meaning and purpose of this clause are also not clear, and it does not fit with the rest of the clauses. The Task Team recommends that this clause is removed.	This section reflects the purpose of the Act of which the statement referred to is a fundamental requirement. The proposal to remove the clause is not supported.
D. SA ASSOCIATION OF WATER BOARDS (SAAWB) It is suggested that the purpose of the Act be expanded to include the need to improve the health of South Africa's water resources. The preamble should be modified to read: *"These guiding principles recognise the basic human needs of present and future generations, the need to protect and improve the health of the water resources, the need to share ..."*	This is already covered in item 5 of the preamble to the Bill by the reference to the protection of the quality of water resources.
E. SOUTH AFRICAN INSTITUTE OF CIVIL ENGINEERING (SAICE) Section 1(1)(c) is superfluous, as it follows logically from (a) and (b). It is a political statement that does not belong in an Act which is to regulate the use of one of the critical resources in South Africa in an objective way.	The Department does not agree.
F. AJ VAN SCHALKWYK: CIVIL ENGINEER INVOLVED IN WATER SUPPLY FOR AGRICULTURAL AND MUNICIPAL USE Chapter 1 1. The explanations and preamble to the Bill swarms with propagandistic and political phases which betrays the compilors' actual purpose with the Bill: "unevenly distributed national resource" "belongs to all people"	The contents of the explanation and the preamble is based on principles accepted in the White Paper.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
"the discriminatory laws and practices of the past has prevented equal access to water" "The need to redress the results of past racial and gender discrimination" 2. The propaganda phrases are absurd, false and offensive. The propaganda is obviously intended to create perceptions with the compilors' less informed voters and the outside world to pave the way for expropriation of vested rights and/or discriminatory taxes on certain land owners. The following phrases point thereto: "equitable allocation" "redistribution of water" "provide for charges for all forms of water use" 3. The problem which the Bill purports to correct does not exist at all. Nobody "dished out" or "distributed" water resources. The water naturally belongs to the land. If somebody, for instance a local authority, needs water, land with a water right is purchased and used for municipal purposes. It is also not a financial problem, because with normal market forces in operation, an agriculturist can never compete with a local authority in the purchase of water or land.	
SECTION 2 - DEFINITIONS A. BUSINESS SOUTH AFRICA (BSA) *Definition of "Reserve"* 1. It is understood that the quality referred to for basic human needs does not imply potable water. The definition should be qualified to make this clear.	The resource quality objectives will address this requirement as a site specific requirement. It should be understood that some form of purification will have to take place to make the water potable.
Definition of "waterworks" 2. This definition includes any borehole, structure, earthwork or equipment installed or used for or in connection with water use. It would include waste water treatment facilities in terms of the water use	Water services works required for water use will have to be licensed in terms of the Bill in relation to the disposal of waste or water containing waste which may be produced thereby. Nothing in the Water Services Act relieves a person from this requirement.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
specification in clause 22(e), (g) and (h). As it was understood that waste water treatment facilities would be regulated in terms of the Water Services Act the definition should be further clarified by specifically excluding water services works as defined in the Water Services Act.	
B. COSAB <u>SECTION 2(1)(r)</u>	
The definition of "reserve" makes an allocation for "basic human needs for all people who are, or who may be supplied ..." There is no clarity on the time frame of the people "who may be supplied". Is this over the next 5,10,15,50 or 100 years? It is recommended that demographic and development projections be capped at a maximum of 10 years, given the uncertainty of these projections and the impact of this reserve on total water allocation.	The comment will be considered and discussed further in the clause by clause discussion on the Bill.
C. JUKSKEI <u>SECTION 2(1)(a)</u>	
The definition of an aquifer on the one hand identifies geological formations that hold water, with no description of the quantity, but in the second part requires water movement to be "appreciable". It is recommended that the word "appreciable" is either removed or also introduced in the first part of the definition.	See F- SAICE below (page 6)
<u>SECTION 2(1)(r)</u>	
The definition of the reserve for basic human needs should be reconsidered. As it stands it could be interpreted that any person anywhere in South Africa can lay claim to "his/her" part of any water resource in the country, as they all <u>may</u> be supplied from such a source. It should be made clear that the reserve for basic human needs only refers to those people who reasonable can be seen to be dependent on a water resource. For instance, the reserve in the Orange River should not include the residents of Gauteng. The water that is transferred should be part of the water that is considered for beneficial use.	See B- COSAB above.(pg$)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
A second consideration is that the reserve for basic human needs should also be spatially defined. It can make a significant difference to resource development if the reserve is abstracted at the top of the catchment, or at the bottom. This aspect becomes significant if it is considered that the ecological reserve can be satisfied wholly or partially by allowing the reserve for basic human needs to flow to the lowest point of the catchment before it is abstracted.	The Bill provides for this in that the Reserve need not be determined uniformly for the whole water resource, but can be for part of a water resource (See clause 16(1) of the tabled Bill).
D. RURAL DEVELOPMENT NETWORK SERVICES (RDSN)	
The Bill of Rights in the Constitution of South Africa and as such reflected in the Department's White Paper states that "everyone has the right to have access to sufficient water". Up to now access to water is been dominated by a privileged minority while the majority of the population enjoys little or no water security at all. Up to now the department has followed the short-term aim of the Reconstruction and Development Programme which provides the right of everyone to 25 liters of safe and clean water per day. We would like to see that this be increased to a supply of 50 liters per day, which is a more realistic minimum for a proper health impact. For us 25 liters can only be an interim figure. There should be no hindrance to the design and implementation of a system capable of supplying 50 liters. Even if 50 liters of water would be supplied to everyone, this would only amount to 3% - 4% of the total consumption of water in the whole country.	No quantity for basic human needs is prescribed under the Bill. This is a policy issue.
In addition, the definition of the reserve should be based on "requirements to support community health and a reasonable standard of living" rather then just basic human needs.	Although every endeavor will be made to maintain rivers in as healthy a state as possible, potability cannot be achieved for all rivers.
E. SA ASSOCIATION OF WATER BOARDS	
<u>CHAPTER 1 SECTION 2.1</u> A new definition, that of "catchment management services" needs to be included. As discussed under Macro issues, Water Boards and water user associations are expected to provide catchment management services. Similarly, another new definition, that of "catchment management services provider" needs inclusion.	It is not one of the basic functions of a water board to provide catchment management services. A CMA may delegate catchment management functions under this Bill to a water board, should it wish to do so. The concept of "catchment management services provider" does not fit in with the structure of the Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Two new subsections should be inserted and should read: *"catchment management services means ... drafters to include detail..."* *catchment management services provider means any person who provides catchment management services to a Catchment Management Agency or to other water management institutions".* CHAPTER 1 SECTION 2.1y	
The definition of "water management institutions" does not include Water Boards in the list of institutions. As discussed under Macro issues, many Water Boards are de facto water management institutions and as such this definition should be expanded to include Water Boards explicitly. Section 2, subsection 1.y should be modified to:- *"means a Catchment Management Agency, water user association, a Water Board, a body responsible for…"*	Water management is not an inherent function of a water board. A CMA may delegate some water management functions to a water board should it wish to do so. A water board is responsible for bulk water distribution. This function may come into conflict with some management functions. Rand Water Board is aware of this potential conflict and has stated so in its comments. (See Rand Water D under clause 81)
F. SAICE	
The definition of an aquifer in Section 2(1)(a) needs to be adjusted. The word "appreciable" should be removed.	Note has been taken of the comment. This is being looked into and the Departments' view will be made known at the clause by clause discussion.
The definition of the Reserve for basic human needs in Section 2(1)(r)(i) should be reconsidered. As it stands, it could be interpreted that any person anywhere in South Africa can lay claim to "his/her" part of any water resource in the country, as they all may be supplied from such a source. It should be made clear that the Reserve for basic human needs only refers to those people who reasonably can be seen to be dependent on a water Resource. For instance, the Reserve in the Orange or Tugela Rivers, should not include the needs of the residents of Gauteng. The water that is transferred should be part of the water that is considered for beneficial use. It should also be noted that the quality for human use and the ecology are not always compatible, such as in an estuary. Some order of preference should be stated.	See B- COSAB above.(pg 4)
G. UCT - ENVIRONMENTAL LAW UNIT	
Coastal marine water" (clause 2(1)(f). In considering this definition, account must be taken of the 1982 Law of the Sea Convention (hereafter: LOSC)	The functions referred to in article 56 of the convention by UCT goes beyond the Department's involvement in water quality

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
which South Africa acceded to in December 1997 as well as the Maritime Zone Act (15 of 1994)". Article 56 of the Convention headed “Rights, jurisdiction and duties of the coastal State in the exclusive economic zone" provides: 1. In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy form the water, currents and winds (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research (iii) the protection and preservation of the marine environment; (c) other rights and duties provided for in this Convention. 2. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part V1. The Maritime Zones Act declares the sea with a distance of 200 nautical miles from baseline to be the exclusive economic zone (EEZ) of the Republic (section 7). Although the Act also claims a continental shelf, in conformity with the LOSC. (Section 8), a coastal state only has jurisdiction over the area for purposes of exploiting natural resources. Both the LOSC and the Act recognise the continental shelf as legal zone over which a coastal state has certain sovereign rights and a complicated	matters, that is, land based activities which may detrimentally impact on the coastal marine waters, although it may fall within the mandate of the Department of Environmental Affairs and Tourism or other government departments.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
geologically based formula (article 76) allows it to extend beyond 200 nautical miles in certain cases. However, here the coastal state has jurisdiction only over the exploitation of sea-bed resources. It is accordingly anomalous to define coastal water with reference to the continental shelf, as international law does not grant coastal states jurisdiction over pollution matters in this zone. The point is that the EEZ provisions of the LOSC grant the coastal state jurisdiction for 'the protection and preservation of the marine environment' but the continental shelf doctrine does not. It would accordingly be more appropriate to define coastal marine waters with reference to the 200 nautical mile exclusive economic zone which is recognised in the Maritime Zones Act.	
3. Definition of 'Aquifer'(clause 2(1)(a)) The definition appears too wide because it includes geological formations which currently do not hold water and may not have done so for a considerable period of time. As currently drafted, it would cover the unsaturated zone on the surface, and particularly all clay. It seems most unlikely that this could have been the intention of the drafters of the Bill. The source of the problem is that the proposed definition departs from those usually employed for scientific and engineering purposes, which defines aquifers in terms of channels and/or usability. It would therefore be preferable to refer to 'saturation zone' as well as usability in the definition. The following alternative definition is proposed: *'a strata or group of interconnected strata comprising saturated earth material capable of conducting groundwater and of yielding usable quantities of groundwater to borehole(s) and/or springs'*	See F- SAICE above (pg 6)
4. Definition of 'Reserve' Clause 1(r) The current definition is vague and will be difficult to implement. By referring to 'water required' the definition implies an absolute amount of water. This will not always be possible to meet however, since the availability of water can fluctuate greatly. More precision is therefore needed as to how this requirement is to be calculated. More guidance is also needed as to which criteria the scientific community is to adopt in deciding water is 'ecologically sustainable development and use' as this is	The Reserve will be determined in accordance with natural cycle flows. These procedural matters will form part of the consultative process set out in the Bill and will be included in the resource classification system - See clause 12(2)(b)(i) of the Tabled Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
notoriously controversial. Furthermore, it is not clear whether 'basic human needs' in par (a) 1 is afforded the same weight as ecological needs (par (b)1). In some places, and at some times, there may not be sufficient water of an adequate quality available to meet both. To be capable of implementation, the definition must therefore spell out the relative weight that has to be attached to each of these priorities. The reference to 'quality' in this definition also needs elaboration.	When there is insufficient water to meet both aspects of the Reserve, the human needs must have preference, such as in situations of serious drought.
5. Definition of 'resource quality' (clause 2(1)(s) It is not clear why this definition of 'quality' also includes a reference to 'quantity'. These are normally understood to refer to different dimensions of a resource, and the concepts are indeed used in that way in the immediately preceding paragraph. As currently drafted this definition may therefore lead to confusion.	The quantity and quality aspects of a water resource is inseparable. It will be proposed to change the definition to read "resource quality". Resource quality comprises all the aspects of the quality of a water resource and the quantity of water therein.
G. CAPE WATER PROGRAMME ENVIRONMENTEK -CSIR In terms of Section 2 (1)(r)(ii) of the National Water Bill, the ecological reserve is that quantity and quality of water required to protect *aquatic* ecosystems in order to secure ecologically sustainable development and use of the relevant water resource. In terms of the Water Law Principles (1996) principle C.3. states that the long term sustainability of *aquatic and associated* ecosystems should be preserved. There seems to be some confusion within DWAF as to what should be protected in the ecological reserve. Some believe the reserve to include only rivers and wetlands. Those leading the development of methodologies to assess the reserve requirements (at the Institute for Water Quality Studies) follow the principles of the White Paper, which includes *associated ecosystems.* I would like to see *associated ecosystems* carried through to the National	The definition of the Reserve includes all aquatic ecosystems.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Water Law. If the intention to protect associated ecosystems is not clearly captured by the law it may be lost in years to come. This would mean that, for instance, the groundwater requirements of vegetation in semi-arid areas, would not have to be accounted for before issuing abstraction licenses and these critical ecosystems may be placed under stress and ultimately lost. I believe it is the intention to protect the environment in cases like this and that responsibility should be spelt out in the National Water Law.	
H. BREEDE RIVER CONSERVATION BOARD	
Section 2	
1. With the definition of "reserve" there should also be a definition of "basic human needs". This is a concept which is already being interpreted in many different ways and in respect of which certainty should be obtained. It will eliminate many problems later on.	See B- COSAB above.(pg 4)
I. UCT - Environmental Law Unit	
Wetlands	
While the specific inclusion of wetlands is welcome, the relevant clauses do not acknowledge that other departments need to be accommodated and at least referred to. The Department of Environment Affairs and Tourism for instance administers the 1971 Convention on Wetlands of International Importance Especially as Waterfowl Habitat (the Ramsar Convention) and 17 wetlands have been designated by South Africa under the Convention. The Department of Environment Affairs and Tourism has prepared a draft wetlands bill eventually to become a Wetlands Conservation Act, which should be dovetailed with the provisions this Act.	The involvement of other Government Departments will be dealt will under co-operative governance in clause 23(3)(4) of the Tabled Bill.
The current definition of 'wetlands' also encompasses estuaries (also defined) and thus overlaps with the Sea-Shore Act which refers to tidal waters and tidal lagoons.	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
SECTION 3 - NATIONAL GOVERNMENT IS PUBLIC TRUSTEE OF THE NATION'S WATER RESOURCES	
A. COSAB	
This section effectively nationalises all water within the country. As already mentioned, we are concerned about the capacity within the Department to implement the various proposals, and with the proposals for compensation (section 23). Schedule III, Clause 3 Clause 3(c) can only apply in respect of servitudes originally acquired under the procedures set out in Schedule III. It would be improper for the State to order the cancellation of servitudes acquired and registered in the ordinary course of business.	The Bill does not nationalise water within the country. It merely confirms national government's regulatory function in respect of water resources. The whole construction of the Bill is to provide for the introduction of new measures in a phased and progressive manner. Resource quality objectives and the Reserve can be determined provisionally so as not to hold up allocations if there is insufficient time to make final determinations. Further, it also provides for measures like general authorisations, and individual licences to make new development possible without reallocating the available water in any given area. The Bill furthermore provides for the delegation of powers to statutory bodies such as CMA's and water user associations. The Department feels that with all the above mechanisms, it will be able to develop the capacity to implement the Act.
SECTION 6 & 7 - CONTENTS OF NATIONAL WATER RESOURCE STRATEGY	
A. ASSOCIATION OF IRRIGATION BOARDS - KWAZULU NATAL	
Clause 6 2. National Water Resource Strategy	
2.1 This strategy must contain a definite commitment to integrated catchment management since the protection of the country's water resources ultimately depends on this concept.	This concept is contained in the Bill.
2.2 The determination of water management areas cannot therefore be divorced from catchments which comprise readily identifiable geographic areas or units of land without the complication of cadastral boundaries that may straddle the watersheds separating one catchment from another.	See clause 6(2) of the Tabled Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
2.3 The ability of the strategy to "provide for the requirements of the Reserve" is questionable unless it is restricted to the laying down of formulae for the calculation of the requirements of the Reserve. The requirements will differ not only from catchment to catchment but also from season to season and will thus fluctuate from time to time. No indication has been given as in how the requirements of aquatic ecocyctomo (see definition of "Reserve") are to be measured.	It will defeat the purpose of this clause if a formula was prescribed for the very reasons that the commentator sets out.
In any event if catchment management agencies are to be responsible for the establishment of catchment management strategies for their respective areas of jurisdiction the national water resource strategy should do no more than provide a broad framework within which the catchment management strategies will operate.	This is agreed.
B. ESKOM	
Chapter 2, Part 1, Section 7: Contents of the national water resource strategy. The national water resource strategy must subject to section 6(2)(a)- (b) provide for- (¡) the requirements of the reserve; (ii) international rights and obligations; (iii) projected future water needs; (iv) **strategic** water use in the national interest;	This has been accommodated in clause 6(1)(b)(iv) of the Tabled Bill, with some change of wording.
C. JUKSKEI RIVER CATCHMENT WQSC	
Comments on Chapter 2	
In both the case of the National Water Resource Strategy and a Catchment Management Strategy, comments have only to be considered once. There is no mechanism to either test the comments with various stakeholders nor does the final strategy have to be published for scrutiny. It is not desirable that the implementation of a management strategy be delayed <u>ad inifinitum</u> while stakeholder consultation takes place, but at the same time an unwanted strategy should not be unilaterally implemented by merely following the letter of the law. The Task Team recommends that a mechanism is built into the Act,	Both strategies are subject to prior comments and depending

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
whereby a proposed strategy is deemed to be withdrawn if significant changes are required to make it acceptable. This will have the effect that the process starts anew. The decision on what is "significant" should rest with Parliament in the case of a National Strategy, or. With the Minister in the case of a Catchment Strategy (refer to Section 72 where this mechanism does exist)	upon the nature of the comments, the Minister or the responsible institution will call for further consultation. Both strategies must be reviewed every 5 years or earlier if considered necessary. To allow for even more compulsory consultation may lead to unacceptable delay in putting a strategy in place.
The Task Team recommends furthermore that the term "establish" is replaced with the term "announce" with regard to the action of giving a strategy legal status. The term "establish" can lead to confusion, and has in fact done so amongst the members of the Task Team. D. SAICE	The Drafters prefer "establish" to "announce".
Comments on Chapter 2	
In accordance with what is proposed in the Bill, there is only <u>one</u> round of consultation before a strategy (either National or Catchment) is finalised. There should be a mechanism to deem a strategy withdrawn if, from the comments received, it becomes clear that the strategy is not acceptable to the majority of role players and stakeholders.	See B above. (pg 12)
E. WILDLIFE & ENVIRONMENT SOCIETY	
Clause 6, (2), (b):	
The maximum review interval for the national water resources strategy is given as five years. This is a long period, in which a considerable amount of environmental and social damage can be done where an inappropriate strategy is in place. Furthermore, the occurrence of floods and droughts will require the re-assessment of a national strategy. It is recommended that this period be reduced to a maximum of two, or perhaps three years.	The Bill sets down a maximum period. Earlier revision is possible.
<u>SECTION 9 - CATCHMENT MANAGEMENT STRATEGIES</u>	
A. BUSINESS SOUTH AFRICA (BSA)	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
The lack of clarity in clause 9(1) on the relationship between a catchment management area and a water management area which was a source of concern in previous drafts has still not been adequately addressed. Although this Bill appears to make provision for participation by civil society in the management of water resources, the lack of clarity will inhibit rather than promote this objective.	Catchment boundaries will be an important consideration for determining the boundaries of water management areas. In response to the comments clause 6(2) of the Tabled Bill was inserted which sets out the considerations for determining a water management area.
The removal from chapter 3 of the stated intention of integrated resource management within a catchment, which preceded this clause in previous drafts, is disappointing and its reintroduction is recommended.	The basis of chapter 3 is one of integrated catchment management. Whenever practicable the boundaries of water management areas will be drawn to facilitate integrated catchment management
B. UCT - ENVIRONMENTAL LAW UNIT	
Catchment management and aquifers	
The provisions regarding catchment management agencies and catchment management strategies make no distinction between surface water and aquifers. This follows from the use in these provisions of the term 'water resources' coupled with the definition of this term, which includes both of these resources. Whilst the general objective of the Bill is to ensure that all water in the hydrological cycle be administered in an integrated manner is laudable, these provisions fail to take account of the fact that the boundaries of surface water catchments do not in reality align with aquifers. Important aquifers traverse more than one surface water catchment. This will create difficulties for catchment management agencies faced with implementing the catchment management as currently drafted. It is consequently necessary to make provision for some mechanism of aquifer management that would transcend the boundaries of catchment agencies. A separate management agency may be advisable to this end.	The principle of establishing different CMA's for specific resources is not supported. It is possible to have sub-CMA's within a water management area and to make it responsible for a particular resource.
C. WILDLIFE & ENVIRONMENT SOCIETY	
Clause 10	
It should be more clearly stated that catchment management strategies are required to set principles for water conservation and water demand management (as in Part 1, 7, (h). It is at the level of the	This is contained in clause 9(c) of the Tabled Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
catchment that the most effective water conservation and demand management can be effected.	
SECTION 11 - GUIDELINES FOR AND CONSULTATION ON CATCHMENT MANAGEMENT STRATEGIES	
A. B South Africa (BSA)	
Clause 11(2) requires a catchment management agency to consult with persons it considers appropriate. Consultation with civil society should not be at the discretion of the catchment management agency but should be an open and transparent public process which is mandatory.	It is not the consultation which is discretionary but the selection of appropriate organs of State or persons with whom to consult. Once the selection is made, consultation is obligatory. This obligation to consult is complementary to a further obligation to invite public comment to which any person may respond.(See clause 8(5)(b) of the Tabled Bill)
B. WILDLIFE & ENVIRONMENT SOCIETY	
Clause 11:	
The consultation on catchment management strategies does not appear to be sufficiently broad. The catchment management agency (CMA) should be required to consult with all interested and affected parties within a catchment, rather than only those that the CMA "considers appropriate" (11, (2), (c)).	See A above. (pg 15)
SECTION 13 - MINISTER MUST PRESCRIBE SYSTEM FOR CLASSIFYING WATER RESOURCES	
A. Business South Africa (BSA)	
1. Clause 13(2)(b)(i) implies that the national water resource strategy can only be established after the system of classification has been prescribed as no procedures exist to determine the reserve. This needs to be clarified.	1. It is possible to make a preliminary determination of the Reserve before a classification system has been established. The statement that the establishment of the national water resource strategy can only take place after a resource

