



SUBMISSION BY

THE FEDERATED HOSPITALITY ASSOCIATION OF SOUTHERN AFRICA (FEDHASA)

ON THE

PROPOSED REGULATIONS FOR THE MANAGEMENT AND CONTROL OF GOVERNMENT WATERWORKS AND SURROUNDING STATE-OWNED LAND ("THE DRAFT REGULATIONS"), READ TOGETHER WITH RESOURCE MANAGEMENT PLANS ("RMPs")

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Department of Water and Sanitation  
Invitation to comment on the proposed regulations for the management and control of government waterworks and surrounding state-owned land

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## **THE HOSPITALITY INDUSTRY OF SOUTH AFRICA**

The Federated Hospitality Association of Southern Africa [FEDHASA], established in 1949, is both a registered section 21 Company and an Employers Association and represents the business interests of the hospitality industry on a variety of matters that directly or indirectly impact the South African trading and employment environment.

FEDHASA represents the interests of over 2,000 establishments within the following sub-sectors of the South African hospitality industry – Resorts, Hotels, B&Bs, Guest Houses, Home Stay SME's, Game Lodges, Restaurants, Pubs, Conference Centre's and Gaming establishments.

The Association has compiled this consolidated submission on behalf of group, independent, established and emerging hospitality establishments throughout South Africa who have a direct interest in the proposed regulations for the management and control of government waterworks and surrounding state-owned land – read with the Resource Management Plans.

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# OBJECTION TO THE PROPOSED REGULATIONS FOR THE MANAGEMENT AND CONTROL OF GOVERNMENT WATERWORKS AND SURROUNDING STATE-OWNED LAND (“THE DRAFT REGULATIONS”), READ TOGETHER WITH RESOURCE MANAGEMENT PLANS (“RMPs”)

## 1. INTRODUCTION

1.1 The Draft Regulations, read together with the Resource Management Plans (“RMPs”), constitute a profound and unlawful restructuring of the regulatory regime governing public water resources, with far-reaching consequences for:

- constitutional rights;
- economic activity;
- lawful existing uses of water bodies.

1.3 The framework is:

- procedurally defective;
- substantively irrational;
- constitutionally vulnerable; and
- in conflict with existing legislation and regulatory authorities.
- there is no provision in the Act for the RMPs to play the role - envisaged by this draft legislation.

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## 2. FAILURE OF LAWFUL PUBLIC PARTICIPATION (PAJA)

2.1 The Draft Regulations state and require compliance with RMPs, yet these RMPs are not fully disclosed or readily accessible on the DWS website or elsewhere - and some have not been drafted yet.

2.2 Stakeholders are therefore unable to understand the full regulatory burden.

2.3 This violates the Promotion of Administrative Justice Act 3 of 2000, which requires procedurally fair and informed participation.

2.4 The consultation process is accordingly legally defective and reviewable.

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## 3. UNLAWFUL SHIFT FROM PUBLIC ACCESS TO PERMISSION-BASED REGIME

3.1 The framework converts public water use into a permission-based system requiring leases or approvals.

3.2 This undermines the public trust doctrine embedded in the National Water Act 36 of 1998.

3.3 It effectively:

- restricts lawful access;
  - centralises control;
  - risks unconstitutional deprivation of rights.
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## 4. DUPLICATION AND USURPATION OF EXISTING LEGAL FRAMEWORKS

### 4.1 The Draft Regulations duplicate and undermine established authorities:

The proposed Regulations create a parallel regulatory system, resulting in duplication, in some cases - conflicting current legislation, administrative inefficiency, legal uncertainty, and the potential usurpation of existing regulators' mandates.

A comprehensive and well-established legal framework for the hospitality and tourism industry already governs activities on and around dams and waterways. The introduction of overlapping and sometimes conflicting requirements - risks regulatory conflict and enforcement confusion.

Rather than strengthening and supporting governance, the proposed Regulations risk:

- duplicating existing legal requirements,
- increasing compliance costs and administrative burdens,
- creating conflicting mandates between regulators, and
- introducing legal uncertainty for property owners, businesses, and the public.

### Legal and Constitutional Implications

The introduction of a duplicative regulatory framework raises serious legal and constitutional concerns.

