

## OUTA COMMENTS ON THE WATER SERVICES AMENDMENT BILL, 2025

**12 February 2026**

### 1. INTRODUCTION

This submission provides comment on the Water Services Amendment Bill, 2025 (“the Bill”). The Bill constitutes the most substantial regulatory intervention in municipal water services since the enactment of the Water Services Act in the late 1990s.

The submission recognises the necessity of reform in light of the widespread collapse of water and sanitation services across many municipalities. It supports the Bill’s overarching intent to professionalise water service provision, strengthen compliance, and introduce meaningful consequences for persistent failure.

However, the submission raises concern that several provisions, if not refined, may create constitutional, governance, and implementation risks that could undermine cooperative governance and weaken already fragile local institutions.

### 2. GENERAL OBSERVATIONS

The Bill is premised on a correct diagnosis: many municipalities are failing to deliver safe, reliable water and sanitation services. Poor political oversight, weak senior appointments, inadequate maintenance, poor financial management, and persistent non-compliance with licences and legislation have contributed to systemic failure.

It must be noted, however, that much of what the Bill seeks to achieve should already have been possible under existing legislation. In a number of municipalities, functional water services are being delivered within the current legal framework, demonstrating that failure is often institutional and political rather than legislative.

Nonetheless, these municipalities are the exception. Given the scale of underperformance nationally, regulatory reform is justified. The concern raised in this submission is not with the destination the Bill seeks to reach, but with aspects of the route chosen to get there.

### 3. LICENSING OF MUNICIPAL SERVICE DELIVERY MECHANISMS (Sections 22A-22F)

The introduction of a licensing regime for Water Services Providers (WSPs) is arguably the most consequential reform in the Bill. The objective of enforcing minimum technical, financial, and governance standards is supported in principle.

Licensing is particularly appropriate where municipalities rely on external providers or utilities that have historically operated with limited accountability. However, it must be acknowledged that Water Services Authorities and WSPs should already be operating under valid licences issued and enforced by the Department of Water and Sanitation. The failure to ensure this points primarily to weaknesses in enforcement rather than gaps in legislative authority.

A key concern is that the licensing authority is vested in the Director General of the Department. This places policy formulation, regulation, licensing, and enforcement within the same institutional structure. Such concentration of authority risks politicisation, inconsistent application, and administrative overload.

In addition, the relationship between national licensing powers and municipal executive authority under Section 156 of the Constitution is not sufficiently safeguarded.

**Recommendation:**

Licensing should be retained but strengthened through:

1. Clear capacity-building and remediation pathways prior to suspension or revocation;
2. Strong procedural safeguards to prevent arbitrary or inconsistent decisions; and
3. Consideration of an independent water services regulator in the medium to long term.

**4. ENFORCEMENT POWERS AND AUTHORISED PERSONS (Sections 62A, 80A-80C)**

The Bill seeks to address the long-standing culture of consequence-free non-compliance through expanded enforcement powers. This objective is supported.

Persistent failures relating to drinking water quality, wastewater compliance, asset maintenance, and financial governance have had serious public health and environmental consequences. The ability to issue directives and compel corrective action aligns with enforcement mechanisms already found in water and environmental legislation.

However, the powers granted to “authorised persons” are exceptionally broad and include search, seizure, interrogation, and policing-type authority. While such powers exist within specialist units such as the Blue Scorpions, the Bill does not sufficiently clarify how these powers will be exercised, supervised, or reviewed.

Without clear safeguards, these provisions carry a real risk of abuse, selective enforcement, or political misuse, particularly in contested municipal environments.

**Recommendation:**

Enforcement provisions should be strengthened by:

1. Clear procedural fairness and due process requirements;
2. Transparent reporting and oversight mechanisms;
3. Defined appeal and review processes; and
4. Preferential use of specialised enforcement units where appropriate.

The emphasis should remain corrective and supportive before coercive measures are applied.

## 5. GOVERNANCE REFORMS FOR WATER BOARDS (Sections 35-37)

The governance reforms applicable to water boards are among the strongest elements of the Bill. Alignment with PFMA requirements, King IV principles, and broader public entity governance standards is welcomed.

Clear fiduciary duties, transparent appointment processes, and the separation of governance and management roles are necessary and overdue reforms.

However, improved governance structures alone will not succeed unless supported by:

1. Financial sustainability;
2. Predictable infrastructure investment; and
3. Clearer alignment of mandates between water boards and municipalities.

## 6. CRIMINAL LIABILITY OF DIRECTORS AND MUNICIPAL MANAGERS (Section 82A)

The introduction of personal liability aims to address entrenched impunity at leadership level. Accountability is appropriate where negligence or wilful misconduct is present.

There is, however, a risk that criminalising failure in a system characterised by chronic under-funding, skills shortages, political interference, and inherited collapse may deter competent professionals from public service.

### **Recommendation:**

1. These provisions should be applied narrowly and proportionately, with a clear distinction drawn between maladministration and structural incapacity.
2. The criminal liability also need to apply to the political office bearers who provide oversight and often cast their vote to move funding away from the water and sanitation budget, forcing officials to underperform.
3. Criminal liability should also apply to staff members who may be guilty of negligence and criminal conduct related to water- and environmental legislation.

## 7. CONCLUSION

The Water Services Amendment Bill, 2025 is necessary, serious, and well-intentioned. It correctly identifies critical weaknesses in regulation, licensing, and enforcement within the water services sector.

However, the Bill also risks over-centralising authority, under-specifying safeguards, and creating unintended constitutional and operational consequences.

The Bill should proceed, but only with targeted amendments that balance enforcement with developmental support; protect cooperative governance principles; strengthen procedural and oversight safeguards and avoid creating a national regulatory bottleneck.

The regulator needs to ensure that where Public Private Partnerships exist, that affordable and sufficient water principles apply.

Lastly, South Africa has robust and modern legislation. These regulations and principles will only make an impact where Political Will exists to see them through.