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
	classification systems has been prescribed is incorrect (See clause 17 of the Tabled Bill)
The current wording does not commit the Department to establishment of the national water resource strategy within the foreseeable future thus exacerbating the situation created by clause 15 in allowing for a preliminary determination of unlimited duration.	It is not policy or practice to require a Minister or government departments to establish structures, policies or strategies within a given period, because it may be delayed by outside factors.
CLAUSE 13(2)(iii) Implies a regulation of land use that was understood from the Department not to be the intention of this Bill.	Only those activities that have or could have a detrimental effect on a water resource will fall under the ambit of this Bill. A classification system can only contain policy on the regulation or prohibition of land-based activities which may effect water resources. The actual regulation or prohibition also can be undertaken by other government departments and it is DWAF's intention to enter into memorandum of understanding with other government departments on the exercise of regulatory powers which cover common interests.
B. COSAB	
This section prescribes a "system for classifying water resources". The definitions and the scope of the Bill are unclear exactly what is intended by the whole classification system, different classes, etc.	The definitions do not define the system. However, before a system can be introduced there must be consultation and the purpose of the system will be debated.
<u>CHAPTER 3 SECTIONS 13.2b.(i), 13.2b(iii) AND 17.1</u>	
C.SA ASSOCIATION OF WATER BOARDS It is accepted that the protection of the water resources is fundamental, however the process of determining the Reserve may be very subjective, and the water uses which require regulation may vary between catchment management areas and may differ substantially at a catchment level with those uses determined at a National level. The procedure or methodology of determining the Reserve should not be prescribed by the Minister, but rather, more appropriate methods should be developed and applied by the Catchment Management Agency. Similarly, the responsibility of determining the appropriate water uses for regulation, currently resting with the Minister, should be vested with the Catchment Management Agencies, and the responsibility of determining the Reserve, currently resting with the Director-General, should also be vested with the Catchment Management	The establishment of the Reserve is considered a National Government responsibility. There will be an opportunity for public comment, which includes water boards. This will promote uniformity and avoid subjectivity.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Agencies with the Director General approving the results therefrom. Furthermore, it should be noted that to meet the Ecological Reserve, may require that existing developed sources will be burdened with an increase in supply requirement. In order to satisfy this, existing demands may have to be reduced or new infrastructure implemented. The objective for existing developed sources should be to maintain the current levels of ecological status.	The level at which the ecological status of existing developed sources should be maintained is a policy issue and should therefore not be legislated for.
Section 13, subsection 2.b.i. should be modified to:- *"establish procedures for determining the Reserve, except in the case where a Catchment Management Agency is in operation which will assume this responsibility".*	Procedures for determining the Reserve is of national importance and should be uniform. This will not be achieved if every agency is allowed to establish its own procedures for determining the Reserve.
Section 13, subsection 2.b.iii. should be modified to:- *"set out water uses for instream and land based activities which must be regulated or prohibited in order to protect the water resource; except in the case where a Catchment Management Agency is in operation which will assume this responsibility; and"*	The classification system for water resources will contain policy for the regulation of in-stream or land-based activities in order to protect the water resources. This is a national concern. The Minister is empowered under clause 26 of the Tabled Bill to make regulations thereon.
D. WILDLIFE & ENVIRONMENT SOCIETY Clause 13: It is hoped that the prescribed system for classifying water resources will make use of the research that has been done in South Africa on river classification, as part of the National Biomonitoring that has been done in South Africa on river classification, as part of the National Biomonitoring Programme for Riverine Ecosystems (Institute for Water Quality Studies, Department of Water Affairs and Forestry).	All available information will be considered during the consultative process.
E. ASSOCIATION OF IRRIGATION BOARDS - KWAZULU NATAL Classification of Water resources Although the definition of "water resource" makes mention of a	The Department disagrees with this view. It considers the

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
"watercourse" and "estuary" (both separately defined) the term really means water in general in its various manifestations. There would appear to be no purpose whatsoever in attempting to create different classes of water. If there were any need for any form of classification at all (which is doubtful) it should be of catchments not water resources. Even the classification of cathcments into separate categories or classes is unlikely to prove workable by virtue of the uniqueness of each catchment.	classification of water resources an effective instrument for setting objectives of a water resource.
SECTION 14 - DG must determine class of water resource and resource quality objectives for any significant water resource. A. Business South Africa (BSA)	
1. Clauses 14(1), 14(4) and 82(1)(b) allow certain actions to be taken in regard to water resources which the Director-General considers to be “significant”. The criteria for considering a water resource to be significant are still not addressed. In order to address this problem it is proposed that either criteria be introduced to guide the Director-General or the term "significant" to be defined.	It is impractical to define "significant." Each case will have to be decided on its own merits. A resource of a specific size may be significant in one area and insignificant in another.
2. Lack of clarity on the relationship between “geographical area”, “management area” and “catchment” in clauses 14(2) dealing with resource quality and 40(2)(a) with a general authorisation to use water has still not been addressed.	The different concepts are independent from one another. The geographical area within which resource quality objectives or water use authorisations apply does not necessarily coincide with the management area of a CMA. The catchment boundaries of a water resource will also not necessarily coincide with a management area, although it is an important factor in the determination of a management area. See the new clause 6(2) of the Tabled Bill.
Integrated water resource management using the catchment as the basic unit of management as envisaged in the Water Law Principles requires that the entire country is divided into “management” areas. Removal of the schedule of promulgated drainage basins as was originally contemplated in the fifth draft has diminished the catchment based approach. The establishment of catchment management agencies is not clearly based on	The criteria for determining management areas are now contained in the new clause 6(2) of the Tabled Bill. Catchment boundaries cannot be the only criteria. Also different water resources within the same water management area can have different catchment boundaries.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
the physical characteristics of a catchment or sub-catchment as understood by the term "catchment". The use of the terms "management" and "geographic" area imply non-adherence to catchment boundaries as the primary criteria for determination. In the absence of these boundaries, the criteria for determination of these areas should be spelt out.	
B. NEDLAC	
Determination of Reserve	
Clause 14 specifies that the reserve for any significant part of the water resource needs to be established. The word 'significant' is a qualification implying that there are parts of the water resource which don't have to be taken into account when determining the reserve.	It is impracticable to determine a Reserve for every tiny water resource. Somebody must be given the discretion to decide when a water resource is sufficiently important to justify the cost and effort required for determining the Reserve. The Director-General may always at a later stage determine a Reserve for a water resource which he or she previously considered unnecessary to do so.
In addition, it is the Director-General who determines what the significant part of the water resource is, and the Minister who will hear appeals against his/her decision.	
These two issues could have the effect of watering down the intention of having a reserve. It could also mean that too much power is put in the hands of the Department (either through the Director-General or the Minister).	
It is agreed that consideration will be given to further clarification by: - defining the word 'significant'	
The Bill stipulates that the reserve must be set aside to ensure that basic needs are met, but it is not clear what mechanisms are then put in place to make sure that water does then actually reach people.	See B- COSAB under clause 2 above. (pg 4)
In so far as the Water Services Act deals with this matter, this Bill needs to make the relevant linkages.	See B- COSAB under clause 2 above. (pg 4)
B. SAAU	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Page 18, Section 14(2) and page 36, Section 40(2) (lack of clarity on the relationship between “geographical area”, “management area” and “catchment” has still not been addressed. Integrated water resource management using the catchment as the basic unit of management as envisaged in the Water Law Principles requires that the entire country is divided into "management" areas. Removal of the schedule of promulgated drainage basins as was originally contemplated in the fifth draft has diminished the catchment based approach. The establishment of catchment management agencies is not clearly based on the physical characteristics of a catchment or subcatchment as understood by the term "catchment". The use of the terms "management" and "geographic" area imply non adherence to catchment boundaries as the primary criteria for determination. In the absence of this criterion, the criteria for determination of these areas should be spelt out.	See clause 6(2) of the Tabled Bill.
SECTION 15 - PRELIMINARY DETERMINATION OF A CLASS OR RESOURCE QUALITY OBJECTIVES OF A WATER RESOURCE. A. BUSINESS SOUTH AFRICA By clause 15 a preliminary determination on classes of water resources quality objectives, is made without any public consultation and could last indefinitely. There needs either to be a time limit on their duration or preferably prior public consultation.	The preliminary determination is intended to make the transition from the old to the new dispensation as smooth as possible. It is in line with the philosophy of “a phased and progressive manner” without abdicating responsibility to attend to a formal determination. A formal determination may be postponed through lack of resources or in areas where there is sufficient water.
SECTION 17/18 - DG MAY DETERMINE THE RESERVE FOR A WATER RESOURCE. DG MAY MAKE PRELIMINARY DETERMINATION A. ASSOCIATION OF IRRIGATION BOARDS - KWAZULU NATAL Clause 17	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
The Reserve	
There should be no provision for the Director-General to determine the Reserve. What he may be required to do is to establish the procedure by which the quantity and quality of water for the reserve are to be arrived at.	See chapter 1 clause 2.1y above. (pg 3)
B. COSATU	
In terms of the Nedlac discussion concerns were raised that the concept of the Reserve may be undermined as a result of the specification that the Reserve would be established out of a "significant" part of the water resource, and that the determination of what was meant by "significant" in this instance would be defined by the Director-General, with the possibility of an appeal procedure to the Minister. **As a result it was agreed that further consideration would be given to defining what is meant by a "significant" part of the water resource and that linkages between the Reserve and the provision of water through the Water Services Bill should be made.**	See B- COSAB under clause 2 above. (pg 4)
The National Water Bill is meant to be the overarching legislative framework within which more specific pieces of water legislation are placed. In other words, the Water Services Act should fit within the legislative framework established by the National Water Bill, and there need to be clear links drawn between the two pieces of legislation indicating where the areas and responsibilities of the two begin and end These linkages, however, are not made clear in the National Water Bill. For instance: i) Link between Catchment Management Strategy and water services development plan:	Several linkages between the two will be recommended at the clause by clause discussion on the Bill. See Section 17A above.
The Catchment Management Agency is responsible for establishing a strategy for the protection, use, development, conservation, management and control of water resources within its management area. Clause 10 sets out the areas and issues that the content of the strategy must take into account. While clause 10(f) talks about the need to take account of "any relevant national or regional plans prepared under any other Act", there is no specific mention made of the need for the Catchment Management	A water services development plan deals with the distribution of water (present and future) whilst catchment management strategy deals with resources from which water can be taken. In so far as a water services development plan relates to water requirements, such requirements will form part of a catchment management strategy. See clause 9(f) & (h) of the Tabled Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Agency to take account of the water services development plan that municipalities are required to draw up in terms of the Water Services Act.	
ii) Reserve	See B- COSAB under clause 2 above. (pg 4)
- There is no clear mechanism for ensuring that local authorities get access to water in the Reserve which has been set aside to meet basic needs.	
- It is not clear what price, if any, local authorities would have to pay for water that is part of the Reserve.	
C. SA ASSOCIATION ON WATER BOARDS	
Section 17, subsection 1 should be modified to "The Director-General, must by notice in the gazette, determine the reserve for all or part of that water resource, except in the case where a Catchment Management Agency is in operation who will assume this responsibility". Section 18 requires similar re-wording.	See B- COSAB under clause 2 above. (pg 4)
SECTION 20 - PREVENTION AND REMEDYING THE EFFECTS OF POLLUTION	
A. BUSINESS SOUTH AFRICA (BSA)	
1. The failure to reflect the participatory approach to water quality management, which is described in departmental publications, is noted with concern.	The Department recognises the concern and will take the matter further during the clause by clause discussion on the Bill.
2. The term “management practices” used in relation to water quality must be defined. It was previously understood from the Department that the intention of this Act would be to ensure protection of the water resources by prescribing resource quality objectives and source control standards; it was not the intention to prescribe how those standards or objectives should be met only that they should be met Prescription of management practices	Any regulation must be preceded by public consultation where that regulation can be discussed in detail. Further, all regulations are subject to Parliamentary scrutiny. Regulations on management practices can allow innovative approaches to achieve stated objectives, provided such approaches meet the approval of DWAF.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
inhibits innovative approaches to achieving the objectives and is likely to result in a failure nationally to adopt state of the art technologies as the State would be unable to keep up with technological developments in prescribing practices.	
Previous comments and discussions with the drafting team highlighted the concerns on the excessive prescriptiveness of the fourth draft. The level of state intervention envisaged by prescribing management practices and methods of analysis and treatment processes are not conducive to innovation and remove the competitive advantage from companies who invest in research into cleaner production technologies. This approach is in contrast with international trends which recognise industrial innovation as a key factor in improving environmental performance.	It is not the intention to be overly prescriptive, but the power to be prescriptive must be retained for cases where the desired objective cannot be achieved in any other manner. Unfortunately experience has shown that prescriptiveness is often the only way to enforce compliance with quality standards against certain companies. The time to object against excessive prescriptiveness in the regulations will be when the regulations come up for public comment.
The state's responsibility is to protect the water resources and thus needs to regulate the output of any activity. Prescribing technology amounts to regulating inputs as well.	
Promotion of industrial innovation forms one of the key themes in the draft White Paper on environmental management and the discussion document on integrated pollution control and waste management and is recognised by the Department of Arts, Culture, Science and Technology, in the White Paper on Science and Technology. It is impossible for the State to maintain the same level of research into management practices as industry and will therefore always be behind the private sector in its approach to technology.	
Clause 20(5)(b) places a liability on the owner of land who may have had no influence or culpability for an act or failure to act in order to recover costs. There appears to be no obligation on the State to prove culpability.	Liability to remedy the effects of pollution of land is a strict liability of the owner of the land, for which culpability is not a requirement. This principle is accepted in many countries all over the word. Notwithstanding this strict liability, clause 19(8) of the Tabled Bill allows the apportionment of liability according to the degree to which each person concerned was at fault. This would in many cases, give the owner of the land a right of action against the actual polluters.
Although the Bill, in giving effect to the Water Law Principle which abolishes riparian rights, de-links water rights from property ownership.	The right to use water will in almost every case be linked to specific property (See clause 28(c)(i) of the Tabled Bill). The