**Firstly**, to the extent that the proposed Regulations replicate or override functions already assigned to other competent authorities, there is a risk that they may be ultra vires - exceeding the lawful powers conferred on the Department in terms of the National Water Act.

**Secondly**, the creation of overlapping and, in some instances, conflicting compliance obligations undermines the principle of legal certainty, which is a foundational element of the rule of law. Affected parties must be able to clearly understand which authority governs their activities and what standards apply.

**Thirdly**, the Regulations may give rise to procedural unfairness under the Promotion of Administrative Justice Act (PAJA), particularly where:

- stakeholders are required to comply with multiple, and potentially inconsistent, regulatory regimes;
- approval processes are unclear, duplicative, or discretionary without defined criteria; and
- the full regulatory burden cannot be properly assessed without reference to external instruments such as Resource Management Plans (RMPs) or Lease Policy.

Finally, the cumulative effect of these Regulations may amount to an unjustifiable limitation of rights, including:

- the right to lawful, reasonable and procedurally fair administrative action;
- the right to property (where use and enjoyment are materially restricted); and
- the broader public interest in access to and reasonable use of water resources.

Duplication of existing regulatory oversight includes, but is not limited to:

- **Maritime Safety and Vessel Operations**  
South African Maritime Safety Authority (SAMSA) – governs vessel safety, skipper licensing, seaworthiness, navigation rules, night travel and operational compliance.

- **Environmental Protection and Impact Management**  
Department of Forestry, Fisheries and the Environment (DFFE) – Environmental Impact Assessments (EIA), biodiversity protection, pollution control (NEMA and associated regulations).
- **Fisheries and Angling Regulation**  
DFFE – permits, species protection, and inland fisheries management.
- **Spatial Planning, Land Use and Zoning**  
Municipalities under Spatial Planning and Land Use Management Act (SPLUMA) – zoning compliance, land use rights, and development approvals.
- **Building Control and Infrastructure Compliance**  
Municipal building regulations and the National Building Regulations and Building Standards Act – structures such as jetties, boathouses, and associated infrastructure.
- **Event Management Applications and Public Safety**  
Municipal Joint Operations Committees (JOCs), Safety at Sports and Recreational Events frameworks, and disaster management regulations.
- **Noise Control**  
Municipal by-laws and provincial environmental noise regulations.
- **Waste Management and Pollution Control**  
Municipal by-laws and the National Environmental Management: Waste Act – handling of refuse, effluent, and pollution prevention.
- **Public Health and Sanitation**  
Municipal health by-laws and the National Health Act – refuse, sanitation, water quality, and public health compliance.
- **Liquor Licensing and Trading**  
Provincial Liquor Boards and the National Liquor Act – licensing, trading hours, and conditions of alcohol consumption.
- **Workplace Health and Safety**  
Department of Employment and Labour under the Occupational Health and Safety Act – safety of employees, customers and operational environments.
- **Tourism and Hospitality Regulation**  
Department of Tourism standards, grading systems, and sector-specific compliance frameworks.
- **Fire Safety and Emergency Services**  
Municipal fire by-laws and disaster management frameworks governing safety compliance at venues and on vessels.
- **Water Boards**  
Some dam/water board authorities (e.g. Rand Water) have extensive duplicate regulations in place (see Annexure C) for the Vaal River Barrage Reservoir - as per detailed below.

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## 5. CONFLICT WITH ANNEXURE C (VAAL RIVER COMPLEX GUIDE PLAN, 1982)

### 5.1 FAILURE TO RECOGNISE EXISTING BINDING LEGAL FRAMEWORK (ANNEXURE C)

The proposed Regulations and RMPs fail to recognise and give effect to Annexure C of the Vaal River Complex Guide Plan (1982), which remains legally operative and binding.

Although the broader planning framework has evolved under the Spatial Planning and Land Use Management Act (SPLUMA), Annexure C was never repealed. It continues to impose specific development controls governing land use, setbacks, and permissible activities within the Vaal River Barrage. These controls are further entrenched through the statutory and operational mandate of Rand Water.

The introduction of overlapping regulatory controls through the proposed Regulations and RMPs creates a parallel system that is inconsistent with, and in conflict with, this existing binding framework.