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Property ownership is used to regulate water rights in clause 29(2). The draft is also not consistent in the delinking of water rights from property in those instances where, as regard pollution, obligations were imposed, not on the licensee, but on the landowner. The Department pointed out that the user will always be liable, but that in certain instances where the licensee was not the owner of the property, the owner should not be precluded from liability. It was pointed out that this does not adhere to the polluter pays principle and that in any event the draft now requires the licensee to provide security in this regard. The Department expressed concern as to what would happen regarding these liabilities in the event of the landowner selling the property to a third party. It is proposed that the Department should in this regard apply the mining industry approach referred to below.(See section 31 item 3)	right of a responsible authority to ask for security in respect of an obligation relating to the use of water in terms of a licence under clause (30)(l)of the Tabled Bill, is optional and will not be exercised in all cases. Also pollution is not necessarily a breach of a licence condition. If security is given, it will be to the benefit of the owner of the property on which pollution occurs, but it is no reason to also absolve the owner from liability in respect of that pollution.
B. COSAB	
This section imposes a duty of care with respect to pollution on an 'owner of land, a person in control of land or a person who has a right to use the land'. This definition excludes illegal occupants of land (i.e. with no rights on the land) who may pollute a water resource or coastal marine waters. It is recommended that the section be amended as follows: "a person in control of land {or} a person who has a right to use the land, **<u>or any other person on the land</u>** on which....	See A- BSA above. (pg 23)
C. MIKE SMUTS	
Clause 20: Pollution prevention	
The assignment of responsibility for pollution prevention and pollution control to- • owners • persons in control of land, and • persons who have a right to use land is in conflict with common law principles under which the perpetrator of pollution has the primary duty of preventing pollution or redressing pollution caused by him. Tinkering with common law principles may be	See A above. (pg 23)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
unconstitutional, and unless the principles are considered very carefully the clause may founder. The clause may moreover turn out to conflict with environmental legislation currently being developed by other organs of State. It is vital that there be uniformity in the principles applicable to pollution control in all legislation at all levels of authority. Even in this clause there is a lack of uniformity, as sub-clause (5) acknowledges the liability of perpetrators. The following situations will illustrate my difficulty with the arbitrary assignment of duties under this clause: • the case where industrial waste is unlawfully dumped at the dead of night in a river on land owned by a person who has no relationship whatever with the industrial operation by which the waste has been produced. If the clause is allowed to stand in its present form, the landowner may actually be ousted of his common law right to take action against the perpetrator. In other words, the clause may interfere with the rights of landowners under the civil law; • the case where squatters unlawfully occupy land and pollute a river flowing over that land. D. IXOPO AGRICULTURAL SOCIETY Clause 20 In the more than thirty years in which I have farmed in this area, we have had two severe periods of drought. As a result, farmers have spent large sums on building dams, both privately, jointly and as Irrigation Districts, in order to ensure the supply of water. The local Conservation Committee has implemented a Catchment Control plan for the Ixopo river to control the incursion of forestry and alien plants. In parts there are problems with squatters and pollution of watercourses. (There has been no response from the Department of Water Affairs to this latter problem) Now landowners are faced with further restrictive red tape, licences and bureaucratic "control" which, I fear, will introduce new hassle to their lives but will not achieve the desired result, namely more water for the country. E. ASSOCIATION OF IRRIGATION BOARDS - KWAZULU NATAL	The Management System proposed is aimed at more effect management of the available water resources. The red tape referred to is unavoidable if the use of water is to be effectively controlled.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Clause 20 Pollution Section 20(5)(b) imposes an unfair burden on an innocent successor-in-title if he had no knowledge of the pollution. The liability created in terms of Section 20(6) should not be dependent on the opinion of the water management institution.	See A above. (pg 23)
SECTION 21 - CONTROL OR EMERGENCY INCIDENTS A. UCT - ENVIRONMENTAL LAW UNIT Emergency incidents (clause 21) The provisions do not make clear what counts as an emergency incident. Does it cover the situation where an incident (or significance) is discovered some time after the incident took place? Does it cover only sudden occurrences or also cumulative events which slowly build up to, and then cross, the 'pollution threshold'? It seems advisable to cover these two situations as well, but the current drafting of these provisions are vague in this regard.	This clause covers all situations where an incident or accident takes place. The time of discovery is of no relevance.
B. WILDLIFE & ENVIRONMENT SOCIETY Clause 21(3) Part 4: A clause similar to that in Part 5, 21, (3) should be repeated in Part 4, In other words, any person with knowledge of pollution sources should notify the Department.	This clause would apply to all pollution incidents.
CLAUSE 22 - WHAT WATER USE IS	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
A. UCT - Environmental Law Unit 1. Water use (Clause 22) It is a great improvement over existing Law that land-based activities resulting in stream-flow reductions will now also be regulated as a water use. However, land-based activities that increase stream-flow, so-called 'hardening' of the environment, as well as ones that affect water quality may also affect the maintenance of the Reserve and resource quality generally. It therefore seems advisable to cover these as well.	Clause 21 of the Tabled Bill provides for all aspects of water use, including return flows of whatever manner. If a land-based activity which increases a stream-flow, because of hardening of the environment, becomes a problem, that activity can be declared a controlled activity under clause 38 of the Tabled Bill.
B. KNYSNA T RYAN Clause 22 1. Water use A property owner should be entitled to all the water that falls on his property and should have the right to impound as much of this rainfall as possible. The building of dams has always been beneficial not only to the owner but to anyone down stream because it prolongs the run off time of all rainfall, and empounds water that would otherwise run off to the ocean. It is accepted fact that the construction of a dam on a property enhances the value and utilisation of that property. Dam construction should be encouraged not discouraged.	This is not in line with the accepted principles contained in the White Paper.
C. IXOPO AGRICULTURAL SOCIETY Clause 22 We accept that the right to use water *responsibility* should be subject to legislation, but the right to use water has always been an inalienable freedom implicit in land ownership. This is true of every major agricultural producing country of which I am aware. To place this right under bureaucratic control raises nightmarish possibilities. I believe it is the responsibility of government to create conditions which encourage people	See D- IXOPO under clause 20 above. (pg 26)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
to farm and I greatly fear that legislation of this nature will have the opposite effect.	
D. AJ VAN SCHALKWYK: CIVIL ENGINEER INVOLVED IN WATER SUPPLY FOR AGRICULTURAL AND MUNICIPAL USE	
Clause 22	
The Ministers' interference with the farmers' water rights is unnecessary and uncalled for. The provisions and prescriptions of the Bill cannot be better than its preconceived objectives. The Bill is rejected in its entirety	This view is not agreed with.
SECTION 23 - PERMISSIBLE WATER USE	
A. BUSINESS SOUTH AFRICA (BSA)	
1. It is proposed that practical mechanisms to promote co-operative governance as envisaged in clause 23(3) be introduced as a matter of urgency if such provisions are not to be a substantive part of the Bill.	This cannot be a substantive part of the Bill as the terms must be negotiated with the authorities concerned.
2. Waste is already defined as waste in water, the two terms are therefore not necessary in clause 23(2)(b).	The reference is probably to 23(2)(c). The wording used was in the interests of clarity. Water containing waste is not the same as waste, for this reason both terms are used.
B. SAAU	
- Page 25, Section 23 Permissible water use	
(1)(ii) “If that water use is permissible as a continuation of an existing lawful water use” This subsection is not clear and a definition for permissible continuation of an existing lawful water use is necessary	The Department does not understand the problem but clause 23(1) of the Tabled Bill sets out what permissible water use is, while clause 33 of the Tabled Bill sets out what constitutes existing lawful water use and this includes the continuation of existing lawful water use.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Section 23(6)→Compensation **Section 51(3)→Constitutionality** A. BUSINESS SOUTH AFRICA (BSA) While BSA accepts the principle of a new approach to allocation, its previous concerns on the removal of existing entitlement rights have still not been adequately addressed. In its comments on the fifth draft of the National Water Bill Business South Africa expressed concern that certain provisions of the draft Bill offended against clause 25 of the Constitution in not protecting rights held by persons under the common law or the Water Act, 1956. BSA has obtained the opinion of senior counsel on the matter. Senior counsel has expressed the view that there is a reasonable prospect that the constitutional court would hold that the failure to provide in the draft Bill for compensation for the taking of rights to private water constitutes an infringement of clause 25(2) of the Constitution which cannot be justified under clause 36(1). Briefly, clause 25(2) provides that property may be expropriated only in terms of a law of general application for a public purpose or in the public interest and subject to compensation. Clause 36(1) provides that the rights in the Bill of Rights may be limited only in terms of a law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society. The final draft of the Bill goes some way to meeting the requirements of clause 25(2). Clause 23(6) of the Bill provides that any person who applies for a licence under the Bill in respect of an existing entitlement to use water may claim compensation for any financial loss suffered if the application is refused or the person is granted a licence for a lesser use than the existing entitlement. In order to qualify for compensation the person must prove that the refusal or licence for a lesser use constitutes the “destruction of or severe prejudice to the economic viability of the undertaking” in respect of which the water was or could have been used beneficially. BSA considers that the provisions of clause 23(6) are too restrictive in	The Bill regulates water rights. The compensation provision was inserted in the interests of fairness and ethics.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
limiting compensation to a refusal or licence for a lesser use which constitutes the destruction of or severe prejudice to the economic viability of the "undertaking" in respect of which the water was used. BSA submits that the protection in clause 25(2) of the Constitution is not limited to the economic viability of an undertaking. On the contrary the protection afforded by clause 25(2) would be available in respect of any financial loss suffered in consequence of the Bill whether or not there is an undertaking and whether or not its economic viability has been prejudiced. By an undertaking is presumably meant work undertaken or an enterprise. In order to provide the full protection by clause 25(2) it is recommended that clause 23(6) be amended to read as follows: Any person who is required or has an opportunity to apply for a licence or a renewal of a licence under this Act in respect of an entitlement to use water and **(a) has had the application refused; or** **(b) is granted a licence for a lesser use than the existing entitlement;** **may claim compensation for any financial loss so suffered in consequence thereof, subject to sub-clauses (7),(8) and (9).** Although it is understood that the department intends to remove the term "destruction" in clause 23(6), BSA remains of the opinion that the provisions are more restrictive than allowed by the Constitution. The intention of the department to seek further counsel opinion on this matter is therefore welcomed.	
B. COSAB We welcome this clause which requires the government to pay compensation to water users where the Bill impacts on their economic situation. However, we cannot accept that this compensation is restricted to "the destruction of or severe prejudice to the economic viability of the undertaking", or that there are certain exclusions from the water rights in consideration (sub-section 7). We believe that in order for the whole process to be just and equitable, the expropriation of water rights must be	See A- BSA above (pg 29 - 30)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
accompanied by compensation where material prejudice to the economic viability or less or diminution of property occurs. This section should therefore read: *"... that constitutes a material prejudice to the property or undertaking in respect of which the water was..."* The exclusion of certain water from the responsibility for compensation (sub-section 7(b)) is also rejected, and this section must be deleted. It is unnecessary and unreasonable to add these qualifications to section 25(3) of the constitution. If it were to be left in, one could find the situation where an economic enterprise is totally destroyed, but no compensation is liable because the water rights expropriated fall with the scope of sub-section 7(b). This would be iniquitous. C. WILDLIFE & ENVIRONMENT SOCIETY Clause 23 (5) Chapter 4, Part 1, 23, (5): It appears that this section circumvents all of the requirements set out previously, which deals with the development of management strategies, classification of water resources, and the determination of the Reserve. Decision-making powers on this matter lies with the responsible authority, which may not be in agreement with national, or even catchment guiding principles. This may lead to the inappropriate use of water until the development of a national strategy is complete. SECTION 23(9) Consequent to item 2.5 above it is recommended that this section be deleted. C. Forest Industries Association Inadequate Provision for Compensation	This subclause is not to delay the implementation of the Bill. This is necessary to give the Tribunal the right to decide compensation.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Despite inclusion for the first time of the opportunity to claim compensation Section 23(6): - The conditions imposed to claim compensation are so restrictive that the likelihood of actually receiving compensation is slim because: - no compensation will be paid unless destruction of or severe prejudice to economic viability results. No compensation may be paid in cases of "over allocation" or "unfair or disproportionate water use". - Forestry argues that Section 25(2) of the Constitution does not limit protection to only the "economic viability" of an undertaking Compensation in this Bill must cover "any financial loss" arising. Forestry Proposal Regarding Compensation Clause D. RAND WATER Expropriation without Compensation 1. Quite apart from the rights to underground water that Rand Water purchased from individual landowners and for which, in 1912, Rand Water paid R4 457 227.25, Rand Water paid the State R4 000 000.00 to obtain abstraction rights from the Vaal River Barrage and in 1934 paid the State for the right to abstract 60 million gallons per day from the Vaal Dam. In addition it purchased in 1937 from the Government the right to abstract 70 million gallons a day and in 1944 it purchased from the State the right to take 65 million gallons a day. Rand Water's total entitlement to water from the Vaal River Barrage and Vaal Dam for which it paid in advance on the dates mentioned above, is 323 783 163m^3 per annum. 2. All of these rights were enshrined in agreements that were entered into between Rand Water and the State and these agreements were scheduled to the various enabling acts of Parliament. Copies of these agreements are annexed for ease of reference.	See A- BSA above. (pg 29 - 30) Note has been taken of these comments and the nature of the water right and will be dealt with in the clause by clause discussion on the Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
3. Clause 4(4) of the Bill provides that any entitlement to use water derives from the Bill when it becomes law and replaces any rights which a person may otherwise have to use water. Clause 36 of the Bill makes it clear that these entitlements are not rights since the responsible authority may require uses that existed before the Bill became law to become licences issued in the discretion of such responsible authority. No compensation for the loss of any of these rights is provided for in the Bill.	
4. Having regard to the provisions of the Bill, it seems clear that the State is taking away rights and substituting licences in place thereof, which amounts to expropriation without compensation of the water rights purchased and pre-paid for by Rand Water. It is Rand Water's submission that the failure to provide in the Bill for compensation for the taking of these rights constitutes an infringement of Section 25(2) of the Constitution, which infringement will not be protected by Section 25(8) and 36(1) of the Constitution.	
5. Clause 23(6) of the Bill provides for compensation but only in those circumstances where the refusal of a licence or the reduction of the quota of an existing use constitutes the destruction of or severe prejudice to the economic viability of the undertaking. It is submitted that this takes no account of hardships caused to particular consumers of a water board and more over the clause does not cleanse the provisions of clause 36 from the taint of unconstitutionality. Section 25(2) of the Bill of Rights is not confined to the economic viability of an undertaking but protects a deprivation without compensation in almost every instance.	See A- BSA above (ppg 29 - 30)
6. It is therefore submitted that clause 23(6) of the Bill be amended to provide for compensation in every case where the claimant can prove financial loss.	)
E. SAAU Page 26, Section 23(6)	
The SAAU studied the various opinions of senior counselors on the matter.	See A- BSA above Pg 29 - 30)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Briefly they expressed the view that there is reasonable prospect that the constitutional court would hold that the failure to provide in the draft Bill for compensation for the taking or rights to private water constitutes and infringement of section 25(2) of the Constitution which cannot be justified under section 36(1). Section 25(2) provides that property may be expropriated only in terms of law of general application for a public purpose or in the public interest and subject to compensation. Section 36(1) provides that the rights in the Bill of Rights may be limited only in terms of a law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society. The provisions in the draft Bill are too restrictive in limiting compensation to a refusal or licence for a lesser use which constitutes the destruction of or severe prejudice to the "undertaking" in respect of which the water was or could have been beneficially used. The SAAU submits that the protection in section 25(2) of the Constitution is not limited to the economic viability of an undertaking. On the contrary the protection offered by section 25(2) would be available in respect of any financial loss suffered in consequence of the Bill whether or not there is an undertaking and whether or not its economic viability has been prejudiced. In order to provide full protection as provided by section 25(2) it is recommended that clause 23(6) be amended to read as follows: Any person who is required or has an opportunity to apply for a licence or a renewal of a licence under this Act in respect of an existing entitlement to use water and- (a) has had the application refused; or (b) is granted a licence for a lesser use than the existing entitlement, may claim compensation for any financial loss suffered in consequence thereof, in accordance with section 25(3) of the Constitution. Subsection 23(7)(b) should be deleted. F. SA SUGAR GROWERS ACCOCIATION	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
COMPENSATION	
The Association does not support the limitation imposed on the obligation to pay compensation by section 23(6) and (7). Not only are these limitations unconstitutional (having regard to the provisions of section 25 of the Constitution), but they are too ill-defined. Much argument will be generated over disputes as to whether "destruction or severe prejudice" has occurred. What is more, a claimant appears obliged to show that there was no "over-allocation" or "unfair or disproportionate use", in order to claim compensation. In regard to agricultural use, these definitions only complicate an adjudication process. The fact is that agriculture has built infrastructure and concluded costly financial arrangements on the basis of allocations, and any reductions therein must, in equity, give rise to valid claims for compensation where financial prejudice follows.	See A- BSA..
G. ASSOCIATION OF IRRIGATION BOARDS - KWAZULU NATAL	
Clause 23	
Compensation	
Section 23(6) limits the payment of compensation to circumstances constituting "the destruction of or severe prejudice to the economic viability" of an undertaking. This is grossly unfair, bearing in mind the safeguards provided by section 23(7). Any prejudice suffered by an applicant must be compensated for, more especially by reason of the difficulty associated with the interpretation of the term "severe prejudice". How is the severity of the prejudice to be determined?	See A- BSA above (pg 29 - 30)
Whenever an application to license existing rights is refused in whole or in part compensation in terms of the Expropriation Act, 1975, should be payable.	
G. BREEDE RIVIER CONSERVATION BOARD	
Section 23(6) is good and well for a person who properly never had lawful existing water rights. Such a person/property is well protected by this provision. It is, however, not good enough for a person who, on the date	See A- BSA. (pg 29 - 30)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
of promulgation of the Bill, exercised lawful water rights. If one hectare is taken away from a farmer who irrigated 15 hectares and just managed to make a living, then his economic viability is affected and compensation is payable. The large scale farmers with 150 hectares irrigation can be deprived of water for 50 hectares and it could be said that although they suffered a big financial loss and had to curtail their farming practices, the farming is still considered to be economically viable. If a farmer is given "new" water by way of a licence, the licence may provide for such a reduction and the farming can be done on that basis. In respect of existing lawful water rights I propose that the following wording in section 23(b) be deleted: "such that it constitutes the destruction of severe prejudice to the economic viability of the undertaking in respect of which the water was or could have been beneficially used"	
STATUTE OF LIMITATIONS (23(8))	
Any claim for compensation must be lodged within 6 months of the refusal or limitation in a licence (s. 23(8)). That is considered unacceptable, given the work required for a claimant properly to prepare his or her case. At the very least the Appeal Board should be given jurisdiction to condone late filing on good cause shown.	Many statutes contain limitations of time within which claims must be instituted against state departments. The Department will recommend the insertion of a clause to provide for an extension of the 6 months period.
CLAUSE 25	
A. MIKE SMUTS	
The term "owner" is not defined in the definitions clause. Under the common law, the holders of servitudes and of real rights, and bondholders, could be affected by the granting of a licence and their consent should also be obtained. The responsible authority ought not to have the power to override the rights of these persons. If, on the other hand, this clause is meant to acknowledge that landowners have a form of "first refusal" on the underground water resources, then the	The development of a water resource on another persons property is subject to a servitude. The procedure for obtaining such a right is set out in Schedule 2 and requires extensive consultation.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
clause would be improved by importing a definition of the term "owner" or by stating that consent must be obtained from the person who, according to the records of the appropriate Deeds Registry, is entitled to the use of the underground water on that property. The purpose of this clause is not clear and it should be reworded	
SECTION 27 - MINISTER MAY MAKE REGULATIONS ON THE USE OF WATER A. BUSINESS SOUTH AFRICA (BSA)	
Clause 27(1)(d); It is not clear what is meant here. The requirement appears to be prescribing activities, which should be the prerogative of the owner or operator. **It is proposed that this clause be altered to reflect application of guidelines to assist owners and operators in the operation and design of waterworks.**	The Department accepts the suggestion. It will propose the following amendments: Substitute clause 26(1)(d) with- "(d) prescribing the outcome or effect which must be achieved by the installation and operation of any waterwork." Add in the words:…where it is necessary or desirable to monitor any water use or to…" after waterwork in the second line and delete the words "in order" in clause 26(1)(e).
Clause 27(1)(h) dealing with regulations prescribing waste standards appears to be very wide as it includes almost any activity.	This is intended because all waste discharged into a water course is a possible threat. Existing waste discharge regulations have a similar scope.
Clause 27(1)(i); It was previously proposed that it was not the intention to prescribe treatment processes, which this does. **This clause should be reworded to reflect a more positive approach like promotion of cleaner production technologies.**	Regulation under this clause will deal with management practices and not treatment processes.
Clause 27(1)(j): The prescription of methods is no longer required as the National Accreditation System which has been adopted by Cabinet and should be promoted by all organs of state provides for the accreditation of	Regulations under this clause will deal with methods of analysis and not with the accreditation of laboratories, which is not a function of this Department. Obviously if there are already

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
laboratories thus ensuring a certain quality standard in respect of analytical results. This will not be achieved by prescribing methods. It also inhibits innovation. This requirement has not altered since the 1956 Act and is not in keeping with the objective of the Act to modernize Water Law. **This should be reworded as follows: "prescribing methods for such monitoring and analysis" should be replaced with "requiring accreditation of laboratories undertaking monitoring and analysis".**	proven methods of analysis, this will be followed.
B. COSATU *Effective Oversight role for Parliament* The Minister and Director-General are given wide powers to implement policy and make regulations within the broad framework of the Bill. While there was provision in the fifth draft of the Bill for Regulations Review Committee, which would have the power to scrutinize and reject regulations before they were promulgated, provision for this committee has been removed in the Bill. Instead there is provision for parliament to review regulations once they have been made to ensure inter alia that they are consistent with the Bill and the Constitution. In terms of the procedure, Parliament can (with reasons) reject the regulations, with the effect that the Minister will, within 30 days, have to repeal or amend the regulations. COSATU and SAMWU applaud the general thrust of this innovation which seeks to give greater effect to the principle of parliamentary oversight through strengthening the role of elected representatives in overseeing the content and substance of regulations. As stated earlier such a mechanism in crucially important in the context of the type of enabling legislation presently under consideration.	
Our concern is that the modalities of the proposed mechanism, which allows parliament to reject regulations only once they are already in force, could lead to uncertainty and even the possibility of wasted expenditures. A mechanism which allows for parliamentary oversight of regulations prior to them coming into force would appear to be preferable. Further, such an oversight mechanism should be extended to also apply to the various prescriptions and determinations which can be made by the Minister and	To extend the Parliamentary role to oversee also "prescriptions" and "determinations" made in terms of this Bill, will involve Parliament in administrative aspects of the Department. It is also the Department's view that the time period while the Regulations are with Parliament is not prejudicial.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Director-General throughout the legislation, for example, the Minister's prescription of the system of classification of water resources (at s13), the Minister's power to establish pricing policy (at s58), or the DG's determination of the class of water resources and resource quality objectives for any significant water resource (s14).	
C. NEDLAC *Prescriptiveness*	
The State's responsibility is to protect the water resources and to set norms and standards. However, where norms and standards are complied with, it should not be the State's intention to prescribe management practices; methods of analysis or treatment processes. Should situations of non-compliance occur, it is expected that the State should prescribe management practices; methods of analysis or treatment processes.	See comment in respect of BSA under A above. (pg 38)
SECTION 27 - Tradability A. BUSINESS SOUTH AFRICA (BSA)	
The elimination of clause 60 of the fifth draft allowing trading of entitlements is noted with concern. Since the adoption of the Water Law Principles, which provided the foundation for a new approach to allocation of water, the concept of tradability of entitlements was understood to be considered an integral component of the new allocation mechanism by the Minister and the Department. In a meeting on the Water Law review process with BSA, the Minister indicated his enthusiasm for such a mechanism. It is proposed that consideration be given to its re-introduction as a substantive clause of the Act. While it is recognised that clause	The Department takes cognisance of the problem. A suitable amendment will be proposed to clause 25 of the Tabled Bill as follows: Amend the heading to: "Transfer of water use allocations" Renumber the existing clause to 25(1) Delete from clause 25(1), the words "Subject to subsection 27(1)" Insert a new clause 25(2), to read: **"(2) A person holding an entitlement to use water from a**

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
27(1)(l) of the bill makes provision for regulations to be promulgated to deal with transactions, there is no guarantee that any such regulations will be promulgated. It is BSA's considered opinion that the absence of a substantive provision in this regard is going to make the implementation of the proposed allocation system much more difficult.	**water resource in respect of any land may surrender that entitlement-** **(a) in order to facilitate any licence application under section 41 of the Act for the use of water from the same resource in respect of other land; and** **(b) on condition that the surrender only becomes effective if and when such licence application is granted."**
The delinking of water rights from property ownership results in the situation where the licence holder and the property owner are not necessarily the same person. In the case where the property owner sells his land the licence holder would need to recover the cost of his investment in the licence. In the absence of a trading mechanism this will not be possible.	Water rights may continue to be exercised by a successor-in-title (See clause 51 (1) of the Tabled Bill)
The necessity for a strong regulatory framework to govern tradability is clearly recognised by BSA. It is clearly understood that the introduction of a market mechanism should not be used to circumvent the fundamental principles, which the Bill seeks to achieve. It is understood by BSA that a regulatory framework will have to: - Ensure that past injustices with respect to access to water are not perpetuated. - Ensure that the concept of beneficial use of water is not diminished. - Prevent exploitation of users in one sector by another. - Prevent excessive profit being made to the disadvantage of the state. The alternative wording which was submitted at the Department's request during discussions on previous drafts has been reviewed in the light of more recent discussions and is considered to accommodate the concerns of the Department. It is therefore resubmitted for consideration in Annexure B. BSA wishes to reiterate its commitment to the fundamental principles of the Bill and to state categorically that its motivation in seeking the	Provision has been made that the Minister can make the necessary regulations. See clause 26(1)(l) of the Tabled Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
reintroduction of this mechanism is not to seek to defeat the purposes of this Bill. This position is advanced on the basis that failure to include this provision in fact impoverishes the Bill in that the golden opportunity to control water demand in an administratively less onerous way is not exploited. Tradability is not seen as a replacement for an administrative allocation system but as a complementary mechanism. Removal of this facility from the Bill reduces the alternatives available to the government to promote efficient water use, which featured strongly in BSA discussions with the Minister. Another way to address BSA's concern in this matter would be to include an express provision allowing tradability subject to regulations on the lines set out below:	
26 Bis Transfer of water use authorisations Subject to clause 27(1)(l), a person authorised to use water in terms of clause 23 may, on such conditions which the water management institution may determine transfer some or all of his rights in terms of his authorisations to another person. If this alternative were preferred BSA would consider the promulgation of regulations to give effect to this provision to have a high priority. It is now understood that the department will include an express provision to allow trading subject to certain conditions in the bill.	See above. (pg 40)
B. COSAB The bill is also silient on the critical issue of a viable free market in water usage rights, which could ameliorate some of the negative impacts of the proposals.	See above. (pg 40)
C. COSATU Labour is strongly opposed to the idea of water rights being traded. We believe that if a situation is allowed to develop where profits are to be made from water, this will make water less accessible to poorer communities, as profiteering by private intermediaries will push up the cost of water. At Nedlac, the parties deadlocked on this matter, as business interests are	The new clause proposed by the Department as an amendment to the Tabled Bill subjects the new use to the same criteria as any other licence application to the extent that, should undesirable practices occur, this may be controlled by regulation.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
pushing hard for the possibility of tradability of water rights, and COSATU and SAMWU now look to Parliament to assert this matter of principle. Our interpretation of the Bill at present is that it provides for the possibility of trade in water rights. While it would appear that there can be no trade in the Reserve (identified to satisfy basic needs and environmental imperatives), the Bill provides for regulations to deal with "transactions in respect of authorisation to use water" (at s27(1)l) and provides that the allocation schedule to be drawn up by responsible authorities should reflect the quantity of water to be allocated by "public tender or auction" (at s47(e)). In COSATU and SAMWU's view the Bill should be amended so that it does not provide for trade in water rights. During this period of reconstruction and development it is important that water regulatory framework be clearly defined in terms of public interest imperatives and no loophole should be allowed to exist through which narrow private interests can begin to dominate a new, and as yet, untested system of national water regulation. We are firmly of the view that at present in South Africa, all water has social benefits, and needs to be allocated, by the responsible authority on that understanding. D. FORESTRY	
Tradability of water use entitlement. Is an integral component of any water allocation system. Provides a mechanism to control water allocation in an administratively less onerous way. Promotes the concept of efficient water use. Gives a market related value to water. Facilitates recovery of investment in licences. Tradability should not replace an administrative allocation system per se but it should act as a strong complementary allocation mechanism. The removal of Section 60 of the 5th Draft of the Bill, from this Bill, is of great concern to the Forestry Industry.	See above. (pg 40)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Forestry's Proposals Regarding Tradability Whilst Section 27(1) of the Bill makes provision for regulations on water use transactions to be promulgated, no guarantees are given that any such regulations will in fact be promulgated. These must be included. Forestry strongly urges that Part. 10 of Chapter 3 of the 5th Draft of the Bill, entitled "Trading of Entitlements to use water" be reintroduced, in its entirely, into the current Bill. E. NEDLAC Government supports the principle of constrained trading of Water Use Rights. Business supports the position of government but want the intention clearly stated. Labour and community do not support any transaction in Water use Rights. F. SAAU Page 27, Section 27 (1) (l) (i), (ii) and (iii) While it is recognised that section 27(I) of the Bill makes provision for regulations to be promulgated to deal with transactions, there is no guarantee that any such regulations will be promulgated. The tradability of entitlements should not be seen as a replacement for an administrative allocation system but as a complementary mechanism. The alternative wording which appears in the fifth draft is submitted for consideration: (1)A person entitled under this Act to use water in respect of a property may, subject to this part, trade the entitlement or part of it to another person.	See above. (pg 40) See above. (pg 40)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
(2)Trade under subsection (1) is either for the remainder of the duration of the entitlement or a shorter period agreed to by the persons concerned. (3)Where trade is effected for a shorter period, the entitlement traded automatically reverts back to the transferor on expiry would have applied had the entitlement not been traded. (sic) G. SA Sugar Growers Association *Tradeable Permits* The provision of the previous drafts which strongly provided for the trading of both water discharge and water abstraction permits, appear to have been removed. It is only by implication (ss. 26 and 27) that this is referred to, and then in a manner which leaves it within the Minister's discretion. It was understood that the White Paper had set out an explicit policy in this regard, and the Association urges the Portfolio Committee to reinstate the provisions of the previous draft (s.60) in this respect. Provided the trade transaction is overseen by the water catchment authority, and scrutinized in accordance with the objects of the Act, the positive attributes of tradeability of permits can be harnessed. Not only does private trading reduce bureaucracy, but would strongly encourage conservation through monetary reward.	See above. (pg 40)
SECTION 28 - CONSIDERATION FOR THE ISSUE OR GENERAL AUTHORISATION AND LICENCES. A. BUSINESS SOUTH AFRICA (BSA) Right of a mine to discharge underground water In terms of clause 22(j) the disposing of water found underground, if necessary for the efficient continuation of an activity or for the safety of people, is classified as a water use. A mine will accordingly in future have to depend on the administrative licencing system for the necessary authority to pump water from underground. This is so, despite the fact that	In order to address the concerns, the Department will recommend that clause 27(1)(d) of the Tabled Bill be amended to read as follows: (i) "the socio-economic impact of -(i) the water use or uses if authorised; or

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
if a mine is unable to pump underground water from the mining area, it impacts directly on the safety of the employees at the mine, accessibility to workings and efficient continuation of the mining operation. Since clause 12B of the Water Act, 1956 which gives express recognition to mine's specific requirement of dewatering, will apparently not be re-enacted, the right of a mine to discharge underground water should be emphasized and be given express recognition also in the list of criteria which must be considered in making a decision on water use. BSA submits that the criterion "the safety of persons in an enterprise intercepting water" should be added to the list contained in clause 28.	"(ii) of the failure to authorise the water use or uses."
B. COSATU	
(3)*Health and Safety should be taken into account for licencing and authorisations* In terms of the Nedlac agreement it is important that the criterion "health and safety of persons" be added to the list of factors (28)(1) which a responsible authority is to take into account in exercising its powers to issue a general authorisation or licence.	See A- BSA above. (pg 46)
C NEDLAC	
In terms of section 22(j) the disposing of water found underground, if necessary for the efficient continuation of an activity or for the safety of people, is classified as a water use. The criterion "health and safety of persons" should be added to the list contained in section 28.	See A- BSA above. (pg 46)
D. MIKE SMUTS	
Clause 28	
It is submitted that the likely duration of a water use is a factor to be taken into account by a responsible authority.	Agreed. An addition to clause 27 will be proposed.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
This clause would also be improved if the responsible authority were obliged to take constitutional requirements into account. The Courts ought not to be the only forums in which constitutional rights are considered. Organs of Government at all levels must be encouraged to implement the Constitution.	The constitutionality of all aspects of the Bill must be considered at all times.
SECTION 29 - ESSENTIAL REQUIREMENTS OF LICENCES. A. BUSINESS SOUTH AFRICA (BSA)	
The approach in clause 29(1) of granting a licence for an indefinite period of up to 40 years or for a fixed period not exceeding 40 years is acknowledged as an attempt to allay concerns that have been raised on previous drafts. BSA accepts this approach and looks forward to providing constructive input to the implementation process.	BSA's support for this is noted.
B. COSAB	
We have serious concern about the impact of the proposed limited period of water use licences on property values, and specifically on investment. Consider the following circumstance - a farm is mortgaged over 25 years, but only gets a 10 years water use licence. This will introduce unnecessary uncertainty. Assume that this particular farm is sold in 6 years' time - there will only be a 4 year water licence term remaining, with no certainty of any renewal. If the licence is not renewed, compensation for economic prejudice could be refused because of the known terms of the licence at time of purchase.	The principle of licences in perpetuity cannot be accepted. The anticipated increase in the country's population with the concomitant increases for demand for water, makes this impossible. The term of notice in the case of a licence given for an indefinite period, or the term of the licence, will correspond to the proposed water use and the nature of the investment. Should future water demands necessitate a reduction of the proposed water use, there ought to be provision for partial termination, subject always to the stipulated notice period. The Department will propose the following alternative wording to clause 28: (1) A licence contemplated in this Chapter must specify- (a) the water use or uses for which it is issued; (b) the property or area in respect of which it is issued; (c) the person to whom it is issued; (d) the conditions subject to which it is issued;

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
It is strongly recommended that the concept of fixed term water use licences be dropped and that licences in perpetuity be granted. The quantum associated with the licences can be negotiated by stakeholders, subject to compensation where material prejudice results from any reduced allocation.	(e) the licence period, which may not exceed forty years; and (f) the review periods during which the licence may be reviewed under section 49, which must be at intervals of not later than five years." (2) Subject to- (a) subclause (3): (b) restriction, suspension or termination in terms of this Act: and (c) review under section 49, a licence remains in force until the end of the licence period, when it expires. (3) The licence period of a licence will recommence at the end of every review period, unless the responsile authority has, during that review period, served a notice on the licensee to the effect that - (a) the licence period will not commence, in which event the end of the licence period will remain as it was immediately before that review period; or (b) the licence period will recommence, but that, from the end of the licence period as it was immediately before that review period, the licence will become subject to different conditions, which must be specified in the notice and which may include a lesser permitted water use. (4) Before serving a notice under subsection (3), the responsible authority must inform the licensee of the proposed notice, state the reasons for it, and give the licensee a reasonable opportunity to be heard."