## **5.2. UNLAWFUL DUPLICATION, ULTRA VIRES ACTION AND USURPATION OF POWERS**

The Regulations introduce a parallel regime of permissions and controls over matters already governed by:

- Annexure C (binding development controls)
- Municipal land use management under SPLUMA
- The regulatory jurisdiction of Rand Water

This results in:

- Unlawful duplication and regulatory conflict
- An ultra vires exercise of power, insofar as the Department purports to override or disregard an existing binding framework without lawful repeal
- An impermissible usurpation of the powers of other competent authorities

It is trite that subordinate legislation cannot override or displace existing lawful regulatory instruments without express legislative authority.

## **5.3. UNLAWFUL RETROSPECTIVE INVALIDATION OF LAWFULLY ACQUIRED RIGHTS**

Of particular concern is the effect of the proposed framework on property owners and operators who have lawfully obtained approvals from competent authorities, including Rand Water, for:

- Jetties, slipways and riverfront infrastructure
- Buildings and improvements
- Commercial and recreational activities

These approvals were granted within the existing legal framework, including compliance with Annexure C and other applicable laws.

The proposed Regulations and RMPs appear to introduce a regime in terms of which:

Existing lawful uses and structures are effectively deemed unlawful unless fresh approval is obtained from the Department.

This is legally impermissible for the following reasons:

### **5.3.1 Violation of the principle of legality**

Administrative action must be lawful, reasonable, and procedurally fair. The arbitrary invalidation of existing lawful approvals, without due process or compensation, is unlawful.

### **5.3.2 Retrospective application of law**

The Regulations operate retrospectively in effect, by altering the legal status of pre-existing lawful rights. Retrospective deprivation of rights is strongly disfavoured in law and requires clear legislative authority, which is absent.

### **5.3.3 Infringement of vested rights and legitimate expectations**

Affected parties have acquired vested rights based on valid approvals and have a legitimate expectation that such approvals will remain valid unless lawfully withdrawn.

#### **5.3.4 Procedural unfairness under the Promotion of Administrative Justice Act (PAJA)**

The failure to provide a lawful, fair process for reviewing or transitioning existing approvals renders the framework procedurally unfair and reviewable.

#### **5.3.5 Potential unconstitutional deprivation of property**

The effective nullification of lawfully exercised property and use rights may amount to an arbitrary deprivation of property, contrary to constitutional protections.

### **5.4. VIOLATION OF THE RULE OF LAW AND LEGAL CERTAINTY**

The coexistence of:

- Annexure C (existing binding controls), and
- The proposed Regulations and RMPs (new overlapping controls)

creates uncertainty as to which regulatory framework applies.

This undermines:

- Legal certainty
- Predictability for investors and property owners
- The rule of law

A lawful regulatory system must be coherent and consistent, not contradictory.

### **5.5. IRRATIONALITY AND DISPROPORTIONALITY**

The imposition of additional permissions and controls where equivalent mechanisms already exist serves no rational regulatory purpose and imposes unnecessary administrative burdens.

The framework is therefore:

- Irrational, and
- Disproportionate to its stated objectives,

and is liable to be set aside on review.

### **5.6. CONCLUSION**

In summary:

- Annexure C remains a binding, unrepealed legal framework governing the Vaal River Barrage
- The proposed Regulations and RMPs unlawfully conflict with and duplicate this framework
- The Regulations constitute an ultra vires overreach and usurpation of existing institutional mandates
- The framework unlawfully seeks to retrospectively invalidate lawfully acquired rights
- The Regulations are procedurally unfair, irrational, and legally vulnerable

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## **6. RETROSPECTIVE INVALIDATION OF EXISTING RIGHTS**

6.1 Many operators have lawfully obtained approvals and invested significantly.

6.2 The Draft Regulations appear to render these existing lawful uses unlawful unless re-approved.

6.3 This violates:

- legal certainty;
- property rights;
- principles of administrative justice.

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## **7. VAGUENESS, UNCERTAINTY, AND LEGAL VACUUM**

7.1 The framework is marked by:

- undefined terms;
- unclear approval processes;
- absence of decision-making criteria.

7.2 It fails to specify:

- lease costs;
- PPP structures;
- authority jurisdiction.

7.3 This creates a dangerous concentration of discretionary power, contrary to the rule of law and provides oxygen and opportunity for corruption, graft and bias – all of which are currently proliferating in every Government department – including in the SAPS as currently is in display at the Malanga Commission.

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## **8. MINISTERIAL OVERREACH (ULTRA VIRES)**

### **LIMITS ON MINISTERIAL POWER AND FLOWS IN THE PROPOSED SCHEME**

#### **8.1 STATUTORY SOURCE OF POWER (STARTING POINT)**

The powers of the Department of Water and Sanitation Minister derive from the National Water Act (“NWA”).

Key point:

The Minister may regulate, control, and make waterworks available - but only within the scope and purpose of the Act.

There is no general power in the NWA to:

- Transfer control of dams to third parties in a manner that displaces State responsibility; or

- Convert public use into a compulsory contractual (lease) regime for ordinary access.

## 8.2. UNLAWFUL DELEGATION OF PUBLIC POWER

### **PRINCIPLE: *Delegatus non potest delegare***

A statutory decision-maker may not delegate powers unless:

- The enabling Act expressly permits delegation, and
- The delegation is clearly defined and limited

## 8.3 APPLICATION TO THE DRAFT SCHEME

The Draft Regulations introduce the concept of a “Competent Authority” / DMC-type structure that:

- Controls access
- Grants approvals
- Enters into lease agreements
- Determines conditions of use

The concern is that this effectively transfers core State control over public waterworks to an external or semi-external body.

## 8.4 LEGAL DEFECT

If the NWA does not explicitly authorise:

- Delegation of control over access rights, and
- Delegation of commercial leasing authority over public water resources

Then - the scheme risks being ultra vires (beyond the Minister’s powers).

## 8.5. CREATION OF A DE FACTO PROPERTY / LEASE REGIME (NOT AUTHORISED BY THE ACT)

The Draft Regulations + RMPs introduce:

- Lease agreements as a condition of use
- Controlled access linked to contractual relationships

## LEGAL PROBLEM

Under the NWA:

- Water is a public resource held in trust by the State
- The State must act as custodian, not as a commercial landlord of access rights

There is no clear provision allowing the Minister to:

Require ordinary users (or even routine commercial users) to enter into lease agreements as a precondition for access to waterworks

## RESULT

This creates:

A parallel, quasi-property system over public water resources without explicit statutory authority.

## **8.6. CONTRADICTION WITH THE PURPOSE OF THE NATIONAL WATER ACT**

The NWA is built on:

- Equitable access to water resources
- Public trusteeship
- Sustainable use

## **8.7 EFFECT OF THE DRAFT FRAMEWORK**

The proposed system:

- Restricts access to approved / leased users
- Converts use into a controlled entitlement system
- Introduces barriers to entry (administrative + financial)

## **LEGAL CONCERN**

A regulatory scheme that materially restricts access and converts it into a permission/lease system may be inconsistent with the purpose and spirit of the Act

## **8.8 ADMINISTRATIVE LAW DEFECTS (PAJA)**

Under Promotion of Administrative Justice Act (PAJA), administrative action must be:

- Lawful
- Reasonable
- Procedurally fair

## **RISKS IN THE DRAFT**

The framework introduces:

- Broad discretionary approval powers
- No clear criteria for approvals or refusals or refusal to renew leases
- Potentially inconsistent application across dams

## **8.9 CONSEQUENCE**

This exposes the scheme to challenge on the basis of:

- Arbitrariness
- Uncertainty
- Procedural unfairness

## **8.10. FORCED CONTRACTING WITH THE STATE**

The Draft Regulations effectively require:

Members of the public / businesses to enter into agreements (leases) with the State (or its delegate) to exercise activities.

## **LEGAL ISSUE**

In South African law:

- Contracts must be voluntary
- The State cannot compel contractual relationships unless clearly authorised by statute

## **LEGAL CONCER**

Forcing individuals to conclude agreements as a precondition to access a public resource - without clear statutory authority - is legally questionable and potentially unlawful

### **8.11. CONSTITUTIONAL DIMENSION**

Under the Constitution of the Republic of South Africa:

#### **Section 22 – Freedom of Trade**

Restrictions on water-based tourism may:

Unjustifiably limit lawful economic activity

#### **Section 25 – Property / Use Interests**

Where businesses rely on:

- Long-standing lawful use
- Investments based on access

A lease-based regime may amount to:

Regulatory deprivation

#### **Section 33 – Just Administrative Action**

Approval-based systems without clear rules risk:

Arbitrary and unfair administrative action encouraging nepotism, graft and corruption.