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
It is therefore recommended that section 29(1)(b) be amended as follows: - 1. A license under this Chapter (a) must be issued for a certain quantum of water usage, which quantum may be; (i)for an indefinite period, subject to amendment by agreed notice; (ii)for a definite period, subject to amendment thereafter; and is subject to review under section 51.	
C. FORESTRY - LIMITED DURATION OF WATER LICENCES	
Forestry is a long term investment practiced on the basis of "sustainable rotations" (in case of sawlog production a minimum of 54 years to achieve)	See B above (pg 47)
Without security of use of rainfall, investment uncertainty will arise.	
Afforestation permits have ensured certainty in water use and have supported investment in both plantations and processing activities.	
Limited term licences will:	
Discourage and limit new forestry investment and processing. Create extreme uncertainty about existing investment.	
Licences of 40 year duration or indefinite period subject to a maximum notice period of 40 years cannot therefore be accepted by Forestry.	
Forestry's Proposals on Water Licence Duration	
For existing and future authorised afforestation licences to be in perpetuity	
In order to provide for reallocation of water resources: a. licences must be utilised (i.e. use it or lose it) and; b. tradeability of licences must be adequately provided for;	
If it is deemed necessary to amend the above, for whatever reason, then full compensation for whatever current and future financial losses as a result thereof, must be payable.	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
D. NATIONAL FORESTRY COUNCIL	
Section 29 of the Act makes provision for water use licences to be issued subject to a notice period which may not exceed 40 years. However the Act does not provide a minimum period for the licence, nor does it propose a minimum notice period. In theory therefore, a licence could be cancelled with a notice period of one year. Given the long period needed to see a return on investment in industries like forestry, we propose that the Bill make provision for a minimum notice period defined as a reasonable period required to achieve socio-economic benefits.	See B above. (pg 47)
E. SAAU	
Page 29, Section 29 - Essential requirements of licences.	
The SAAU's submission is that water use rights for agricultural purposes should be granted for an indefinite period, subject to review and compensation through expropriation. The permanency of water use rights would not hamper the states needs/demand to use water for other purposed but would create stability and security in the economy. Section 29(1)(a)(i) should be amended by deleting the words "subject to termination by notice, the notice period to be stated in the licence which notice period may not exceed 40 years".	See B above (pg 47)
F. STATEMENT NATIONAL FORESTRY ADVISORY COUNCIL	
Section 29 of the Act makes provision for water use licences to be issued subject to a notice period which may not exceed 40 years. However the Act does not provide a minimum period for the licence, nor does it propose a minimum notice period. In theory therefore, a licence could be cancelled with a notice period of one year. Given the long period needed to see a return on investment in industries like forestry, we propose that the Bill make provision for a minimum notice period defined as a reasonable period required to achieve socio-economic benefits.	
G. CHESTNUTS FARMING PARTNERSHIP	
Clause 29	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Water use licences for the production of certain crops on farms - the person/s who issue these licences will have little or no knowledge of farming conditions in these areas, and with the present corruption in most government departments, we have little faith in fair dealing. Withdrawal of these licences leading to compulsory removal of crops grown and forced rehabilitation of the land.	The applicant will indicate the water use, not DWAF.
H. ASSOCIATION OF IRRIGATION BOARDS - KWAZULU-NATAL Clause 29	
1. The Act will effectively abolish water rights and substitute in their place a licensing procedure. Many people contest the legality and fairness of this because, as the Bill stands, compensation is payable only in cases of "destruction or severe prejudice". In any event the limitation of existing lawful water use to the two year period prior to the coming into force of the Act will in certain circumstances by unfair.	See A- BSA under clause 23(6) above.
2. Accessibility to and the sharing of the country's water resources are the means by which water legislation can meet the need to ensure the even and equitable distribution of water and it is therefore accepted that some form of licensing control is necessary.	
At the same time (from the irrigation perspective) it must be recognised that the land closest to water resources is the land that can most cost effectively be irrigated. Thus the principle of riparian rights was based on practical considerations. The Bill itself calls for a licence to be issued in respect of a property or area specified in the licence (Section 29(1)(c). In the KwaZulu-Natal context none of the areas occupied and controlled by Blacks lacks access to major rivers or significant water resources. What is missing in these areas is the infrastructure (such as roads, dams and other waterworks) to achieve the fair distribution of water. It is this infrastructure which requires urgent attention.	The comments put forward will be considerations in considering the merit of an application.
3. The point has been emphasised in the past that before meaningful decisions regarding the allocation of water in a catchment can be made	See A- BSA under clause 15 above. Existing water use is regarded as lawful for purposes of implementing the new Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
vast quantities of data and the analysis of such data are required. In the light of staff shortages and limited professional and technical expertise it could take years for a responsible authority to make informed and appropriate decisions on the allocation of water to prospective licensees. All existing water use should therefore be deemed lawful until the requirements of the Reserve and/or public interest dictate otherwise.	
4. The duration of licences is a source of major concern. On the one hand the degree of permanence is of great importance to land owners; on the other hand a measure of flexibility is required to meet the needs of changed circumstances or increased demand. Section 29(1)(a) should in consequence be amended to read:- "(1) A licence under this Chapter (a) must be issued for an indefinite period, subject to review under Section 51 at the time periods stated in the licence, which time periods may not exceed 40 years". Section 51 must then be amended to permit the responsible authority only to terminate the licence on review in cases of extreme exigency.	See B above. (pg 47)
Chapters 8 & 9 8. Catchment Management Agencies, Water User Associations or Responsible Authorities	
8.1 A catchment management agency is described in the Bill as a body corporate but cannot possess a legal personality separate from its governing board because it is not comprised of members on whose behalf its governing board acts. In other words the governing board is itself the catchment management agency which cannot exist as a nebulous entity. The Bill must clarify this position and for the purposes of these comments the term catchment management agency will be used as including its governing board.	A board of a management catchment agency is a body corporate.
8.2 A catchment management agency must have functional representation of the water users within its water management area (or, preferably, its catchment as indicated in 2.2 above). There is absolutely no need whatsoever for the appointment of an advisory committee to recommend to	DWAF does not agree with the proposals as to how presentations should be effected and prefers the procedure set out in the Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
the Minister the organs of state and bodies representing different sectors and other interests within the water management area since sectoral representation is unlikely to extend beyond urban use, rural use for household and gardening purposes, commerce, industry, agriculture, irrigation, forestry and environment, which sectors should preferably be identified in the Bill. Such of these sectors as exist in a catchment should have no more than tow representatives each to be nominated to serve on the catchment management agency. Sectoral representation does not "enable everyone to participate" as stipulated in the concluding paragraph of the preamble to the Bill and in order to achieve grass roots participation it is suggested that the areas of jurisdiction of water user associations be so arranged as to cover the entire area of a catchment and that each water user association should nominate one or two representatives to the catchment management agency. Once these nominations have been received the Minister should, without undue difficulty, be able to decide which organs of state should be represented on the catchment management agency.	
8.3 Major drainage areas or basins extending over thousands of square kilometres would have to be served by several catchment management agencies. Some provision must be made for bodies to exercise over-arching jurisdiction over the whole of a drainage area or basin to co-ordinate the functions of the catchment management agencies and their subordinate water user associations.	This is DWAF's role.
8.4 The licensing function should be the responsibility of the catchment management agency with the right to the latter to delegate this function to a water user association. Pending the establishment of a catchment management agency the function will have to be exercised by the Director-General.	This is possible in terms of the Bill.
8.5 The actual use of water within the area of jurisdiction of a Water User Association must be subject to control by the Association and membership should be compulsory for any licensed user of water.	This is possible in terms of the Bill.
9. The powers which the Bill arrogates to the Minister are so wide as to be all but Draconian. Democratic participation at grass roots level should be	DWAF does not agree with the first statement.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
the watchword.	
10. Much of the requisite information for catchment management as well as professional and technical expertise is already in the hands of certain of the Water Boards (e.g. Umgeni Water Board) but the Bill makes no reference to the valuable contribution such Boards can make to the implementation of the principles on which the Bill is based or to the role they should play. This is seen as a major deficiency.	This is possible by delegation.
I. MIKE SMUTS	
Clause 29	
The term "successor-in-title" in c.29(2) signifies that a licence is freely transferable and that there is no need for the "successor-in-title" to submit to the scrutiny of the authorities before commencing or continuing the activities in respect of which the licence has been granted. This will allow abuses. In particular, it is unclear how the "successor-in-title" will become bound to execute pollution control measures, and whether the original holder of the licence will be excused from further duties. The responsible authority would fail in its duty if it did not examine the credentials of a "successor-in-title" before allowing a transfer of the licence.	The conditions of a licence remains in force and the licence holder is subject to monitoring.
J. KNYSNA T RYAN	
Clause 29 A water use licence to grow certain crops is an outrageous infringement of ones personal liberty to decide in which direction ones efforts should be directed in order to make a living and thereby add to the well being of the community. Obviously certain crops prefer certain regions, for instance in the garden route area of the Southern Cape, pine trees are a better proposition than wheat, so why is forestry to be penalised in favour of wheat?	See G above. (pg 50)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
SECTION 30 - CONDITIONS WHICH MAY.BE ATTACHED TO GENERAL AUTHORISATIONS AND LICENCES.	
A. BUSINESS SOUTH AFRICA (BSA)	
1. Clause 30 (1)(b)(i): Specification of management practices.	
The department should prepare guidelines to assist people in complying with source control standards but should only make compliance with guidelines mandatory when the activity has a negative impact on the receiving water quality.	The Department must be proactive and not reactive. Prescriptive conditions will not be included in licences unnecessarily. We do not live in a perfect world and some people may take advantage of the lack of perscriptiveness in a licence.
2. Clause 30(1)(b)(ii): Specification of measuring devices;	
The same comment applies as for (b)(l)	See A1 under this clause.
3. Clause 30(1)(iii): Specifying treatment to which it must be subjected, before it is discharged;	
Treatment should only be specified where discharges are not complying with source control standards and not in cases where innovative approaches may be resulting in higher quality discharges. Guidelines would be useful in this regard but not for mandatory application in all cases.	
4. Clause 30(1)(d)(i): Specifying the waste treatment, pollution control and monitoring equipment to be installed, maintained and operated;	As A1 above. Under this clause
5. Clause 30(1)(d)(ii): Specifying the management practices to be followed to prevent the pollution of any water resource;	As A1 above under this clause.
6. Clause 30(1)(h) and (I): Are catchalls which imply a wide range of official discretion which results in inconsistent application of the legislation.	As A1 above. It remains within the discretion of a responsible authority how prescriptive a licence should be.
The prescriptiveness approach adopted here will not necessarily promote achievement of the objectives and should preferably be base on promotion of cleaner production technologies.	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
7. Clause 30(b)(v) allows a responsible authority to require the licensee to provide water to a person specified in the licence. In contrast to the Water Services Act where a similar provision exists there are no conditions qualifying this requirement. It is proposed that the wording be altered from "provided" to "make available" so as to avoid unreasonable demands being made on the licensee for the delivery of water to the person concerned.	This has been accommodated in the Tabled Bill - see clause 29(1)(v) of the Tabled Bill
Inter-basin transfers	
A. COSATU	
The impact on conservation and on rural communities of inter-basin transfers needs to be taken into account. Environmental impact assessments need to be done before any inter-basin transfers take place.	Inter basin transfers can only be handled under national strategy, which the Minister puts into place. National strategy is subject to prior public comment. If such transfer has or could have any detrimental impact on rural communities or on environment it can be addressed when public comment is made.
Chapter 4, Part 2, Section 30(1)(e)(ix)	
B. ESKOM	
The constitutionality of obliging licencees to become members of a water user association needs to be investigated.	This is regarded by DWAF as constitutionally correct. The requirement of becoming a member of a water user association is a prerequisite for water use under a licence and does not exist independently from this licence. The provision is important to ensure economic use of infrastructure and to prevent the exclusion of emerging farmers.
Page 31, Section 30(2)	
C. SAAU	
The permanent transfer of water use rights is uncertain and needs clarification.	See B- COSAB under clause 29 above. (pg 47)
D. WILDLIFE & ENVIRONMENT SOCIETY	
Clause 30	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Part 2, 30, (l): The case where water not containing waste is discharged into a river, leading to increases in flow, is not dealt with in this section. This occurs when water is transferred between catchments and can lead to deleterious ecological effects that are similar to water abstraction.	See clause 29(1)(a)(ii) and (b)(ii) of the Tabled Bill.
SECTION 31 - SECURITY BY LICENCE APPLICANT	
A. BUSINESS SOUTH AFRICA	
1. The security against liability required under clause 31(1) is similar to the pecuniary provisions required of mining companies under the Minerals Act (Act No. 50 of 1991) in terms of mitigating the residual impacts of mining activities post closure. The criteria, which will be used by the responsible authority to determine whether it considers it necessary to require security, should be specified.	Security will only be required for the protection of a water resource or property. The normal abstraction rights will not require any form of security. On the other hand weather modification and waste return flow activities may require security. The criteria is contained in clause 30(1) of the Tabled Bill, namely when it is necessary for the protection of the water resource or property.
2. Clause 31(3) lacks reference to a transparent process which would ensure effective participation by the affected parties when the responsible authority decides to require security.	The Bill provides for inputs from an applicant on all aspects of a licence, of which security may be one. (See clause 41(2)(d) of the Tabled Bill.)
3. A final point on this issue is that this requirement may duplicate similar requirements in the EMP-approach adopted by the mining industry to address this type of need. The mining industry strongly opposes its duplication and requires an enabling clause that would recognise compliance with similar provisions in another law which should be deemed to be compliance with clause 31. It is furthermore submitted that this provision should not prevent a mining company from obtaining conditional closure when it has succeeded in complying with the mine closure objectives agreed to in the approved EMP report.	The Bill makes it possible that if an EMP is required in terms of another Act, and it meets DWAF's requirements, a further EMP may be dispensed with. (See clauses 22(3) and (4) and 41(3) of the Tabled Bill.)
B. NEDLAC	
SECURITY BY LICENCE APPLICANT	
It was agreed that section 31(3) would read as follows: A responsible authority must determine the type, extent and duration of any security	See A-2 above. The suggestion for "in consultation with the applicant" implies consent of the applicant, which can frustrate

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
required <u>in consultation with the applicant</u>.	the whole procedure.
C. SAAU	
• Page 31, Section 31 Security by licence applicant	
It is not clear on which basis the amount of security in respect of any obligation or potential obligation arising from a licence will be determined. In the absence of clear guidelines this could severely prejudice the cash flow situation of an irrigation farming enterprise, should the undertaking be liable to provide a bond or a bank guarantee as security under this section. In the case of the agricultural sector the security implies a charge on the land. Our submission is that the land in question offers sufficient security. Clarification is also needed on the duration of the security which "may extend" beyond the time period specified in the licence concerned. Section 31(4) should therefor be deleted. Security could well extend beyond the licence period depending on the water use.	See A-1 above. (ppg 57) It is highly unlikely that security will be required for an agricultural enterprise. The section is aimed at water use which could be hazardous. The hazardous effect of a water use (e.g. contamination by pollutants) could well extend beyond the period of the water use concerned. Land can be offered as security.
SECTION 33/34: What constitutes an existing lawful water use. Responsible authority may declare a water use to be an existing lawful water use.	
A. RAND WATER	
1. In terms of Clause 33 of the Bill existing lawful resource use means actual use of a water resource for two years immediately before the Bill becomes an Act and which use was authorised under the Water Act, 1956, or any other law, or part thereof, repealed by the proposed Act, once it is in force. Many water boards are using water, the use of which was obtained by them by means of contract.	This will be discussed in the clause by clause discussion on the Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
The proposed Bill seems to contain a *lacuna* in that no provision is made for the continued use of resources such as those that have not been secured in terms of a statute. Cases in point are Rand Water's existing contractual rights to draw water from the Zuurbekom compartment and the Fountains wells used by the Pretoria Municipality.	
2. It is accordingly suggested that the definition of "existing lawful resource use" should be elaborated upon in the Bill and that the provisions of the Bill be revised to accommodate rights obtained contractually.	
B. SAAU	
• Page 32, Section 34(3)(b)(ii)	
Unexercised water use rights is not fully protected as it is subject to "good reason" and in the "opinion" of the responsible authority who must declare the potential use as an existing lawful water use. The question thus appears what will be regarded as good reason in the opinion of the responsible authority. This is vague and should be amended. Sufficient time should be allocated to exercise the rights. The words "if there is good reason, in the opinion of the responsible authority" should be deleted from section 34(3)(b).	See A above. The subjective test of "good reason in the opinion of the Responsible Authority" has been deleted.
Existing lawful water use (clause 33(1)(b))	
C. UCT - ENVIRONMENTAL LAW UNIT	
Does the reference to "other law" (clause 33(1)(b)) include the common law?	Yes.)
D SUNDAYS RIVER IRRIGATION BOARD	
The words are used "good reason" and "good faith" are vague in that an individuals opinion may be the deciding factor in determining whether the water use right is lawful.	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
If that right is noted that it is not being utilised due to development then such water use right should be lawful.	
E. BREEDE RIVER CONSERVATION BOARD	
I really believe that provision should be made for the recognition of existing lawful water rights which have not yet been exercised. My reason for this is that the D.G. (Mr Muller) last year said at Elsenburg Stellenbosch in so may words that existing uneseereised rights would not summarily be taken away. This I, and others, conveyed to irrigation farmers. Persons who may have wanted to start exercising their rights are now being prejudiced. I therefore suggest that section 34 (3)(b)(ii) be amended to perhaps read as follows: "and (ii) there is good reason in the opinion of the responsible authority that the use should be declared and existing lawful water use provided that if no steps, to the satisfaction of the responsible authority, had been taken in good faith towards exercising the use within five years of commencement of this Act, the declaration of an existing lawful use under this provision lapses and becomes null and void."	See above (pg 58)
SECTION 37: Minister may declare stream flow reduction activity	
A. FORESTRY *Discriminatory Treatment of Forestry*	
Section 37 (4) classifies Forestry as a “stream flow reduction activity”. No other activities are classified. Other activities can be declared “stream flow reduction activities” but only after a process of due consultation.	Forestry is already subject to a permit system due to its significant effect on water resources. The Act provides that other water hungry vegetation can also be declared stream flow reduction activities. This eliminates any discrimination which may