### **8.12. COOPERATIVE GOVERNANCE FAILURE**

The scheme overlaps with Municipal regulations and legislation:

## **RESULT**

The Regulations risk creating a duplicative and conflicting regulatory layer, contrary to principles of cooperative governance and undermines Municipalities.

## **CORE CONCLUSION**

The Draft Waterworks Regulations, when read with Resource Management Plans, introduce a scheme that exceeds the Minister's statutory powers by effectively delegating control of public waterworks, imposing lease-based access to a public resource, and compelling contractual relationships without clear authority in the National Water Act. As such, the framework is vulnerable to challenge on the grounds of ultra vires action, unlawful delegation, and inconsistency with both administrative law principles and the Constitution.

It would not be unreasonable to read into this draft legislation - that it has a strong flavour of expropriation without compensation.

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## **9. FAILURE OF COOPERATIVE GOVERNANCE**

9.1 The Constitution requires coordination between spheres of government.

9.2 The Draft Regulations:

- override municipal authority;
- duplicate regulatory frameworks with numerous entities;
- fail to align with existing governance systems;
- raise confusion as to which authority is deemed the highest authority.

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## **10. ECONOMIC IMPACT AND DISPROPORTIONALITY**

10.1 The hospitality and tourism sector is a major employer and employs more people per square meter than any other industry.

10.2 The Regulations:

- create uncertainty – uncertainty is the opposite of what is needed for tourism growth;
- increase costs. The majority of the industry is struggling/marginal. Will cause closures;
- deter investment – developments will go elsewhere - where these rules do not pertain;
- come at a time where hospitality is under significant financial strain;
- create a burden only on dam businesses – but not on other hospitality businesses;
- appear to be targeting an industry for additional funds for DWS – at a time when the industry is struggling – with the majority of industry running financially marginal businesses.

10.3 This is irrational and contrary to economic development objectives.

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## **11. SEVERE OPERATIONAL AND ECONOMIC IMPACT ON HOSPITALITY AND TOURISM**

### **11.1 BROAD DEFINITION OF “EVENT” (REGULATION 6)**

11.1.1 The definition of “event” includes any gathering exceeding 50 persons.

11.1.2 This captures most ordinary daily hospitality operations, not exceptional events.

11.1.3 Businesses may need daily approvals simply to operate. How long will approvals take in practice (not theory)?

11.1.4 This is:

- irrational;
- impractical;
- unlawful;
- damaging;
- causes doubt that a hospitality business can legally operate from day to day.

## **11.2 DESTRUCTION OF NIGHT-TIME TOURISM AND CRUISING (REGULATION 7)**

11.2.1 Restrictions on night-time navigation undermine a globally established tourism practice.

11.2.2 Sunset and evening cruises are essential revenue streams.

11.2.3 The effect will be:

- closure of cruise operators;
- job losses;
- economic harm.

11.2.4 This unlawfully duplicates and overrides SAMSA's mandate which permits night cruises and regulations.

## **11.3 DESTRUCTION OF THE HOUSEBOAT INDUSTRY (REGULATIONS 7 & 8)**

11.3.1 Houseboat tourism depends on:

- flexible movement;
- spontaneous mooring.

11.3.2 The Regulations impose:

- permission requirements for mooring and overnight stays;
- designated mooring restrictions.

11.3.3 This destroys the viability of the industry entirely and is contrary to SAMSA's legislation.

## **11.4 ADMINISTRATIVE INEFFICIENCY AND "COMPETENT AUTHORITY" RISKS**

11.4.1 Multiple undefined and duplicate authorities create:

- delays;
- uncertainty;
- inconsistent decisions;
- risk on being able to trade in the future – if permissions not obtained timeously.

11.4.2 No timelines or accountability measures exist.

11.4.3 This results in regulatory paralysis.

## 11.5 OVER-REGULATION AND UNCERTAINTY

11.5.1 The industry is already heavily regulated.

11.5.2 The Draft Regulations add another layer without clarity of additional lease costs et al.

11.5.3 Businesses cannot determine:

- which authority prevails;
- which rules apply.
- rules they must follow - details of the rules in their RMP (where can these RMP rules be accessed? Very few RMP's are on the DWS website and some RMPs have not been developed yet. How can one develop an informed comment on draft regulations that need to be read in conjunction with the RMP – if the RMP for the relevant dam that one on lives on, is not available due to not existing or not being able to access it?