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
	be perceived. The inclusion by name of Forestry in the Bill is to simplify the transition.
Forestry therefore has been treated differently from other activities and is given no opportunity to state its case or object. This is contrary to the agreed principle of "level the playing fields".	
By classifying Forestry, this implies that Forestry has an "over allocation of water" and uses and "unfair and disproportionate amount of water" relative to other water users (implications for compensation).	Forestry uses a significant quantity of water. There is no question of over "allocation" or "unfair and disproportionate water use", provided the extent of permissible forestry is controlled. It is accepted that Forestry plays an important role in the SA economy.
This creates an extremely negative perception about Forestry to the public at large.	
Forestry's Proposals Regarding Stream Flow Reduction Activity	
In the preamble to part 4, the sentence: "The control of Forestry for its impact on water resources, currently exercised in terms of the Forest Act, is exercised under this part", be removed.	
Section 37 (4) (a) (b) & (c) be removed and replaced with the following:	
The Minister may, by notice in the Gazette, declare any run-off reduction activity which was previously controlled, as a run-off reduction activity in terms of Section 37 (1), without having to comply with the procedures set out in section 37 (2) (a) to (e) and 37 (3) (a) and (b).	This suggestion cannot be accepted because it would exclude forests established before 1972, when the Forestry Permit system was first introduced. All forestry should be treated equally.
B. GREYTOWN AND DISTRICT CHAMBER OF COMMERCE	
The area this chamber represents is agriculturally based with timber being the dominant product. The area is heavily dependent on timber with a lot of industry involved with timber products.	See above. If there is no competing potential use for the water consumed by forestry in the Greytown area, forestry licences will in all likelihood be granted.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Any reduction in timber would severely impact the labour market and cause further unemployment in our area. For this reason we oppose the national water bill as it seems certain to adversely affect timber production. As matters stand vast amounts of water from our area run into the sea annually. This source of water should be enhanced and stored and used. To restrict forestry to increase the run-off of water into the sea is ludicrous. We would urge your department to leave the forestry industry alone and concentrate your efforts on the storage and distribution of water that is currently going to waste. Surely the main objective should be to create employment and not destroy jobs. Any government interference in the private sector will only lead to inefficiencies and will harm the free market. This must be avoided at all cost.	
C. KWAMBONAMBI FARMERS AND TIMBER GROWERS ASSOCIATION This Association which comprises mainly sugar cane and timber growers views with alarms the drafting of the new National Water Law. In times when many facets of agriculture are being deregulated we find it inconceivable that this restrictive burden is placed on us. We wish to record our strongest objection to the New Bill.	
D. REGIONAL COUNCIL WESIFUNDA	
1. It is our considered opinion that the proposed Bill is restrictive to the agricultural sector upon which a substantial portion of our regional economy is based. Both the timber and sugar growing industries and consequently the secondary and tertiary related and ancillary industries will be adversely affected by the imposition of term licences	The importance of agricultural activities, such as timber and sugar growing, is no reason to give these activities special privileges in the allocation of water.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
for the continuation of such agricultural undertakings.	
2. Any restrictions on the continued use of the land by commercial timber, sugar and other agricultural plantations, actual or perceived, will undoubtedly result in the loss of confidence and ultimately the loss of investment and development for our area.	
3. The unemployment statistics in the Ugu Regional Council area of jurisdiction are already a serious cause for concern and any adverse condition which may be applied to the regional economy is most unwelcome, especially where such adversity will affect the rural populace where employment opportunities are already at premium.	
4. While the conservation of the water resource is to be applauded and is supported by the Ugu Regional Council, the cost of the proposed methodology on our economy must be considered too high, given that the Bill discounts the value of existing real estate and should be reconsidered.	
5. The Council does not dispute the right of everyone to water, but are mindful that the proposed **B**ill will result in increased water tariffs to meet the proposed taxes to be levied for water.	There are no taxes for water use, but only charges for services rendered.
E. SAAU	
Page 34, Section 37(1)	
This constitutes a discriminatory and restrictive practise on agriculture and forestry and could include the cultivation of any particular crop other vegetation to be a stream flow reduction activity. There are sufficient other sections in the Bill which provides for management of stream flow reduction activities. Section 37 (i) should be deleted from the Bill.	See above. (pg 60) It is unfair to require water users abstracting water from a river to pay for infrastructure such as dams, to replace water which would otherwise reach the river but is intercepted by water hungry crops. It is necessary to enable the Minister to declare stream flow reduction activities to achieve an equitable allocation of water use amongst different sectors of use. Otherwise interceptors of water will have an unfair advantage over abstraction of water.
F. SA ASSOCIATION OF WATER BOARDS	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Chapter 4 Sections 37 It is considered to be more appropriate for Catchment Management Agencies to identify and declare stream flow reduction activities rather that the Minister, although the Minister or Director-General should give final authorisation. The degree of regulation in the forestry industry is noted and all other declared stream flow reduction activities should be subject to the same level of regulation. Section 37, subsection 1 should be modified to:- *"the Minister may, except in the case where a Catchment Management Agency is in operation who will assume this responsibility, by notice in the gazette, in relation to a particular area specified, declare any activity.."*	The declaration of a stream flow activity is an important intervention and should be done on national level by central government. Nothing will stop a CMA from requesting the Minister to declare particular activities within its water management area to be stream flow reduction activities. See above.
G. SA SUGAR GROWERS ASSOCIATION The majority of the Associations' members grow cane in high rainfall areas. Consequently, there is little need to augment the naturally occurring soil moisture by other means. These growers therefore do not require any permits for conducting their businesses. A minority, however, have water allocations, and irrigate their land.	See F in clause above.
The Bill excludes the first group from the definition of "water use". They would, it appears, only be affected by the control and fiscal measures of the Act if cane farming were to be declared a stream flow reduction activity as defined in section 37 in the CMA where they are active. Such a declaration would only be competent if the Minister were to be able to demonstrate that cane farming "significantly reduces or may reduce" the availability of water in certain defined respects (s. 37 (1)). As the declaration has many potentially prejudicial effects for the relevant farmers, the Portfolio Committee is urged to ensure that the publication provisions in the section are considerably improved. Farmers do not read government gazettes, nor do many of them have access to regular newspapers. It is therefore considered prudent that the Minister should identify the affected farmers in the area concerned	Separate notices to individual farmers are impractical. There may be too many notices and their names and addresses will in most cases not be known. Farmers have representative organisations with access to the Government Gazette.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
and give each of them a notice setting out the proposal and requesting comment.	
It is also urged that a declaration by the Minister in terms of Section 37 be subject to an appeal to the Appeal Board in terms of section 156. Such a declaration involves technical matters, and the Board will be well placed to adjudicate on whether, in fact, there is a significant reduction. The alternative will be costly review proceedings in the Supreme Court.	For effective water management, the declaration of a streamflow reduction activity is a policy decision. Policy is the responsibility of the government of the day, not of the Water Tribunal. Therefore an appeal to the Water Tribunal is inappropriate. In any event there is opportunity for public comment before a stream flow reduction activity can be declared. There is also the possibility of a review by the High Court should the Minister not apply his or her mind.
H. SOUTH AFRICAN WOOD PRESERVES ASSOCIATION	
• It is our considered opinion that the proposed Bill is restrictive to the timber farming/forestry sector of our regional economy upon which our livelihood depends. The imposition of term licences for the growing of timber will adversely affect our economic sector by discouraging the expansion of, or even the perpetuation of primary timber production.	See above. (pg 60)
• Any legislated restrictions on the continued use of the land by commercial timber growers, actual or perceived, will undoubtedly result in the loss of confidence and investment in our sector of the national economy.	
• Unemployment in our region is already a serious cause for concern and any adverse condition which may be applied to the primary sector of the economy will result in the direct reduction of jobs in the wood preservation industry through disinvestment or the curtailment of proposed expansion. Most of the SAWPA members operate in the rural areas, adjacent to the timber suppliers and are therefore providing employment opportunities to some of the most needy people in our provinces.	
• Industries involved in the processing and preservation of wood products produce much of the input raw materials required by the nation in the production of houses and other infrastructural	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
redevelopment. Restrictive legislation will result, in the long term, in the reduction of product output and the consequent increase in price of these important products. While the conservation of the water resource is to be applauded and is supported by SAWPA, KwaZulu Natal, the ultimate cost of the proposed methodology to our sector of the regional economy must be considered too high given that the Bill discounts the value of the timber industry's real estate and discourages future investment in timber farming/forestry with the resultant knock down affect on ancilliary industries, such as our own	
I T. RYAN	
Totally ridiculous, how will this be measured ? and even if it is proven to be so, it does not follow that the result of the growing of a crop is necessarily a negative factor to the well being of that community. I cant imagine that the water bill would prefer a fast run off from a short grass covered slope to that of a dense crop which will utilise some of the water and slow down the run off.	See above. (60)
J CHESTNUTS FARMING PARTNERSHIP	
That the Minister may, simply by notice in the Government Gazette, impose a "Rainfall" tax.	See D point 5 above.
K IXOPO AGRICULTURAL SOCIETY	
On the subject of a rainfall tax, it is felt by our members that it would be arbitrary, prejudiced and unjust, not to mention unworkable. Who, for example, would be liable for the large areas of this country which are not farmed? Would landowners build up credit in years (such as this) of surplus run-off?	
SECTIONS 38 AND 39: CONTROLLED ACTIVITY	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
A. BUSINESS SOUTH AFRICA	
The consolidation of licences into a single licence is welcomed and the department is to be complimented on the cohesive approach, which now appears to be envisaged in Chapter 4. It is assumed that if an application includes a controlled activity, determined in terms of clause 38 and 39 that it would be dealt with as part of a single licence.	This assumption is correct.
B. ESKOM	
Power generation activities which alter the flow regime of a water resource, are identified as a controlled activity.	
Although the explanatory note at the beginning of Part 5 allows the Minister to regulate controlled activities, no provision is made in the Bill to enable him to do so.	Clause 37(2) in the Tabled Bill rectifies this situation.
Furthermore, the scope or intent of these regulations is not specified. This is of concern to Eskom and requires clarification.	Control can be exercised through licence conditions or the making of regulations.
C. SAAU	
Page 35, Sections 38 and 39	
The sections could limit the farming potential in the field of aqua-culture, feedlots and piggeries and should be reviewed with other legislation concerned (e.g. in terms of section 21 of the Environmental Conservation Act (act 73 of 1989) which may have a substantial detrimental affect on the environment.	Controlled activities are only those activities through which water resources are or could be detrimentally effected. This section does not deal with activities in general. Controlled activities can only be declared after opportunity for public comment has been given and all other relevant legislation must be taken into account. (See clause 41(3)). It is also possible for DWAF to enter into a Memorandum of Understanding with other government departments on the application of this power.
D. BREEDE RIVER CONSERVATION BOARD	
Section 38 creates the opportunity that the responsible authority may under the cloak of "verifying the lawfulness", at any time convert an existing lawful exercised water right, which is not intended to be	This clause is to verify the facts of an existing water use and thereafter to issue a licence. Over a period of time one can assume that all exisating lawful

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
temporary, to a licensed right which is subject to time limits. It also creates the opportunity for a responsible authority to look for work and income for itself where no interference is necessary. I would therefore say that section 36(1) should read as follows: "(1) If there is good cause to doubt the lawfulness of an existing water use, the responsible authority may, in order to verify its lawfulness, by written notice require any person claiming an entitlement to that water use to apply for a licence for that use"	uses will be converted to licences subject to conditions..
SECTION 42: PROCEDURE TO APPLY FOR WATER USE	
A. BUSINESS SOUTH AFRICA	
Waterworks as defined in the Bill fall under the Environmental Conservation Act regulation mentioned above. It is proposed that it be made clear that the environment impact assessment referred to here will comply with the legislative requirements that other developers face.	See clause 41(3) of the Tabled Bill.
In clause 42(2)(a) the term “independent assessment” required in terms of the fourth draft has been replaced with an “assessment” which then has to be independently reviewed. This approach is more costly without necessarily adding value. The fact that other legislation on impact assessment exists is now recognised in the final draft but as an additional requirement, which is completely unacceptable. The whole thrust of BSA’s submission to the drafting team was that a single impact assessment should be required by government and that all departments requiring it should co-ordinate their requirements. Subsequent discussions confirmed that the Department intended to promote co-operative governance in this regard.	The term "independent assessment" was changed to "assessment" to make in-house assessments possible. This will save costs because an assessment submitted by an applicant may be of poor quality or may not be objective. Provision is made for an independent review. This is less costly than a new assessment. The right to acquire an assessment or an independent review of an assessment is optional, and will only be exercised by a responsible authority in suitable circumstances.
This is borne out by the inclusion of clause 23(3) which states this intention. It is hoped that the Department will set the example by entering into co-operative agreements with other Departments to give	The Department is initiating steps to enter into co-operative agreements with other government departments.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
effect to this clause.	
SECTION 44:	
A. COSATU	
Responsible Authority may invite persons to apply for licences	
(1) Time-frame for establishing schedule for water use allocation	
The responsible authority is under no obligation to immediately put in motion the process of preparing a schedule for water use allocation (at s45) and compulsory licensing (at s44). The legislation simply states that this process can be put in motion if the responsible authority considers it desirable in order to achieve one of a range of goals. It could take many years for the responsible authority to put this process in motion. This could have serious implications for goals of equitable access to water and redress for past discrimination. **It is, therefore, proposed that there needs to be some requirement on responsible authorities to prepare a schedule for water use allocation within a specified time-frame.**	Requirement for water use allocation will be applied when a water resource is under stress with no further capacity within the system for individual applications to be granted. It is not possible to state a time frame in the Bill. In some water rich areas it may not be necessary for many years to come.
SECTION 46:	
Responsible authorities may require further information on application for licences.	
A. BUSINESS SOUTH AFRICA	
Clause 46(a) does not refer to other impact assessment legislation, as is the case in clause 42(3). Both situations should be treated equally.	Clause 46 in the Cabinet Bill has been deleted by the State Legal Advisor as it was covered by clause 42 of that draft. It is now contained in clause 41(2) of the Tabled Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
It is noted with concern that there appears to be no intention to prescribe further details of the requirements for, impact assessments thus leaving the matter open to greater official discretion than would be the case if prescribed by regulation. It is proposed that a requirement for regulation be included under clause 27.	The concern has been addressed by giving the Minister the power to make suitable regulations. See clause 26(1)(0) of the Tabled Bill.
SECTION 47: Responsible authority must propose allocation schedules A. BUSINESS SOUTH AFRICA The provision which is made in clause 47(e) for public auction or tender of access to water is not understood to be a tradability mechanism by BSA as this refers to a transaction between the State and a water user. B. ESKOM **2.1.2 Chapter 4, Part 8, Section 47:** *Responsible authorities must propose allocation schedules:* (2) A proposed allocation schedule must comply with- (a) the criteria set out in section 28; and ADD (b) the national water resource strategy; and (c) the relevant catchment management strategy under section (9)(1) (3) A proposed allocation schedule must, subject to subsection (4), reflect the quantity of water to be- (a) assigned to the Reserve and any international obligations; and ADD (b) allocated for strategic use; (c) allocated to each of the applications etc.	The statement is correct. This has been addressed by the inclusion of clause 27(1)(i) in the Tabled Bill. Clause 45(1)(c) of the Tabled Bill requires the Responsible Authority to consider all factors mentioned in clause 27(1) (including the strategic importance of the water use) in preparing the allocation schedule.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
C. FORESTRY *Non-Allocation of Available Water* Chapter 4, Part 8, Section 47(4) states: "A responsible authority is under no obligation to allocate all available water". This is unacceptable if it is in a catchment which is under subscribed as this will deter development. Water is a resource that should be used if available and if demanded.	This is a policy issue to be dealt with as part of the national and the catchment management strategy in terms of which water may be reserved for a planned future development.
SECTION 49 A. SUNDAYS RIVER IRRIGATION BOARD In the renewal or issuing of licenses the user is placed in worst situation, then surely compensation must be made.	See under clause 23 A- BSA (pg 30).
SECTION 51 RESPONSIBLE AUTHORITY MAY REVIEW LICENCES AND MAY AMEND OR SUBSTITUTE CONDITIONS OF LICENCE. A. COSATU *(2) Renewing and reviewing licences* Provision is only made for reviewing a licence at the time periods specified in the licence (at s51). This could lead to a situation where a licence is issued for a certain time period, but before that time period is up, the responsible authority recognises that in order to meet some of the other goals of water allocation (for instance, redressing past	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
discrimination, ensuring equitable access to water, or any of the other criteria established in s51(2)), water use should be differently allocated. They could be prevented from reviewing the licences issued for a number of years. The only provision made for an early renewal or amendment of the licence is if the licensee requests it (at s54). There are strong disincentives for the responsible authority to amend the conditions of the licence- even if in the opinion of the authority this would be necessary in order to protect water resources, ensure equality and so on - because compensation will have to be paid to the licensee if changes to the licence destroy or severely prejudice the economic viability of any undertaking for which the licence was originally issued.	
Business has argued that compensation should not be restricted to situations where the economic viability of enterprises would be severely prejudiced, but COSATU and SAMWU would strongly **oppose any attempt to make this clause less restrictive. As it could, in fact, be argued that it is not sufficiently restrictive, in that it opens up the way for industry to be paid out large sums of money which should rather be spent on water development.**	DWAF agrees that the clause should not be less restrictive.
B. SAAU *Page 42, Section 51(2)(a), and (b) and (c)* **It is suggested that subsection (c) be deleted. The point of departure is that any reduction in entitlements in favour of demand changes, should be subject to expropriation and compensation.**	The compensation provision in clause 49(4) of the Tabled Bill will apply if the criteria are met.
SECTION 58: MINISTER MAY ESTABLISH A PRICING POLICY FOR WATER USE CHARGES.	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
A. BUSINESS SOUTH AFRICA	
1. Although clause 58(8) requires the Minister to invite comment on proposed water pricing policy by notice in the Gazette, no period for public comment is specified. Provision should be made for public comment as set out in 6; 9; 39(3); 40(4); 58(8); 72(1); 81(3); 93(2).	Clause 58(8) of the Cabinet Bill is now clause 56(7) of the Tabled Bill where a period of 60 days is provided for public comments.
2. A degree of cross subsidisation between industrial and basic domestic use as envisaged by clause 58(4)(a) is not opposed. However if differentiation is intended as an instrument of industrial policy then it is opposed. It is assumed that the water pricing policy would be applied to water pricing at other management tiers as well and that a mechanism for the differentiation between users at the consumer end would be investigated for implementation at the bulk end of the supply stream.	Water pricing will not be used as an instrument in the development of industrial policy. This will be addressed in the formulation of the pricing policy to be set by the Minister under clause 56 of the Tabled Bill.
3. The removal of the provision in the fifth draft restricting the application of revenue generated in a catchment area to that area is viewed with concern and reinforces the view that water pricing policy may be just another way of raising taxes for other purposes. It is proposed that the original clause 191 in the fifth draft be reinstated.	The provision referred to has been substituted by clause 57(5) of the Tabled Bill. See also clause 59(1) of the Tabled Bill. These clauses make it impossible to use pricing policy for raising taxes.
B. COSATU	
COSATU and SAMWU support the fact that the Bill's financial provisions (in Chapter 5) set out progressive, equity-based parameters for establishing a pricing policy, including the possibility of price differentiation amongst geographic areas and amongst different categories of water users and water use. However, these parameters are broad, lack specificity and - as with other aspects of this enabling legislation - much will turn on how these parameters are to be put into practice. From our point of view the Bill's parameters will prove appropriate only to the extent that, in practice, they provide for effective cross-subsidisation, price differentiation and other mechanisms to promote social equity and redress past inequitable and discriminatory access. **We strongly support the principle of cross-subsidisation and**	This is also part of the pricing policy to be established by the Minister under clause 56 of the Tabled Bill. The application of block tarriffing is possible under clause 56(3)(c) of the Tabled Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
believe that it could be strengthened by explicitly supplementing the provision allowing for pricing policy to differentiate between different categories of users (at s58(4)), with an explicit reference to the possible use of differentiating mechanisms, such as, block tariffs. For instance, block tariffs would allow for cross-subsidisation, without extra administrative costs, between big industry, commercial farming and small subsistence farming.	
C. ESKOM	
Section 58 allows for the establishment of a pricing policy for water use charges for funding water resource management, water resource development and use of waterworks and for achieving equitable and efficient allocation of water.	
Although Eskom supports these categories of charges in principle, the detail of how they are calculated needs clarification.	See above. (pg 73)
Eskom is concerned that the process of consultation on the Water Pricing Policy, which commenced in November 1997, has been terminated pending the promulgation of this Bill.	The process of consultation has not been terminated. It will be continued on the basis of the provisions now contained in the Bill.
This process should be reinstated to allow sufficient time for input prior to the publishing of this policy in terms of Section 58(8). In this regard the time allocated for comment in 58(8)(a)(ii) should be increased from 30 days to at least 60 days.	This has been done. See clause 56(7)(a)(ii) of the Tabled Bill.
Under section 59, no provision is made, as in previous drafts, for the income derived from water use charges to be used only for the purposes for which they were levied. The obvious implication of this is that water income finds its way into the general fiscus and simply becomes an additional tax. This issue needs serious consideration.	See above. (pg 73)
D. FORESTRY	
Use of Water Charges Raised	See above. (pg 73)
Section 59 (3) (b) of the Bill indicates that revenue raised by a CMA	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
can be used for any purpose, anywhere. Section 59 (1)(a) makes provision for nationally or regionally based water charges which, in terms of Section 39 (3) (a), are payable to the State. These Sections imply that water charges are to be used as a way of raising taxes for non-specific purposes. This is unacceptable.	
Forestry's Proposals Regarding Water Charges	
Section 58 (8)(b) should be amended to include reference to consideration, consultation and negotiation with stakeholders. The present wording only includes "consideration". This allows the Minister far too wide a discretion.	The nature of the comments will determine to what extent further consultation should take place. It is not practical to legislate to what extent the consultation process should continue before a decision is taken.
Chapter 17 "Appeals and Dispute Resolution" should be amended to allow appeals against Ministerial decisions and not only appeals against decisions made by a responsible authority (e.g. Director-General of CMA's)	See Chapter 16 of the Tabled Bill.
Section 191 of the 5th Draft of the Bill "use of revenue for specific purposes only" should be reinstated in its entirely.	See above. (pg 73)
E. JUKSKEI RIVER CATCHMENT WQSC	
Comments on Chapter 5	
This Chapter should include a clause that the funds generated by water use charges must be used for the purpose for which they were levied.	See above. (pg 73)
F. NEDLAC	
Pricing Policy	
It is agreed that in so far as there may be a lack of clarity between taxation and water user charges, this matter needs to be clarified	See above. (pg 73)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
between the Ministries of Finance and Water Affairs and Forestry.	
A degree of cross subsidisation between industrial and basic domestic use as envisaged by section 58 (4) is supported. However, the intention or otherwise to allow cross subsidisation within a water use sector other than domestic, needs to be clarified.	See above. (pg 73)
G. NATIONAL FORESTRY ADVISORY COUNCIL	
Section 58 of the Bill notes that the Minister may in future develop a pricing policy for water use. This could include a pricing policy for those activities, including forestry, that reduce stream flow. We suggest that, as a matter of policy, the Department agrees to consult with interested and affected parties in the detailed formulation of the policy. We also suggest that charges should be limited to covering the costs of catchment management rather than a charge for the use of the soil moisture itself. Charges for catchment management should be divided in an equitable manner between water users in a given catchment. Charges for water infrastructure should be based on a user pay basis.	See above. (pg 73) This is also part of the pricing policy to be established by the Minister under clause 56 of the Tabled Bill.
H. RDNL	
Tariffs and pricing policy	
In terms of the tariffs and pricing policy, we recommend that a national tariff structure should include the RDP guidelines which look at a lifeline tariff to ensure that all South Africans are able to afford water services sufficient for health and hygiene requirements. A pricing policy needs to be developed, preferably before the enactment of the bill which need to reflect the differentiation promised in the policy criteria. We propose that the pricing policy should stipulate block terrifying commencing at 0, and this for the minimum service level (25 litres initially but extended to 50 litres as a basic minimum). In order that this minimum level of service is provided, a policy of cross-subsidisation is required which would include both the rural/urban and wealthy/poor considerations. As it stands now the relationship	This would be part of the Minister's pricing policy still to be developed and for which a process of public consultation is required. The enabling provision contained in clause 56 of the Tabled Bill is wide enough to allow a pricing policy along the lines suggested.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
between the pricing policy and the levying of water use charges with the provision for norms and standards for tariffs in section 10 of the Water Services Act is unclear. In the New Water Bill appropriate control measures are absent, so is any guidance for local government on the application of the costs of water use charges. We therefor would like to see that the pricing policy takes into account clear norms, standards and regulations to ensure the necessary controls.	The reference to guidance to local government on the application of the costs of water income forms part of the Water Services Act and the norm and standards for tariffs to be established in terms thereof.
I. SAAU *Page 46 Financial Provisions*	
The removal of the section in the fifth draft restricting the application of revenue generated in this way is viewed with concern and reinforces the view that this approach is just another way of raising taxes for other purposes. It is proposed that the original clause 191 in the fifth draft be reinstated to read as follows: *Use of revenue for specific purposes only* The proceeds of charges fixed in respect of water resources management or water resources. development and the use of waterworks- (a) by the Director-General, may only be used for the purpose for which they were set; or (b) by a water management institution may only be used - (i) for the purpose for which they were set; and (ii) for the benefit of water users within the service area of the water management institution concerned.	See above (pg 73)
It is suggested that subsection (c) be deleted. The point of departure is that any reduction in entitlements in favour of demand changes, should be subject to expropriation and compensation.	The purpose of clause 58(3) of the Cabinet Bill (clause 56(2)(c) of the Tabled Bill) is not to reduce entitlements but to allow a non-admistrative means of allocation
Page 46, Section 58(1) Minister may establish a pricing policy for	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
water use charges	
Although this section requires publication in the Gazette, no period for public comment is specified. Provision should be made for public comment, as set out in 6; 9; 39(3); 40(4); 58(8); 72(1); 81(3); 93(2) and 95(3).	Clause 58 (8) of the Cabinet Bill did state a period. See clause 56 (7)(a)(ii) of the Tabled Bill.
J. SAICE	
This chapter should include a clause, as appeared in previous drafts, that the funds generated from water use charges may only be used for the purpose for which they were levied.	See above. (pg 73)
K. SA SUGAR GROWERS ASSOCIATION	
Water Charges	
The Association assumes that the removal of all reference to run-off reduction charges from the Bill indicates government's acceptance that such charges should not be levied. However, the Association has the concern that, although cane growers cannot in any event be charged for water use unless cane growing is declared a controlled activity, the possibility exists that this may occur in the future -	See above. (pg 73)
As a consequence, the oblique reference to charges in s.58 are of concern. In particular, s. 58(3) which is a new provision, suggests that pricing policy may be targeted specifically at achieving equity and efficiency in allocations. When this is read with s.27 (1) (m), it appears as though specific sanction is given to the Minister to impose these charges. This is unacceptable, for the reasons which the Association has consistently enunciated. Farmers are already heavily burdened, and when it is remembered that a high proportion of the growers in South Africa are small cane farmers, the unsustainability of these forms of additional taxes is made the more obvious.	
Furthermore, the previous drafts made reference to the proceeds from water use charges remaining within the CMA. This Bill only makes	The new clauses 57(5) and 59(1) contained in the Tabled Bill address these concerns.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
reference to 'concurrence of the Minister of Finance' ss.58(2) and therefore could result in water use charges flowing out of the CMA in which they are raised. This is of concern to our Association and we would wish those funds to remain within the CMA.	
The items listed under ss.58 (3) (i) to (v) should, in the view of this association, include a charge for 'capacity building' with respect to the CMA's (this Association, and in particular the SA Cane Growers' association, could give invaluable advice on this regard flowing from experience learned over the past 20 years).	The purpose goes beyond the scope of the purposes for which a water charge is intended. This does not however prevent a CMA from using funds for capacity building.
L. STATEMENT OF THE NATIONAL FORESTRY ADVISORY COUNCIL	
Section 58 of the Bill notes that the Minister may in future develop a pricing policy for water use. This could include a pricing policy for those activities, including forestry, that reduce streamflow. We suggest that, as a matter of policy, the Department agrees to consult with interested and affected parties in the detailed formulation of the policy. We also suggest that charges should be limited to covering the costs of catchment management rather than a charge for the use of the soil moisture itself. Charges for catchment management should be divided in an equitable manner between water users in a given catchment. Charges for water infrastructure should be based on a user pay basis.	The Bill requires a consultative process in developing a pricing policy. The Bill allows for charges to be made in terms of a pricing policy. The Bill allows for charges for water use where it has a detrimental impact on a water resource.
M. MIKE SMUTS	
In clause 58(4)(d) allowance could also be made for the case where water withdrawn from one resource is returned to a different resource e.g. where underground water is removed from a mine and discharged into a river.	The present formulation makes this possible.
N. IXOPO AGRICULTURAL SOCIETY	
The exclusion of the provision in the fourth Draft of the Bill that required funds to be utilised for the purposes which they were levied is a major defect. Without this protection levied funds could be used for	See above (pg 73)

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
purposes which bear no relation to the conservation and creation of sustainable water resources, the primary purpose of the Act.	
SECTION 62 WATER USE CHARGES ARE CHARGES ON LAND	
A. BUSINESS SOUTH AFRICA	
A certificate of paid water charges issued by the Director-General under clause 62(2)(c) appears to be analogous to a clearance certificate obtained from a local authority as part of the legal transfer of land ownership. In the case of large pieces of land the 30 days period allowed for this certificate to be obtained could have severe financial implications.	A clearance certificate is normally applied for at an early stage when drawing transfer papers and therefore 30 days should not cause any financial loss. See also the additional protection afforded by clause 60(3) of the Tabled Bill.
SECTION 64: DIRECTOR-GENERAL MAY GIVE FINANCIAL ASSISTANCE	
A. SAAU	
Page 50, Section 64(1)	
We object to the principle of differentiated tariffs without time limits and we propose that the grants should be more specific.	It is presumed the objection relates to clause 58(4) of the Cabinet Bill. Such differentiation has been acceptable in the past in respect of local authority water charges and is not restricted by any constitutional dictate. Transformation in South Africa makes this necessary within equitable limits. Equitable limits will be set out in the pricing policy.
SECTION 72/73: PROCEDURE TO MAKE ANY REGULATION UNDER THE ACT AND CONSIDERATION OF REGULATIONS	
A. BUSINESS SOUTH AFRICA	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Clause 72(1)(c) is more restrictive than clause 71(1)(d) of the Water Services Act. The latter allows a report on the extent to which comment has been taken into account to be requested by anyone in contrast to this bill which restricts this request to Parliament. It is proposed that the two Acts be equivalent in this respect.	It is unduly cumbersome to compel the Minister to report to everyone who may ask for it.
B. COSAB *Sections 72 and 73* Legislation is the preserve of Parliament. Regulation (including the multitude of detail encompassed in regulation) is the responsibility of government to implement the provisions of legislation. As such, it has to be detailed and flexible. It is unlikely that the parliamentary process, already straining under the work load associated with legislation, will be able to cope with that associated with regulation. It is therefore recommended that section 72 and 73 be deleted.	The principle of Parliamentary scrutiny is already accepted under the Water Services Act. If Parliament does not react within the given period, its rights of intervention falls away. Parliament's heavy workload will not retard the regulation making process.
SECTION 74: DIRECTOR-GENERAL HAS THE RESPONSIBILITY TO MANAGE THE NATION'S WATER RESOURCES	
A. COSAB The capacity of government to achieve this is of concern.	See comments under COSAB A on p11 above.
SECTION 77	
A. SUNDAYS RIVER IRRIGATION BOARD The impression is gained from working through the document is that to much power is vested in the Minister and here reference can be made to Chapter 8 : Catchment Management Agencies in which the Minister must make the appointments.	Consultation is always a prerequisite for the establishment of a CMA

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
At Catchment level surely democracy should prevail once the interest groups have been identified and a constitution has been drafted for that agency.	
The funding of Catchment Management Agencies also appear to be vague and no link exists between Water User Associations and the Board and no functions or purpose for such a Catchment Management Agency is defined.	See Schedule 3
B. BREEDE RIVER CONSERVATION BOARD	
We also have concerns regarding the composition of a CMA and the deliberation and right to voting of the actual water users.	
Somewhere in Chapter 8 there ought to be a provision that all decisions of the Board which have a financial implication, require a two-thirds majority. This is not a foreign concept - it is presently applicable to Local Transitional Councils.	This is impractical as it will mean that every decision will have to have a two thirds majority
SECTION 80: DIRECTOR-GENERAL MAY APPOINT EMPLOYEES ON CONTRACT	
A. COSAB	
Section 80(1)	
It is unclear why any "employees on contract" need to be appointed "outside the provisions of the Public Service Act".	The provision is aimed at construction workers working on construction sites. Work on a construction site is always of a temporary nature and when the work is completed, the contract has to be terminated.
SECTION 81: PROCEDURE TO ESTABLISH CMA'S	
A. BUSINESS SOUTH AFRICA	
Clause 81(2) deals with the information required in respect of the	There are different requirements for the two situations. If the

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
intention to establish a catchment management agency. It appears as if the information to be communicated when establishment is initiated by a person other than the minister is more extensive than if establishment is initiated by a person other than the minister is more extensive than if establishment occurs on the initiative of the minister. It is proposed that both should be treated equally in terms of 81(2)(a).	initiative it taken by the Minister the required information may already be available within the Department. An initiative from outside the Department must be guided by setting minimum information requirements.
B. COSATU	
(1) Establishment of CMA's	
The legislation provides that Catchment Management Agencies (CMA) are meant to be established on the initiative of the community and stakeholders, and if not, then on the initiative of the Minister. The problem with this is that there could be significant delay before the establishment of certain CMA's. It cannot be presumed that local communities and stakeholders will automatically see the necessity for establishing CMA's urgently, or will have capacity to initiate them.	
It is therefore proposed that, notwithstanding the need for effective mechanisms to inform and assist communities in setting up CMA's, a time limit be outlined as to when all CMA's should be established.	It is not practical to set a time limit in the Bill as in most cases capacity has to be built for this purpose. The need for CMA's will depend on particular circumstances.
C. JUKSKEI RIVER CATCHMENT WQSC	
As for Chapter 2, the Task Team recommends that the term "establish" is replaced by the term "announce".	See above. (pg 83)
As is the case with the catchment management strategy, the Minister should have the power to consider a proposal for the establishment of a Catchment Management Agency to be withdrawn if the comments received are of such a nature that it is clear that there is no stakeholder consensus on the creation of a CMA.	It goes without saying that if after an investigation the desirability for establishing a CMA is not evident, it will not be established.
The first paragraph of the preamble to chapter 8 states that an advisory committee may be appointed as the first step towards creating a CMA. This aspect is however not addressed at all under	Chapter 8 deals with Advisory Committees which can be established for any purpose. It would therefor serve no purpose to repeat this under the chapter dealing with CMA's.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
any of the sections in this chapter. The Task Team consider this an essential and logical step in the process of creating a CMA, and the Minister is anyway required to do this to advise him on the appointment of Board Members (Section 85(3)). The rules for appointing such an Advisory Committee should be added to this chapter.	The possibility of a CMA possibly being preceded by an Advisory Committee is to allow for capacity building. This is related to the implementation of the Bill and ought not to be separately legislated for.
As it stands at the moment, a CMA only report to the Minister and there is no accountability to stakeholders in the catchment. The Task Team believes that this is not in the spirit of what was intended with the creation of CMA's and that this can be addressed by making provision for a mandatory constitution for a CMA. Such a constitution should ensure that Board Members represent a constituency to which they are accountable.	The CMA is responsible for the drawing up of a catchment management strategy which must be prepared after consultation with stakeholders. The Bill is prescriptive in that all decisions must be in accordance with the strategy. The CMA must annually report on its activities. Should they not give effect to the mandate of a catchment strategy, the Bill provides for remedial action by the Minister or Director-General. Furthermore stakeholders in the catchment are represented on a CMA by persons of their choice, and these persons are responsible to the stakeholders who nominated them.
SECTION 81 - Section 81 (3) (a) (i): Include in the notice details on where the proposal can be inspected.	The necessary information will be set out in the notice.
Section 81 (4): Seems to overlap with Part 4, which, according to the heading makes provision for changing the water management area of a CMA. The Task Team recommends that Section 81(4) be removed, that Section 81 (1)(a) or (b)(ii) only applies to name changes, and that the process for changing the water management area of a CMA (increasing or decreasing) be addressed under Part 4.	Part 4 deals with action which may be taken by the Minister though intervention, while clause 81(4) of the Cabinet Bill deals with changes in the name and water management area of a CMA.
D. RAND WATER	
1. The provision in the Bill that persons having an interest in the establishment of a catchment management agency (CMA) may submit proposals in that regard to the Minister seems to be an attempt by the drafters to provide for the interest of existing institutions, like Rand Water. The process of notice and consultation before the establishment of a CMA is also in line with the underlying principle that water resource management should be carried out on a consensual	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
basis with the participation of affected persons.	
2. Clause 84 lists the "original functions" of a CMA. These functions clearly relate to water resource management only, and water supply services and sanitation, do not form part thereof. Organisations like Rand Water, that presently undertake water supply and sanitation services as well as water resource management may face a predicament insofar as the establishment of CMA's are concerned.	Under the Water Services Act, a water board may provide catchment management services to or on behalf of the responsible authorities. Provision of such services is not a primary function of water boards. When a CMA assumes liability for water resource management, it may, where desirable, contract with a water board to render water management services to it or on its behalf.
3. To ensure Rand Water's potable water quality it is essential that Rand Water maintains a sound knowledge of its raw water sources at all times. Trends in raw water quality are also important as they may require changes to existing purification systems to accommodate the changing raw water quality.	
4. It is accordingly suggested that any overlap between the provision of catchment management services as envisaged in the Water Services Act, 1997, and where it is undertaken as an aspect of water resource management on the one hand and the role of other state departments on the other hand, be clearly referred to and cross-referenced with other legislation, where appropriate.	The Water Services Act provides that a water board may permit catchment management services to and on behalf of catchment management authorities. A CMA is such an authority. There is no overlap between the Act and the Bill. The Act supplements the Bill in so far as catchment management services are concerned.
5. It is submitted that existing water institutions, such as Rand Water have already in place comprehensive systems and records to assist in the provision of catchment management agency services, and that the existing relationship with consumers and other affected organisations should not be underestimated. Rather than discarding the expertise and capacity of existing water institutions it is submitted that these should be preserved and tapped when the establishment of CMA's for the different catchments are being contemplated.	See above.
SECTION 82 - PROPOSALS TO ESTABLISH CMA'S	
A. JUKSKEI RIVER CATCHMENT WQSC Section 82 (2): It needs to be clearly stated under which conditions	It is unnecessary to set out the circumstances under which assistance with the establishment of a CMA will be given. The

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
assistance may be rendered, that is, there must at least be demonstrably a need and desire for a CMA.	circumstances of individual cases will dictate the extent of the support required.
SECTION 83 - GENERAL POWERS, FUNCTIONS AND DUTIES OF CMA	
A. COSATU	
Relationship between CMA and Water Services Institutions established in terms of the Water Services Act	
In neither the National Water Bill nor the Water Services Act, is the relationship between the CMA and the water service institutions established in terms of the Water Services Act spelt out. The National Water Bill indicates that when appointing the members of the Board of the CMA the Minister must balance different interests among them (the interests of local government); At no point however is a structural relationship between the CMA and Water service institutions, such as Local authorities or Water Boards established.	A CMA will manage catchments within its water management area and authorise the use of water from resources in its water management area (in so far as it may be authorised to do so). A water services institution established under the Water Services Act can be the recipient of authorisations to use water and will use such water to provide water services to persons within its area of supply. Water services providers are important stakeholders in a water management area and will in all probability be represented on the governing bodies of CMA's.
B. JUKSKEI RIVER CATCHMENT WQSC	
Section 83 refers in the heading to duties, but these are not addressed at all. This Section should refer to section 8 (developing a catchment strategy) and section 12 (giving effect to a catchment strategy). This is especially important in the light of section 92 which allows the Director-General to intervene if the CMA is delinquent in its duties.	Clause 83(3) of the Cabinet Bill has been deleted by the State Law Advisor. The duties of CMA's are now imposed in various clauses contained in different parts of the Bill.
The Task Team is also of the opinion that section 83 (5) serves no purpose as all of these matters are addressed elsewhere in the Bill.	This is a reiteration of essential aspects which has been stated to promote clarity of intention.
Section 83 (2) does not belong here and should move to Part 2. There should be reference here to Schedule IV.	The placing of the clause is a matter of choice. It is not considered to be out of place in clause 83 of the Cabinet Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
The Task Team felt very strongly that the CMA should specifically be given the power to prosecute.	The power to prosecute will have to be obtained from the Department of Justice.
C. RDSN	
In terms of the Catchment Management Agencies, we feel there is a lack of clarity as to how CMA's will relate to each other, to the local government and other initiatives such as SDI's. In terms of their powers, which are limited, additional powers can be delegated or assigned to them. This should however be such that it would not conflict with one of the founding provisions of the Bill, namely that the National Government is the public trustee of the nations water resources. We would like to propose that clear criteria get set and thought gets given to constrain and assist the Director-General's ability to grant greater or lesser powers to CMA's, in particular in terms of the strategies and the consultation on these strategies.	The provisions in respect of representation on the governing body of a CMA require balanced representation of all interest groups. The question of delegation depends on the capacity of the institution involved and delegation will be preceded by consultation with the institution concerned. The responsibility to co-ordinate related activities of water management institutions within its water management area vests in the CMA. (See clause 80(c) of Tabled Bill.)
SECTION 84 - ORIGINAL FUNCTIONS OF CMA	
A. JUKSKEI RIVER CATCHMENT WQSC	
The use of the word 'original' is confusing and the Task Team recommends that it is replaced by the word 'basic'. It is also not clear why this section is included, as it refers back to section 83 (which refers to section 84). The Task Team recommends that there is only one section dealing with powers, functions and duties of a CMA.	The headings of clauses 83 and 84 of the Cabinet Bill has been changed in the Tabled Bill. The heading of clause 79 in the Tabled Bill refers to general powers and duties of CMA's and the heading of clause 80 of the same draft refers to the main functions of CMA's. The new headings clarify the difference between the contents of the two clauses.
The Task Team also recommends the re-wording of the contents of section 84, as follows:	
"Basic powers and functions of catchment management agencies. Subject to chapter 2 and section 83 of this Act, the basic <u>powers and</u> functions of a catchment management agency are to:	
(a) manage and control the water resources in its water management area by investigating, advising, monitoring and ensuring the protection, development, conservation and effective use of the water resources	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
within its area of jurisdiction; (b) develop, monitor and ensure compliance with a catchment management strategy, and (c) co-ordinate the related activities of water management institutions as defined in this act within its water management area." B. SA ASSOCIATION OF W.B. *Chapter 8 Section 84* The original functions of Catchment Management Agencies should be expanded to include those functions listed above. New subsections should be inserted and should read: " (d) establish procedures for determining the Reserve for approval by the Minister; (e) set out water uses for in stream and land based activities which must be regulated or prohibited in order to protect the water resource for approval by the Minister; (f) determine the reserve for all or part of that water resource in a particular area for approval by the Director-General; and (g) determine and recommend a stream flow reduction activity for declaration by the Minister." The delegation of powers, functions and duties of Catchment Management Agencies should incorporate a provision for catchment management services providers to provide catchment management services. Furthermore, where capacity is available, existing water management institutions, such as Water Boards, should be utilised to fulfill the functions of, or be the primary service providers to both Catchment Management Agencies.	This suggestion cannot be accepted for reasons stated above. The Water Services Act already contains a provision in section 30(2)(c) that water boards may provide catchment management services to or on behalf of responsible authorities. It is not a function that they may exercise independently.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
SECTION 85 - APPOINTMENT OF GOVERNING BOARDS OF CMA'S	
A. BUSINESS SOUTH AFRICA	
Clause 85(3) provides for the Minister to appoint an advisory committee to make recommendations on nominations to be called for in respect of membership of the governing boards of catchment management agencies. It was always understood that water user associations would have direct representation on these boards. While the bill appears to make provision for this in this clause, extent of the representation can be altered by the minister as set out in clause 85(7). The mechanism by which significant user groups will be represented needs to be set out clearly.	The mechanism is provided for in detail in clause 81 of the Tabled Bill.
B. COSATU	
(2) Composition of CMA's	
It is important that the composition of CMA's take into account the interests of different stake-holders. In particular effective representation of disempowered communities and marginalised interests, such as those of subsistence farmers should be taken into account. Furthermore, local authorities, which play a key role in ensuring access of water to all, should play a particularly important role in the CMA.	
These concerns appear to be broadly taken into account under s85 of the proposed legislation, save to say:	
• that the Minister's power to determine local government representation on CMA governing boards (at s85(2)) should be based explicitly on a recognition of the important role played by local governments in widening access to water; and	The Bill already indicates the process to be followed in appointing the governing body of a CMA and places certain obligations on the Minister to effect balanced representation.
• that there appears to be a technical error at s85(10)(e) where the word "disadvantaged persons or communities" should replace "disadvantaged persons or committees".	The technical error has been corrected.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
C. JUKSKEI RIVER CATCHMENT WQSC	
The Task Team felt that there was a lack of clarity on what a CMA consists of. This may be deliberate in order to allow for a variety of structures to be created in response to catchment specific conditions. Nonetheless some guidance will be needed in order to allow the preparation of proposals.	Clause 81 of the Tabled Bill provides clear guidance.
It is also not clear how CMA's will interact with the Department and each other. Will CMA's be able to influence National policy and strategy? The Task Team strongly recommends that co-ordination and co-operation between CMA's is formalised.	A CMA may, like any other stakeholder, make inputs in the formulation of national policy and strategy.
The Task Team believes that 85(10) should be removed and that these conditions should be reflected in the constitution of a CMA. Clause 85(9) allows the Minister in any case to act in the interest of an interest group that is unable to do so itself.	The proposal of CMA's to function under separate constitutions cannot be supported. A CMA is a governmental body with governmental functions and should operate under statutory powers within parameters laid down by statute. Voluntary associations, and not governmental bodies, are governed by constitutions. Because a CMA is a governmental institution, the government of the day must have the authority to ensure that it is sufficiently representative and empowered to fulfill its functions. The power of the Minister to appoint additional members is limited to specific circumstances and its purpose is to achieve the above object.
D. RAND WATER	
SPECIFIC REPRESENTATION FROM EXISTING WATER SUPPLIERS ON CMA	
1. The promulgation of the Bill will effectively terminate Rand Water's "one on one" relationship with the Department of Water Affairs and Forestry. Rand Water will in terms of the provisions of the Bill, be required to negotiate licenses and quotas with several water management institutions, such as:- a catchment management agency,	This is a necessary consequence of decentralisation. A benefit will be that a water board will deal directly with interested parties instead of dealing only with the Department. National water policy will contain guidelines where under water management institutions must deal with water areas of strategic importance.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
a water resource user association, an international body, the water utility and the Director-General	
2. A water board (such as Umgeni Water Board and Rand Water) that has in the past played a major role in catchment management and the allocation, storage and abstraction of water is, it is submitted, a prime candidate for membership of a catchment management agency and of a responsible authority.	This statement is correct.
3. On account of the clash between the need for a water board to obtain a licence and the fact that catchment management agencies and respon- sible authorities have a licensing function it follows that a water board cannot be a member of a catchment management agency or a responsible authority that has a licensing function. On account of this fact, a water board even though it may be a prime candidate for membership, will be excluded by principles of natural justice, from being a leading member of catchment management agencies or responsible authorities.	Most of the stakeholders represented on a CMA will also be water users. Under the present Water Act all members of irrigation boards are also water users and this has not prevented them from performing a water allocation function.
4. If a single catchment agency is appointed to each catchment area or rivers that impact on Rand Water's operation, there will, depending on the definition of a catchment, be many such agencies (Wilge River, Vaal River upstream of the Barrage, Suikerbosrant River, Blesbok-spruit, Klip River, Taaibosspruit and Rietspruit, Tugela). Rand Water is concerned that although the different water management institutions will be acting in accordance with a national resource strategy and within defined policies, differences of application and implementation will take place which may affect Rand Water's operations.	This is a necessary consequence of decentralisation.
To prevent these provisions of the Bill having a negative effect on Rand Water's operations, it is submitted that water management institutions responsible for the licensing or Rand Water's water allocation, storage and abstraction should be representative of the community served, with due regard to the criteria enumerated in the Bill, and with necessary influence to secure sufficient licenses to enable Rand Water to adequately supply its consumers with water. The Bill should accordingly be revised in this regard to provide for	It is inadvisable to be prescriptive on the composition of management boards of CMA's. Each CMA should be treated on its own merits. Clause 81 of the Tabled Bill provides for representation.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
specific representation from existing water suppliers on water management institutions, such as catchment management agencies. *Page 61, Section 85* *SAAU* Appointment of governing Boards of catchment management agencies This section makes no provision for a direct link between water user associations and the governing Board of a catchment management agency. It is also necessary to define the powers of the Catchment Management Agencies (CMA's) and water user associations. The advisory committee of the CMA is appointed entirely at the discretion of the Minister. The appearance of impartiality is not enhanced by this approach. It is not clear why such a complex appointment procedure has been introduced. Requests for nominations from water user associations, relevant organs of state and other interested bodies is a task that could be carried out by the Director-General supplemented by a public media nomination process. In fact too much discretion is in the hands of the Minister in appointing the entire Board as well as the Chairman and the Vice Chairman and to inter alia achieve gender representation and to achieve representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to water.	There is no direct link between a water user association and the governing board of a CMA. The two types of institutions perform separate types of functions and the functions are clearly described in the Bill. Some mechanism (the proposed Advisory Committee) must be put into place to identify stakeholders who will be invited to nominate representatives to serve on the board. It is submitted that an Advisory Committee which can consult with stakeholders (see clause 81(4)(c) the Tabled Bill) constitutes a far more satisfactory process than giving the task to the Director-General. Clauses 81 and 82 of the Tabled Bill contain clear parameters within which the Minister may exercise his or her discretion.
E. SAICE *Comments on Chapter 8* The first paragraph in the preamble to Chapter 8 makes mention of an advisory committee that can be appointed as a first step in establishing a Catchment Management Agency (CMA). This is, however, not addressed in any of the sections in this chapter. One of the main concerns is that a CMA will effectively, report to the	This has been accommodated in the preamble of the Tabled Bill by making reference to Chapter 10 dealing with Advisory Committees. Board members of a CMA are nominated by the stakeholders and