## 11.6 FAILURE TO DISCLOSE LEASE COSTS

11.6.1 Compulsory leases are introduced without cost disclosure in the draft legislation. How will the lease costs to **use of the water surface** of a dam be formulated? If one goes in a canoe 10 meters, 1km, 10km – will there be different charges? if one uses the dam daily, monthly, annually? If one uses it only to fish? If one only swims in it? If one baptises in it? How will a commercial boating business be charge – if one uses it for 10 customers, 100 customers? Uses only weekdays? Ten times a year? Goes around in circles – to limit km travelled/use of the surface of the dam water?

11.6.2 Reference to valuation mechanisms provides no certainty.

11.6.3 Stakeholders cannot assess viability.

11.6.4 This renders consultation procedurally unfair under PAJA.

## 11.7 CUMULATIVE EFFECT

11.7.1 The combined impact is:

- destruction of business models;
- loss of jobs;
- economic decline.
- decline then decimation of hospitality and tourism around dams

11.7.2 This is:

- irrational;
- disproportionate;
- constitutionally indefensible.

## **11.8 IRRATIONAL, ECONOMICALLY DAMAGING RESTRICTION ON PHOTOGRAPHY (REGULATION 6)**

11.8.1 The Draft Regulations provide that “... photography ... on state land or the water surface of government water works (dams) may take place only with the written permission of the Competent Authority.”

11.8.2 This provision is extraordinary in scope, fundamentally impractical, and economically damaging, particularly to the tourism and hospitality sectors.

### **11.8.3 CRIMINALISING ORDINARY HUMAN BEHAVIOUR**

11.8.3.1 On its plain wording, the provision applies not only to commercial filming, but to all forms of photography, including:

- families taking photographs of one another while enjoying a day at a dam;
- international tourists capturing personal memories – will they have to apply for permission before they arrive in SA;
- visitors documenting every day personal experiences in public recreational spaces.

11.8.3.2 The unavoidable implication is that:

- ordinary, everyday conduct becomes subject to prior written State permission.

11.8.3.3 This leads to an absurdity:

- must a family apply in advance to take photos on a Sunday outing?
- must a visitor obtain written approval before capturing a sunset over a dam?
- international tourists – should the SA Travel Warnings include it is a criminal offence in SA to capture themselves enjoying a leisure cruiser or houseboat on a dam in SA.

11.8.3.4 Such an interpretation is:

- self-evidently irrational;
- impossible to administer; **and**
- incapable of enforcement in any meaningful way.

### **11.8.4 DIRECT DAMAGE TO TOURISM AND HOSPITALITY MARKETING**

11.8.4.1 In the modern social media economy, photography is not incidental to tourism - it is central to it.

11.8.4.2 The tourism and hospitality sectors rely heavily on:

- user-generated content;
- social media sharing;
- organic promotion through guest experiences via social media.

11.8.4.3 Visitors taking photographs and sharing them:

- is one of the most powerful and cost-effective marketing tools available to tourism businesses and in promoting South Africa internationally;
- directly drives footfall, bookings, and revenue.

11.8.4.4 The proposed restriction would:

- discourage visitors from taking and sharing content;
- create uncertainty and discomfort among tourists;
- significantly reduce free, organic global exposure for South African destinations and particularly reduce tourism exposure of tourism around SA dams.

11.8.4.5 In practical terms, this means:

- fewer visitors discovering destinations;
- reduced competitiveness against international tourism markets;
- measurable economic harm to already struggling businesses.

11.8.4.6 At a time when the sector is still recovering from:

- prolonged COVID-19 restrictions; and
- raw sewerage in dams - declining water quality affecting tourism areas,

this provision represents yet another unnecessary and harmful constraint.

### 11.8.5 **DEVASTATING IMPACT ON BIRDING AND ECO-TOURISM**

11.8.5.1 The impact on birding and eco-tourism is particularly severe.

11.8.5.2 Birding tourism:

- is a recognised niche market with strong international appeal;
- contributes to job creation, especially in rural and water-adjacent communities;
- is fundamentally based on observation and photography.