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Minister and will not have a constituency to which it is accountable. There should be a proper process, whereby Board Members are to be elected by stakeholders.	each nominee remains responsible to the stakeholders who nominated him or her. An election by interested members of the public is not feasible, firstly because it will be impracticable to identify those interested members and compile a voters list, and secondly because such a procedure could make it possible for a sector of the public (with the greatest number of votes) to dominate the management board.
There is also no reference to Schedule IV in this chapter, which is probably an oversight.	This is provided for in clause 71(2) read with clause 72(1) of the Tabled Bill.
There is lack of clarity on how CMA's will interact with each other, as well as other agencies/bodies. This should also take account of bodies created in terms of the Water Services Act. This lack of clarity could lead to duplication and conflict.	
F. WILDLIFE & ENVIRONMENT SOCIETY *Chapter 8, Part 2, 85, (1):*	
Environmental interest groups are mentioned specifically as requiring representation on the governing Board of the catchment management agencies. If a specific list is to be given, community and cultural interest groups should be added.	Groups will be identified by the Advisory Committee.
SECTION 88: FUNDING OF CMA	
A. JUKSKEI RIVER CATCHMENT WQSC	
Section 88 seems to be incomplete and should refer to Chapter 5. It should state explicitly under which conditions CMA's can set water use charges and that they can recover them directly.	This is a matter for drafting. The power for a CMA to set water use charges is appropriately located in clause 57(2) of the Tabled Bill.
B. WILDLIFE & ENVIRONMENT SOCIETY	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Part 3, 88, (c): It is not clear who is responsible for finding other funding sources for catchment management agencies.	This is not a specific responsibility but an enabling responsibility which can include CMA's itself.
SECTION 89 - CMA'S MAY ESTABLISH COMMITTEES Section 89 should refer to Schedule V and stipulate whether or not committee members can be paid.	Schedule 5 is referred to in clause 79 (2) of the Tabled Bill. The delegation does not prevent the payment of committee members
SECTION 90 - SERVING OF DOCUMENTS ON DG Section 90 should be expanded to include documents relating to proceedings instituted <u>by</u> the CMA.	Action by the CMA is not a concern to the Department. The concern is when action is taken against a CMA, as this could pose a threat to its functioning.
SECTION 91 - CMA'S MAY DELEGATE THEIR POWERS, FUNCTIONS AND DUTIES Section 91(d) is inconsistent with (a), (b) and (c). This can be interpreted that no consent is necessary for (i), (ii) and (iii) in this case.	It is intended that the consent of the Director-General is only necessary for the delegation of powers under paragraph (d).
A. SA ASSOCIATION OF WATER BOARDS *Chapter 8, Section 91* Water Boards should be included as an institution to which Catchment Management Agencies may delegate their powers, functions or duties. Section 37, subsection (b) should be modified to:-	A delegation to a water board is possible under clause 87(1)(c) of the Tabled Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
"a water board, an employee of a water management institution (including itself), by name ,or the holder of ..." Section 91 should be modified to include the following at the end of the section: ***"Alternatively, a Catchment Management Agency may request a Catchment Management Service Provider to render services to fulfill the above-mentioned functions and duties. Should a Catchment Management Agency wish to enter into a service provision contract with a private sector Catchment Management Service Provider, this should be done only after consideration is given to all known public sector Catchment Management Service Providers which are willing and able to perform the relevant functions".***	This would impose unnecessary restrictions on a CMA.
B. BREEDE RIVIER CONSERVATION BOARD Section 91 Section 91 states the powers of a CMA are very wide but non-specific. For the practical exercising of its functions I would like to see that Schedule 6 also contains the following provision regarding the powers of a CMA: "Subject to being supervised and overruled by the Catchment Agency, if and when instituted, the Water User Association shall, in order to execute it's functions, have all the powers allocated to a Catchment Management Agency under Schedule IV." It is of the utmost importance to my Board that it should be able to prescribe to its irrigators how, where and when water may be abstracted, the measurement thereof and the application of limitations when the water supply runs low.	See above (pg 95)
SECTION 93 - MINISTER MAY DISESTABLISH CMA'S	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Presumably the word “and” at the end of this sub-section should read “or” to ensure that any of the 3 conditions apply and not all of them at the same time.	This has been rectified in the Tabled Bill. See clause 89(1).
SECTION 95 - PROCEDURE TO ESTABLISH WUA’S	
A. BUSINESS SOUTH AFRICA	
Clause 95(1) deals with the intention to establish a water user association. It appears as if the information to be communicated when establishment is initiated by a person other than the minister is more extensive than if establishment occurs on the initiative of the minister. It is proposed that both should be treated equally in terms of 96(1).	See above. (pg 83)
SECTION 98: POWERS, FUNCTIONS AND DUTIES OF WUA	
A. SA ASSOCIATION OF WATER BOARDS	
Chapter 9 Section 98	
Another clause should be added to Section 98 whereby Water User Associations may obtain water services, as defined in the Water Services Act, from other water services providers (including Water Boards). Section 98 should be modified to include the following at the end of the section: -	If its constitution so allows it is possible for a WUA to delegate some of its functions to water services providers or to use them as agents.
"A water user association may request a water services provider to render water services to fulfill the functions and duties of the said association. Should a water user association wish to enter into a service provision contract with a private sector water services provider, this should be done only after consideration is given to all known public sector water service providers which are willing and able to perform the	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
relevant functions."	
SECTION 99: DG MAY GIVE DIRECTIVES TO WUA	
A. COSAB	
SECTION 99(3)(E):	
The word "obstruct" is not defined. Presumably this refers to non-legal methods, and does not restrict the full rights in law of the Association.	The interpretation is correct.
SECTION 103 - MINISTER MAY ESTABLISH ADVISORY COMMITTEES	
A. JUKSKEI RIVER CATCHMENT WQSC	
Advisory Committees will play an important role in the process of creating CMA's. The creation of Advisory Committees seems to be left entirely to the discretion of the Minister, and such a committee will only be responsible to the Minister. The Minister should at least be required to consult stakeholders and interested and affected parties on the purpose, function and composition of an Advisory Committee.	This is a broad provision to provide for assistance to the Minister in having matters investigated and proposals submitted to him. CMA's cannot be established without a process of public consultation regardless of the process having been preceded by the establishment of an Advisory Committee.
B. SAICE	
COMMENTS ON CHAPTER 10	
The creation of advisory committees is left to the discretion of the Minister. This is not acceptable in the case where the work of such a committee will have far reaching results on water users, such as in the case of the formation of a CMA. The Minister should at least be required to consult stakeholders on the function, purpose and composition of such an advisory committee.	The Minister must accept responsibility for the exercise of his powers and duties under the Bill. If the Minister chooses to appoint an Advisory Committee to advise him, he should within the confines of clause 99(7) of the Tabled Bill, have a free hand to determine its composition.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
SECTION 117: MINISTER MUST CONSULT AND OBTAIN AN EIA BEFORE CONSTRUCTING GOVERNMENT WATERWORK.	
A. SA ASSOCIATION OF WATER BOARDS	
Chapter 13, Section 117.1.a	
The principle of conducting an environmental impact assessment before constructing a government waterwork is supported, however, the term environmental impact assessment should be adequately defined to ensure that the full life cycle of the project is taken into account (the Integrated Environmental Management procedure) by the development of an Environmental Management Plan and the adoption of a systems approach compatible with ISO 14001. Section 117, subsection 1.a should be modified to: *prepare an environmental impact assessment which involves recommendations for mitigation, reinstatement, monitoring and reporting relating to the proposed waterworks: ……"	Nowhere in the Bill has the contents of an EIA been defined. .If necessary, regulations can be issued under clause 26(1)(0) of the Tabled Bill. See also clause 31-A. (pg 51)
B. WILDLIFE & ENVIRONMENT SOCIETY	
Chapter 13, 117, (1), (a):	
It is hoped that the preparation of environmental impact assessments (EIAs) relating to government waterworks be subject to regulations as set out in the new environmental legislation. In other words, EIAs are to be performed by agencies that are independent of appointed engineering firms and of the developer (in this case the Department of Water Affairs and Forestry), and are to be independently reviewed.	This is correct.
(2),(a)&(b):	
In these cases, an emergency advisory committee should be established, to monitor and advise on the planning and construction of emergency and temporary waterworks. In some cases, the magnitude and geographical location of these schemes will lead to sufficient	The action taken by DWAF will depend on the circumstances. The Deaprtment must deal with short term emergencies but would not like the action to continue indefinately.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
impacts to warrant effective monitoring and mitigation. An example of this was the Grootdraai Emergency Scheme, which was both an emergency and temporary scheme, which led to the reversal of flow in the Vaal River in 1983, through the construction of earth dams and pump stations. The ecological effects of this scheme were not assessed, but were probably significant.	
SECTION 119: DG MAY MAKE WATER AVAILABLE FROM GOVERNMENT WATERWORKS	
A. SA ASSOCIATION OF WB	
Section 119, Subsection 1 should be modified to:	
"The appropriate water management institution may make water from a government waterworks available …"	This could follow from a delegation but is only possible once control over a government waterworks has been given to such an institution.
Section 119, subsection 2 should be modified to:	
"The appropriate water management institution may -"	See above. (pg 98)
Chapter 13 Section 119	
With regard to government waterworks, the use of water from these facilities and the access to and use of these waterworks for recreational purposes should be determined by the relevant water management institution and not the Director-General as is proposed.	It is presumed this comment relates to clause 120 of the Cabinet Bill (clause 113 of the Tabled Bill). It is only appropriate to vest the control of the recreational use of government waterworks with another water management institution if the overall management of that waterworks has also been delegated to the institution concerned.
SECTION 127 - REGISTRATION OF A DAM WITH A SAFETY RISK	
A. COSAB	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
SECTION 127(2)(C): It is unclear why an application to register a dam must occur every time its ownership changes.	The Department takes note of the comment and will take the matter further during the clause by clause discussion on the Bill.
SECTION 135: *Chapter 14* A. WILDLIFE & ENVIRONMENT SOCIETY This chapter should be extended to include all structures associated with waterworks and not only dams. In other words, structures such as transfer tunnels, canals and outlets are safety risks, as are reservoirs themselves. The occurrence of reservoir-induced seismicity in South Africa has been recorded, and can lead to serious risks to human life.	Structures other than dams will have to comply with environmental assessments and the safety risks will always be of concern and is covered by generic legislation.
SECTION 144 A. MIKE SMUTS The use of the term "personal servitude" is incorrect. The servitudes meant by the clause are servitudes of a praedial nature but which enlure to the State as a legal entity and not as owner of a dominant tenement. The term should simply read "servitude".	A personal servitude is a servitude which allows a person (including an organ of state) to exercise some right on the property of another. Under common law, the holder of a personal servitude may not transfer that servitude to another. The purpose of this clause is to make personal servitudes transferable.
SECTION 146: DG MUST ESTABLISH MECHANISMS TO CO-ORDINATE THE MONITORING OF WATER RESOURCES A. JUKSKEI RIVER CATCHMENT WQSC The contents of this chapter should be expanded to include catchment	Clause 138 of the Tabled Bill makes provision for this.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
monitoring networks managed by CMA's, and provide for integration of catchment monitoring and national monitoring. In other words, the Department should co-ordinate and monitor catchment monitoring networks.	
B. SA ASSOCIATION OF WB	
Chapter 16 preamble	
The SAAWB supports the development of National Monitoring Networks and Information systems, however, the preamble to Chapter 16 should recognise that information and monitoring needs differ at local regional and national levels. National Information and Monitoring Systems need to draw on information from these lower levels, therefore the bill should enable a Catchment Management Agency to develop a monitoring network and information system for their area of control, within the framework provided by the National systems. The preamble should be modified to read:	There is nothing preventing a CMA from establishing a network. It will, however have to be subject to any regulations made under clause 143 of the Tabled Bill. Further in terms of clause 138 of the Tabled Bill, the D-G must consult with water management institutions.
"Monitoring, recording, assessing and disseminating information on water resources is critically important for achieving the objects of the Act. Part 1 of this Chapter places a duty on the Director-General, as soon as it is practicable to do so, to establish a national framework for monitoring networks. The purpose of the framework will be to facilitate the continued and co-ordinated monitoring of various aspects of water resources by collecting relevant information and data, through established procedures and mechanisms, from a variety of sources including organs of state, water management institutions and water users.	If a framework for monitoring systems is required it can be prescribed by regulation under clause 143 of the Tabled Bill.
Part 2 requires the Director-General, as soon as it is practicable to do so, to establish a framework of national information systems, covering different aspects of water resources, such as a national register of water use authorisations, or an information system on the quantity and quality of all water resources. The framework will provide for the provision of information by establishing procedures and mechanisms in order to collect information from a variety of sources including organs of state, water management institutions and water users. The Director-General may require any person to provide the Department with information	See above in this clause

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
prescribed by the Minister in regulations. In addition to its use by the Department and water management institutions and subject to any limitations imposed by law, information in the national systems should be generally accessible for use by water users and the general public. It is likely that a Catchment Management Agency will establish information systems focused on problems in its own area of control, within the framework developed by the director-general." This amendment will have a snowball effect on the wording, though not always the meaning through Sections 145 - 148.	See above in this clause
C. SAICE *Comments on Chapter 16* This chapter should make provision for catchment monitoring by CMA's. It should allow the Department to co-ordinate and oversee catchment monitoring programmes, and allow access to the data.	A CMA may be given the power to monitor water use under item 2A of Schedule 3.
SECTION 152: *Chapter 16, Part 3, 152 :* A. WILDLIFE & ENVIRONMENT SOCIETY It is recommended that the 1:50 year floodline should also be indicated to local authorities before development takes place. Furthermore, the Act should state more clearly that development should not occur below this floodline. In addition, it is recommended that the 1:50 year floodline should be determined for all urban rivers, so that this information is available for future developers and local authorities.	The question of development planning and control is a provincial legislative competency. The Department cannot prevent development in the area referred to. The 1-100 year floodline is the internationally accepted norm.
CHAPTER 12: SECTIONS 154/158 - APPEALS A. BUSINESS SOUTH AFRICA 1. BSA welcomes the proposed Water Appeal Board established by clause	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
154. The appointment of the Board on the recommendation of a selection panel and the removal of provision for intervention by the minister envisaged in the fifth draft of the Bill should ensure an acceptable level of independence for the Board.	
2. BSA would have preferred an appeal from the Board on both questions of fact and law. The restriction of appeals to the High Court on a question of law is however accepted as a means of promoting the expeditious hearing and determination of appeals, thus providing a balance between the legal component and speed of resolution.	The objections against the appeal procedure have been noted and proposals to the issues raised may be submitted during the clause by clause discussion on the Bill.
3. Clause 156 of the Bill deals with appeals. It limits appeals not only in relation to who is dealing with the matter, namely the Director-General or a water management institution, but also to matters arising under three clauses, namely clause 20 (prevention and remedying the effects of pollution), 21 (control of emergency incidents) and 26 (temporary transfer of water use authorisations for irrigation).	See above in this clause.
Appeals against decisions of the Minister (for instance under clause 81 relating to the establishment of a catchment management agency) would not be possible although they could have far-reaching consequences. We understand that appeals against all decisions of the Minster could be appealed against under amendments to be tabled by the Department. If this understanding is correct, it would remove one part of our objection to the appeals provision.	Appeals to the Water Tribunal are generally speaking allowed where discretion has to be exercised on the implementation of policy. Policy decisions are the responsibility of the government of the day and ought not be subject to a body with no political responsibilities. This does not, however, preclude a review by the High Court of any decision which is not subject to appeal.
Decisions which do not fall under clause 20, 21 or 26 would not be appealable. Thus there could be no appeal against decisions of the Director-General or a water management institution under clauses 26 or 28 dealing with a grant of a licence although obviously they could affect a person's livelihood. This would be patently unreasonable.	The previous ambiguous wording of clause 156(1) of the Cabinet Bill has now been replaced by clause 148(1) of the Tabled Bill. Any decision of a responsible authority is subject to appeal, in addition to decisions by water management institutions under clauses 19 and 20 of the Tabled Bill.
We submit therefore that there should be a right of appeal against all decisions of the Director-General and a water management institution (as well as those of the Minister). This could be achieved by amending clause 156(1) to read as follows:	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
"A person who is affected by a matter dealt with by the Minister, a responsible authority or a water management institution may appeal to the Water Appeal Board against a decision of the Minister, the responsible authority or the water management institution if the decision adversely affects any right of that person."	
C. COSAB	
SECTION 154:	
This section established another parallel quasi-legal process, outside of the standard courts. It will result in considerable cost and duplication of effort. It is recommended that the whole "Water Appeal Board" be dropped, and that disputes be resolved in the normal courts.	The establishment of this process will have the following benefits: (a) It will be less expensive than normal court procedure; (b) it will be quicker than normal court procedure; and (c) the member of the Tribunal will have specialised knowledge or expertise on water related disputes, which every member of the ordinary courts often do not have.
SECTION 155(1):	
It is unclear how the decision of one or more members can "constitute a decision of the Board" (whose size is unlimited). It is recommended that this section be deleted.	This is possible, on the same basis that the decision of a single Judge can constitute a decision of the High Court, notwithstanding that the High Court has many judges.
SECTION 156:	
This section would appear to restrict the jurisdiction of the Water Appeal Board to only the following circumstances: - Pollution (section 20) - emergencies (section 21) - temporary change in irrigation use (section 26) It is unclear why no other appeals, including those relating to "authority to use water" (see the introductory memorandum to the Chapter) are allowed.	See pages 103 -104 above.
SECTION 157(1):	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
This section restricts any appeal against the decision of the Water Appeal Board (note -decision by 1 member per current section 155(1)) to questions of law only. This restriction on the rights of parties to access the standard court system is rejected. This section must therefore be deleted.	It is customary to limit appeals against decisions of quasi-judicial tribunals to questions of law only, firstly because the members of such tribunals are usually experts who are in the best position to judge on facts and secondly because, if an appeal on facts is allowed, the Tribunal will have to keep a detailed record of all evidence submitted, which is a cumbersome, costly and delaying process. Should the Tribunal commit any gross error on its adjudication of facts, that decision will be subject to review by the High Court, on the usual grounds for review.
D. NEDLAC	
It is agreed that appeal to the Board in terms of section 156 would be amended to include appeal against decisions made by the Minister.	See pages 103 -104 above .
E. SAAU	
Page 101, Section 157(1)	
The part "on a question of law" should be deleted. The fact that a person could approach the High Court on a decision of the Board is sufficient according to our opinion.	See pages 103 and 104 above.
SECTION 160: *Chapter 18, (1),(b) :*	
A ENVIRONMENT SOCIETY	
The "damage caused to a water resource … " is not defined in the Act. All waterworks cause damage to water resources, in some way or another.	"Damage" is a well defined legal concept.
SECTION 161 - GENERAL PRESUMPTION	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
A. UCT - ENVIRONMENTAL LAW	
Offences (Chapter 18)	
The provisions in clause 161 regarding evidence in criminal and civil proceedings are to be welcomed. They do not go far enough, however, prosecutions can, and have in the past, been unsuccessful due to doubts raised about procedures for sample collection and analysis. The proposed presumption in clause 161 regarding the correctness of the readings of certain devices, will not cover this particular problem. Clause 20 of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947 has been amended so as to eliminate this problem as far as possible an can be adapted in order to improve on clause 161.	DWAF will recommend at the clause by clause discussion that this section be deleted as section 212 of the Criminal Procedure Act, 1977 is more appropriate than the present wording.
SECTION 162 - OFFENCES IN RELATION TO EMPLOYER AND EMPLOYEE RELATIONS	
B. SAAU	
Page 104, Section 162(a) and (b) This section implies a severe penalty to the employer in the form of a criminal offence whenever an Act or omission by an employee or agent takes place in the event of or express or implied permission of an employer. It is suggested that the "offence" be changed to a civil offence.	The word express means that the employer had prior knowledge and this should therefore not be of concern. Implied permission also pre-supposes a degree of prior knowledge. It is always a factual matter which the courts must decide on individual facts.
SECTION 171 - SERVICE OF DOCUMENTS	
A. COSAB	
SECTION 171(1)(A)(II):	
Presumably the word "and" at the end of this section should read "or".	The correction has been made. See clause 162(1) of the Tabled Bill.
SCHEDULE 1 - PERMISSIBLE USE OF WATER	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
A. BUSINESS SOUTH AFRICA	
1. During discussions with the drafting team on previous drafts the question was raised as to the level of consumption for commercial activities which would be subject to a licence. Assurances were given that a de-minimus rule was being developed in this regard. Schedule 1 does not apply the rule to commercial activity, which could result in a significant administrative burden for government and industry. It is proposed that commercial activities should be included in Schedule 1.	Schedule 1 must not be confused with general authorisations, which when introduced, will cover the commercial situations.
2. 4(1): Discharge of waste is also permitted under Schedule 1 under specific conditions. It is understood that this use is not regulated further under this bill as it is dealt with in terms of the Water Services Act. This appears to result in a conflict with 22(h) which provides that water use includes disposing of water, which contains waste from an industrial process.	This supplements the Water Service Act in that if a service to dispose of waste is rendered by a municipality, a licence need not be obtained under this Act. Schedule 1 must be read in conjunction with clause 21(h) of the Tabled Bill and is therefore not in conflict with it.
B. NEDLAC	
It is agreed that a minimum level of consumption for commercial activities subject to a licence should be included in schedule 1.	This comment confuses schedule 1 with a general authorisation. Intensive stock farming is specifically precluded from schedule 1 and this water use would be covered either by a licence or a general authorisation.
C. SAAU	
Page 109, Schedule 1, (1)(b), and 1(e)(ii) It is known that certain extensive stock farming areas, such as in the Northern Cape, the water demand for animal watering purposes would exceed a maximum rate of 5 litres per second, not exceeding 5 cubic metres (5 000 litres) per day. It is suggested that the existing use be exempted from this section. The definition of a "person" is necessary to create certainty of the number of people and family units included. We suggest that a limitation on the size of the family should be included.	This will be addressed in a revised item 1(a) and (b) of Schedule 1. This is as follows: "(a) take water personally for reasonable domestic use in that person's household, directly from any water resource to which that person has lawful access. (b) take water for use on land owned or occupied by that person, for- (i) reasonable domestic use; (ii) small gardening not for commercial purposes; and