11.8.5.3 The essence of birding is:

- spontaneity;
- responsiveness to nature;
- the ability to capture fleeting moments photographically.

11.8.5.4 Requiring prior written permission to take photographs:

- renders birding activities commercially unworkable;
- undermines guided birding tours and cruises;
- discourages international birding tourists from visiting South Africa.

11.8.5.5 This is particularly damaging given that:

- South Africa is globally recognised as a prime birding destination;
- water bodies and dams are critical birding environments.

### 11.8.6 **INTERNATIONAL COMPARISON AND REPUTATIONAL DAMAGE**

11.8.6.1 The proposed restriction is wholly out of alignment with international practice.

11.8.6.2 Globally:

- photography in public natural environments is freely permitted;

- restrictions are limited to clearly defined sensitive areas (e.g. strategic sites, military zones, protected research sites, national key points sensitive areas).

11.8.6.3 There is no comparable jurisdiction where:

- tourists must obtain prior written permission
- to take photographs in ordinary recreational settings.

11.8.6.4 The introduction of such a rule in South Africa will:

- create confusion among international visitors;
- damage the country's reputation as a tourism destination;
- position South Africa as over-regulated and unwelcoming.

### **11.8.7 LEGAL DEFECTS: OVERBREADTH, VAGUENESS AND DISPROPORTIONALITY**

11.8.7.1 The provision is legally defective in that it:

- is overbroad, capturing conduct far beyond any legitimate regulatory objective;
- is vague, failing to distinguish between private and commercial activity;
- grants unfettered discretion to undefined authorities.

11.8.7.2 It is therefore:

- arbitrary;
- disproportionate;
- inconsistent with the rule of law.

11.8.7.3 It also unjustifiably limits:

- freedom of expression;
- the right to enjoy public spaces.

### **11.8.8 NON-IMPLEMENTABILITY AND REGULATORY FAILURE**

11.8.8.1 The provision is incapable of practical implementation:

- there is no system capable of processing the volume of required permissions;
- no timelines or criteria are provided;
- no enforcement model exists.

11.8.8.2 The inevitable result will be:

- widespread non-compliance;
- arbitrary enforcement;
- erosion of respect for the regulatory regime.

### **11.8.9 CONCLUSION ON PHOTOGRAPHY PROVISION**

11.8.9.1 This provision epitomises the broader defects in the Draft Regulations:

- overreach without practicality;

- control without purpose;
- economic harm without justification.

11.8.9.2 It will:

- damage tourism;
- undermine hospitality businesses;
- reduce South Africa's global competitiveness.

11.8.9.3 It must therefore be:

- deleted in its entirety, or
- strictly limited to narrowly defined, genuinely sensitive areas of a National Key Point.

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## 12. CONCLUSION

### A FUNDAMENTAL FAILURE OF CUSTODIANSHIP AND A MISDIRECTED REGULATORY RESPONSE

12.1 This submission must conclude with a matter of profound constitutional concern: the Department of Water and Sanitation ("DWS"), as custodian of South Africa's most scarce and irreplaceable resource, has demonstrably failed to uphold its own statutory obligations.

12.2 Water is not an ordinary commodity. It is:

- a finite national asset;
- a constitutionally protected public resource;
- and, in a water-scarce country such as South Africa, a resource that cannot be manufactured, substituted, or expanded.

12.3 Yet, despite this, DWS has:

- not prevented widespread and increasing pollution of dams, rivers and seas by failing wastewater treatment systems and networks;
- failed to take effective enforcement action **that resulted in remediation (halting of sewerage pollution)** against municipalities et al, that are prima facie criminally liable for discharging raw or partially treated sewage into national water systems;
- presided over a continued deterioration in water quality, as confirmed in its own Green Drop Report 2025 and Blue Drop Report 2025, which reflect an alarming and systemic decline.

12.4 This is not a marginal failure. It is a systemic collapse of custodial responsibility.

12.5 Against this backdrop, it is both legally untenable and institutionally contradictory that DWS now seeks to:

- introduce additional layers of regulation when it cannot even abide by its own primary mandates,
- duplicate existing legal frameworks, when it can't adhere to its own legal framework,
- and impose further administrative and financial burdens on a sector that is not the cause of the problem – it is DWS by not abiding by its core mandate.