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
	(iii) the watering of animals (excluding feedlots) which graze on that land within the grazing capacity of that land, from any water resource which is situated on or forms a boundary of that land, provided that the use is not excessive in relation to the capacity of the water resource and the needs of other users."
The latter could lead to undesirable practises where perennial crops are grown along riparian parts of rivers.	
D. BSA	
SCHEDULE II - CONTROLLED ACTIVITIES	
Schedule II and clause 33(1)(e) provide for a particular type of water use, whereas a much broader range of activities appears to be contemplated in clause 39, which may lead to conflict with the promotion of co-operative governance as contemplated in clause 23(2). Clause 13(2)(iii) and 14(3)(g) regulate land based activities.	Any activity to be declared a controlled activity requires a prior consultative process which will involve other government departments and stakeholders. The clauses referred to must be read together and supplement one another in the process of classifying water resources, setting objectives and effecting control. If an activity under clause 13(2)(ii) is identified, it could be declared a controlled activity in terms of clause 39.
SCHEDULE III CLAUSE 3	
E. M SMUTS	
Clause 3(c) can only apply in respect of servitudes originally obtained under the procedure set out in Schedule III. It would be improper for the State to order the cancellation of servitudes acquired and registered in the ordinary course of business.	This clause has been deleted by the State Legal Adviser.
SCHEDULE IV - POWERS, FUNCTIONS AND DUTIES WHICH MAY BE EXERCISED BY CMA's	
A. ESKOM	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Schedule IV, Section 7: Powers, functions and duties which may be exercised by catchment management agencies on assignment or delegation.	
This section makes provision for a catchment management agency to temporarily control, limit or prohibit the use of water during periods of water shortage. Whilst this provision is necessary under severe drought conditions, it should be exercised with due recognition of assurance of supply. Section 7(3) should be modified by adding: (b) give recognition to assurance of supply.	During severe droughts or water shortages, for whatever reason, the controlling body will have to apply measures to effect the best possible balance between the different user needs. The Tabled Bill now includes item 7(3)(c)(iii) which requires the CMA to consider the strategic importance of any water use when deciding on the limitation of water uses.
B. JUKSKEI RIVER CATCHMENT WQSC	
Catchment Management Agencies should have the power to prosecute on those issues where powers and functions have been delegated to them.	The power to prosecute must derive from a national prosecution Bill which may soon become law, and should not be contained in this Bill.
Catchment Management Agencies should manage information systems on those issues that have been delegated to them, specifically with regard to achieving the objectives of the catchment management strategy.	This forms part of their normal functions.
In general the schedule concentrates on powers, and does not specifically detail duties and functions.	Duties and functions follows from powers.
ENVIRONMENT SOCIETY	
A. SCHEDULE IV, 3 (1):	
It is recommended that this clause should state more explicitly that the catchment management strategy may regulate the quantity of water available to a water user.	The clause referred to states that “a catchment management agency may establish rules to regulate water use. “Water use” is defined in Section 21 of the Tabled Bill and includes the quantity aspect.
B. SCHEDULE IV, 7, (1), (b), (iii):	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
It is nor clear whether this clause includes government waterworks, and thus whether a catchment management agency can recommend closure of or alteration to such a waterworks.	Only if the power has been delegated to that authority.
SCHEDULE (iv), SECTION 7 A. SA ASSOCIATION OF WATER BOARDS	
The management of water supplies during periods of water resource shortage is currently a function of Water Boards who have to obtain permission from the Minister to implement statutory restrictions in this regard. It is not clear whether Catchment Management Agencies have been delegated the role the Minister currently plays, or whether they will assume the management function currently being undertaken by Water Boards. Should the latter be the case, then the SAAWB is very concerned and Water Boards would not want to relinquish this responsibility. It is recommended that the management of water supplies during droughts should remain a function of Water Boards.	The power to control or prohibit the use of water during droughts may only be exercised by a CMA if it has been assigned or delegated to that CMA. The exercise of that power can be contracted out to a water board as has sometimes been done in the past. Water Boards never had original powers to perform this function.
SCHEDULE V - INSTITUTIONAL MANAGEMENT AND PLANNING B. JUKSKEI RIVER CATCHMENT WQSC	
The schedule should either make provision for a constitution, or it should detail a procedure by which nominations for the Board are acquired.	See comments in respect of clause 81 of the Tabled Bill. The idea of a CMA having a separate constitution is not supported. See page 90 under C.
SCHEDULE VI - MODEL CONSTITUTION OF A WUA A. SA ASSOCIATION OF WATER BOARDS	
Schedule (vi)	
This schedule seems to be somewhat premature and perhaps out of place in legislation of this nature. It is recommended that a model constitution of a water user association be developed as a separate regulation.	Although it could form part of the regulations, it is included as part of the Bill due to the large number of existing irrigation boards who require clarity on the nature of the constitution envisaged by DWAF. It has been drawn up in such a manner that alternative

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
	options to cater for different needs are set out. This procedure is not without precedent. The Company's Act contains model Articles of Association for companies.
GENERAL MATTERS	
A. BUSINESS SOUTH AFRICA	
Conservation	
Promotion of conservation of water resources was understood to be one of the cornerstones of the new water law. Achievement of conservation requires adoption of a specific "culture" as enunciated by President Mandela in his address to Parliament on 6 February 1998 when he said "it is our responsibility, as the Water Bill is finalised, to change our own water consumption culture, recognising that this is a scarce resource that must not be squandered."	Throughout the Bill specific reference is made to conservation which is of prime importance in all water use considerations. Promoting awareness of water conservation is an obligation accepted and complied with by the Department. It is not something that is achieved through legislation.
The bill, however, remains focused on the traditional command and control approach rather than harnessing the energies of all citizens to the cause of conservation. Although conservation principles are to be set in terms of the National Water Resource Strategy the level of public participation is confined to a thirty day comment period on publication in the Gazette. The opportunity is not used to raise public awareness through more extensive consultation and debate.	
Consultation mechanisms	
It is noted with concern that the mechanisms in the Bill for consultation with stakeholders are less extensive than in previous drafts. Use of the Government Gazette, alone, is not necessarily a mechanism which promotes public participation. The use of the public media should also be considered as was provided for in previous drafts.	It is proposed to add a new provision to all the clauses dealing with consultation such as -take such further steps as the Director-General considers appropriate to bring the contents of the notice to the attention of interested persons.
It is reiterated that a period of thirty days to comment on matters as complex as water law and in particular by large constituencies which have to go through a mandating process, in fact precludes civil society	Clause 70 of the Tabled Bill also allows for extension of periods or to control failure to comply with stated time periods.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
from commenting meaningfully on proposals. While it is recognised that the wording here implies a minimum, it is suggested that the minimum be increased to 60 days. It is proposed that the relevant clauses below be redrafted to include additional media publications and a minimum of 60 days for consultation. 6, 9, 39(3), 40(4), 58(8), 72(1), 81(3), 93(2)	
B. COSAB	
1. The Bill proposes to vest all water rights in the Minister of Water Affairs, and the management of this total portfolio in the Director-General: Water Affairs. We are concerned that this will introduce a new bureaucratic and administrative implementation programme beyond the resources and capabilities of the government, especially given its current budgetary priorities.	The Bill does not vest water rights in the Minister of Water Affairs and Forestry. The Bill in fact reduces bureaucracy from what it was under the existing Water Act, and it devolves powers to local levels.
2. Many sections of the Bill require publication in the Government Gazette, and provide the public with 30 days within which to comment "after publication of the notice in the Gazette" (see sections 6, 9, 14, 17, 37, 39, 40, 44, 47, 58, 72, 81, 93, 95, 100, 113, 117, Schedule IV section 3, Schedule VII section 6). Experience with the postal services confirms that it takes on average 10 - 14 days from publication of the Gazette to receipt via the post. This effectively limits the time to react to the notice. It is recommended that the "30 days" be extended to "60 days" for practical purposes. Similarly, clauses associated with this one require that the Minister/Department "consider all comments received on or before the date specified …". This allows no leeway for late submissions.	
C. COSATU	
The Bill provides for a process of involvement of communities and stakeholders in decision-making processes. This element is, however,	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
limited. It generally involves the publication of proposals by the Minister or Director-General, with a provision for written comments to be submitted on these proposals within thirty days of publication. The Minister or Director-General must then consider these comments. In terms of the agreement at Nedlac that relevant clauses of the Bill "be reviewed with the view to give expression to … effective and meaningful consultation", the following matters should be taken into consideration:	
It is inadequate that the Minister or Director-General only have to "consider" the comments. There is no obligation on them to actually take the comments into account.	The Minister and the Director-General should not have any obligation to accept comments which are "ill founded". To avoid any misunderstanding on this, the word "consider" was used.
A time-period of 30 days to comment is very short, and could make it difficult for those who don't have many resources, such as rural communities, to comment in a meaningful way before the 30 days is up.	This has now been rectified.
Where the DG is empowered to make preliminary determinations (e.g. of the resource quality objectives of a water resource or of the reserve), these preliminary determinations are not subject to process of consultation and comment. The problem is, there is no time frame given by when the final determination, which includes the process of consultation, must be completed. There is therefore the possibility that the preliminary determination could continue for a long time. This undermines the attempt to make the process broadly consultative.	
Mechanisms need to be found for making the process of consultation more meaningful and effective, including:	
• As with regulations in the Bill, parliament should be empowered to request a report on the extent to which a specific comment has been taken into account, or if the comment was not taken into account, provide reasons why not.	Parliament's intervention powers are limited to regulations and in that respect Parliament is empowered to request a report on the extent to which comments were taken into account. See clause 68(1)(c) of the Tabled Bill.
• The 30 day time-period for public comment should be extended.	This has now been rectified.
• A requirement that local authorities and Nedlac play a role in the consultative process would facilitate more direct notification and participation of effected communities and constituencies; and	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
• A definite time limit should be put on the preliminary determination. This could be achieved through setting a specified time period in which a final determination must be made.	A preliminary determination can be made on the best available information at any point in time. For a final determination full information is necessary. It is uncertain when such full information will be available, given the restrictions of funds and capacity. In some cases final determination may not be urgent and the allocation of scarce funds and capacity thereto may not be prudent. Further, preliminary determinations are aspects to be considered in formulating the national and catchment strategies which are subject to 5 year reviews.
D. JUKSKEI RIVER CATCHMENT WQSC	
There appears to be no link between the Water Services Act and the National Water Bill and this could lead to confusion as to which act has precedence. Under the Water Services Act the following bodies are defined: Water service authorities, water service providers. Water service committees and water boards. Under the National Water Bill, the following bodies are defined: Catchment management agencies, water use associations and National Water Utility. There is no indication in either of the acts how these various bodies are related or will interact. A national water management structure needs to be developed to indicate the role and responsibilities of the various bodies.	These are separate Acts supplementing one another. In several clauses cross references to the Water Services Act will be recommended to the Portfolio Committee.
Under the Water Services Act, water users require approval for water use and/or effluent disposal from water services authorities but they also require authorisations/licences for water use (including effluent disposal) from water management institutions under the National Water Bill - The definition for Water Management Institution does not include water services authorities. Does this mean that a water user will require two licences?	If a water service is provided by a water services provider under the Water Services Act, the water services provider will require a licence to use the water concerned in terms of provisions of the National Water Bill. Water uses serviced by a water service provider will not require individual licences under the National Water Bill.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Under the Water Services Act water services authorities are required to produce water services development plans, which must include water user allocations. Under the NWB responsible authorities, which includes catchment management agencies, are required to prepare water allocation schedules, which must include water user allocations. There appears to be an overlap between the two acts. Also which act takes precedence?	There is no duplication. In terms of the Water Services Act the water services authorities must state how the water allocation is to be utilised in supplying water services. The water allocation itself is made under the Bill in favour of the water services provider concerned.
E. NEDLAC	
Delegation of powers	
The Bill gives a lot of power to officials and other management institutions. The implications of this need to be explored. While this is presumably done out of practical considerations (the Minister cannot deal with all the issues), it has political connotations. It is agreed that the extent of delegation of administrative powers to officials and other management institutions needs to be reviewed within the context of the need to balance political accountability with efficient implementation.	Delegation takes place on a negotiated basis and this will allow for delegation of power to a water management institution based on their capacity.
APPROACH TO WATER RESOURCE MANAGEMENT	
The approach to water resource management is considered to be extremely complex and still lacks clarity particularly in the following concepts: - Integrated catchment management. - River drainage basins; and - water management areas.	
In order to ensure an orderly progression the following actions need to be undertaken by government: - Drainage basins determined. - Classification system established. - Significant water resources deter-mined.	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
- National water resources strategy developed; and - significant water resources classified in terms of the reserve and resource quality objectives determined.	
For the integrated catchment management to be introduced, the significant water resources must be based on the catchment as the unit of management within the drainage basin identified in terms of the Bill. It is agreed that the relevant clauses will be reviewed with a view to providing greater clarification.	See the new clause 6(2) of the Tabled Bill.
F. RDSN	
GENDER	
As far as representation on the different institutions established under the Bill is concerned, gender equity is inadequately dealt with. We believe that it should be an initial consideration in the appointment of a governing board.	See clause 81(10)(b) of the Tabled Bill which makes specific provision for gender representation in CMA's. In the case of water user associations an approved constitution is required which enables the Department to ensure whether the question of gender representation has been sufficiently addressed.
PARTNERSHIPS	
Finally, one of the current policies in government circles is public - private sector partnerships. Within the Department of Water Affairs and Forestry a similar programme is under way. We want to stress that such initiatives, although meant to speed up delivery should be looked at very carefully in terms of long terms sustainability and in terms of the roles and capacity of local government and existing water committees before any long term commitments are made.	Private sector representation is achieved in the composition of CMA's and other water management institutions.
G. SA ASSOCIATION OF WB	
ROLE OF PROVINCIAL GOVERNMENT	
The only reference to Provincial Government in the Bill is in terms of governance of the Boards of Catchment Management Agencies (Section 85.1) and to be given notice of a claim for a servitude (Schedule III). It is not clear if Provincial Government is considered an	All references in the Bill to organs of State are inclusive of Provincial Government. Organs of State are frequently brought into the consultative process.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
organ of state in this Bill, but notwithstanding this, the role of Provincial Government should be firmly and explicitly entrenched in water resources management and therefore in the Bill. In fact, Schedule (vi) of the Constitution of South Africa provides for Provincial Government to be responsible for agriculture, the environment and physical planning. All of these functions are integral to effective water resources planning and management. *Chapter 4 Sections 41 to 57*	
Parts 7 to 10 Chapter 4 of the Bill (sections 41 to 57) relate to procedural aspects in terms of application, granting and withdrawal of licences. These aspects should either be contained in a schedule or as a separate regulation.	This is a matter of drafting. The Department prefers these sections in the body of the act rather than in a schedule.
Centralisation versus subsidiary	
The powers vested in both the Minister and the Director-General are considered to be excessive, in fact more so than those powers vested through the current Water Act. The SAAWB is very concerned with this centralisation of power since this will lead to greater bureaucracy, delayed decision making and even poor decision making. It is also in direct contradiction to the Principle 23, that of subsidiarity, outlined in the original Water Law Principles which were adopted by Cabinet in November 1996.	These statements are not agreed with. The whole thrust of the new Bill is to allow for devolution of powers and to make decision making subject to public comment.
Notice period	
Throughout the Bill a notice period of at least thirty days is given for public comment on various issues. Although this is a minimum notice period, it is still considered to be too short and should be extended to 60 days which would be in line with the notice periods provided for in the Water Services Act, 1997.	See above.
H. SAICE	
The implementation of the Bill will require significant inputs in terms of manpower and resources. This is not only with respect to the Department itself, but also what is envisaged with regard to Catchment	See A- COSAB under clause 3 above.

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
Management Agencies and their activities. There is some concern that the South African community will not be able to afford this, and that in some cases, such as that required for the classification of streams and rivers, or the determination of the Reserve, sufficient numbers of trained and experienced people are not available. There is therefore some concern that the Bill, through lack of funds and personnel, will not be implemented properly. It would be wise to identify priority issues and in some cases a simplification of processes in order to ensure the success of the good intentions of the Bill.	
Under the current legislation there is a general authorisation to use water, except in those areas which have been declared Government Water Control areas. The proposed Bill makes no provision for this and in effect the whole country now becomes a Government Water Control Area. This will put a tremendous administrative load on the Department and it is doubtful whether transgression will be able to be effectively detected and acted upon.	This will be dealt with by general authorisations.
It also seems that, while existing users can continue, new users will have to apply for licences. In some cases it may be difficult to identify existing users, who are using water in terms of a general authorisation. This may lead to abuse where new users claim that they were existing users. It may also lead to lengthy and costly delays in the case of new applicants, who may even be totally ignorant of the law and the required process to obtain a licence. If this system is implemented, the Department should ensure that the structures are in place to deal with applications promptly and efficiently. Otherwise the National Water Bill runs the risk of being discredited at an early stage of implementation.	The Bill provides for the registering of all existing water users and any new water users will either fall under a general authorisation or will have to apply for a licence. It is possible for a new water user to falsely claim existing use but clause 35 of the Tabled Bill allows for an investigation to verify the lawfulness of such a claim.
I. UMVOTI AGRICULTURAL SOCIETY	
This society strongly objects to the provisions made in the draft water bill. The objections of the society are:	The matters raised in the submission have all been raised by other commentators. It is included for the sake of completeness but is not separately commented on by the Department.
1. We are a productive and diverse agricultural area with the major activities being forestry, maize, sugar cane, vegetables and both intensive and extensive beef and dairy farming. All of these activities depend on a permanent and reliable supply of water.	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
To ensure this supply, properties have been purchased at high prices because of the relatively high rainfall the area expects to receive and the availability of water from streams, rivers and dams. This society accepts the need for a "reserve" to which everyone is entitled, but rejects all the other aspects of the draft bill which unreasonably restricts viable agricultural enterprises. 2. Water use licences and the restrictive duration thereof will have the effect of de-basing assets and will lead to a lack of confidence in agriculture. 3. The unlimited powers conferred on the Minister who need not even refer to parliament. His ability to impose levies and fees for water will most certainly make some enterprises non viable with an increase in the number of unemployed. Our society draws a great deal of labour from Msinga which is an extremely poor area. Any loss of employment for these people will cause severe hardship. 4. A rainfall tax in the guise of a stream flow reduction levy goes totally against internationally accepted norms and standards. 5. The majority of government legislated activities which are restrictive seldom result in "opportunity" gains elsewhere. There is no guarantee that any further run off of water will be used productively by persons downstream of the restricted area. In the case of forestry restrictions have been in place since 1972 through the permit system. 6. To accept a draft bill that makes extensive reference to charges and levies, but does not even hint at their extent is surely asking too much of those affected by the bill. 7. That rights to use water, will be divorced from property ownership without payment of compensation, is a fundamental concern. Those rights were paid for with the purchase of the land. 8. Forestry is being singled out as a stream flow reduction activity where legislation is in place to restrict plantation forestry already. This is discrimination and cannot be tolerated in the new South Africa.	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
I. WILDLIFE & ENVIRONMENT SOCIETY	
Much of the powers and duties set out in the Water Act are assigned to the Minister and the Director-General of Water Affairs and Forestry. The Wildlife & Environment Society trusts that these individuals, and the Department, will be transparent and accountable at all times. As a user of water, the Department must be subject to the requirements of the Act.	The Department is bound by the provisions of the Bill.
In most cases where public notification is required, the Act requires publication of information in the Gazete. This publication is not always easily available, so the Wildlife & Environment Society recommends that in some instances communication should be broader, such as through local newspapers. Furthermore, it should be the responsibility of catchment management agencies to be aware of and have the contact details of all interested and affected parties within the catchment. This would ease communication concerning important meetings and notices.	See above.
J. IXOPO AGRICULTURAL SOCIETY	
My personal concern is that a welter of legislation will have the unintended effect of acting as a disincentive to agriculture, in addition to being cumbersome and ineffectual.	The comment is noted.
The answers may lie in simpler, more practical plans of action (for example, a rainwater tank next to each dwelling) and restorative conservation measures applied to areas where there is huge run-off and erosion (no examples needed).	
K. A J VAN SCHALKWYK	
Instead of incurring further costs with unnecessary laws the Minister and his colleagues should pay attention to the following matters which are of the extreme importance:	The comments are noted.
1. More productive use of water (including rain) and agricultural land in the	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY
eastern (high rainfall) areas of the country must be achieved. Why is it necessary that the inhabitants of those areas which have the best rainfall and agricultural land, should migrate to the western areas (relative deserts) in an attempt to make a living. Obviously there is a lack of knowledge and spirit of enterprise to develop their own areas and guidance in those areas. What is the Ministers doing about education and guidance in these areas. 2. There are always complaints about too little work, too little housing, too little money, schools etc. Actually there are too many people and the population growth is excessive. Shortly the population will even be to great for the basic natural resources (agricultural, land and water) of the country as a whole. What is urgently required is family planning (birth control, at the utmost two children per woman). Obviously guidance and persuasion measures are required. Especially political representatives should use their influence and power of persuasion at every occasion. And naturally illegal immigration should be stopped immediately.	

PUBLIC COMMENTS ON CABINET VERSION	REACTION BY DEPARTMENT OF WATER AFFAIRS AND FORESTRY