12.6 The stark reality is this:

- The Department has not enforced the laws that already exist;
- It has not protected the resource it is mandated to safeguard;
- Yet it now seeks to expand its control over compliant, highly regulated industries.

12.7 This is the very definition of regulatory misdirection.

## **12.8 ECONOMIC REALITY AND THE RISK OF INDUSTRY COLLAPSE**

12.8.1 The hospitality and tourism sector, particularly around inland water systems:

- has already suffered severe economic damage due to annual increasing volumes of raw sewerage entering their dams and rivers; who wants to have their lunch, function, cruise, or wedding on the banks of sewerage filled dam, river or seafront?
- DWS's failure to honour its mandate as a custodian of water in SA - has single handedly caused the loss of thousands of tourism and hospitality jobs on banks of rivers and dams and seafronts – and severely damaged our country's reputation as a tourism waterfront mecca including internationally;
- has endured the devastating impact of prolonged debilitating COVID-19 restrictions, from which many businesses have still not recovered;
- operates on increasingly thin margins, with limited capacity to absorb additional regulatory costs.

12.8.2 Outside of isolated high-performing nodes such as Cape Town and the Kruger National Park, the broader hospitality sector in South Africa remains fragile and under strain, especially those on the banks of raw sewerage saturated dams.

12.8.3 The Draft Regulations:

- introduce unknown lease costs and additional financial burdens;
- impose administrative burdens that are operationally unworkable;
- restrict core revenue-generating activities (including night-time tourism, houseboats freedom of travel and water-based experiences).

12.8.4 The inevitable outcome is not increased compliance or revenue for the State - it is:

- business closure;
- job losses;
- reduced tax base;
- and the collapse of water-based tourism economies and related such as boat building and sales.
- decline of infrastructure around dams – as residential and tourism investment leaves those areas. Vandalism and destruction of unused infrastructure.

## **12.9 THE FINAL CONTRADICTION**

12.9.1 There is a fundamental contradiction at the heart of this regulatory proposal:

- DWS has failed to prevent the degradation of South Africa's scarce water resources, which has already devastated tourism and hospitality businesses;
- yet it now proposes a regulatory regime that will further damage, restrict, and ultimately extinguish the very industries that depend on those water resources.

### 12.9.2 In effect:

- where pollution has not already destroyed water-based tourism,
- these Regulations will complete that destruction.

12.9.3 This is not regulation in the public interest. It is regulation that will extinguish public benefit.

## 12.10 A CALL FOR LAWFUL, RATIONAL, AND PRIORITISED GOVERNANCE

12.10.1 The Department's primary duty is **not to expand regulatory control over areas that are the cause of the major water and sanitation our country faces**, but to apply current legislation vigorously:

- protect and restore water quality in our water sources and provision of clean water;
- vigorously enforce existing laws against polluters - that result in corrective action;
- enable sustainable economic use of water resources.

12.10.2 Until such time as DWS can demonstrate:

- effective enforcement against municipal et al pollution;
- measurable improvement in water quality;
- alignment with existing legislative frameworks;

It cannot lawfully or rationally justify the imposition of additional regulatory burdens on compliant sectors, who have been integral in forming numerous NGO's trying to protect SA's water sources from pollution - since DWS has not done so.

The financial supporters of these NGO's - are the very people that the DWS is now trying to impose more regulations on (residents on dams who care about the water quality). Dam residents have funded these NGO's to force municipalities to stop polluting since the DWS has failed to enforce their very own regulations.

How ironic.

## 12.11 FINAL POSITION

12.11.1 The Draft Regulations, read with the RMPs:

- are procedurally flawed;
- substantively irrational;
- constitutionally vulnerable; and
- economically destructive.

12.11.2 Should the Department proceed in their current form, the Regulations will inevitably face:

- legal challenge;
- industry resistance; and
- practical non-implementation due to economic collapse.

## 12.12 CLOSING STATEMENT

South Africa cannot afford:

- to lose its already scarce water resources, nor
- to destroy the industries such as tourism - that depend on them.

The Department must choose:

- to put all its efforts in trying to fulfil its primary custodial mandate,  
or
- to persist in a course that will result in both environmental and economic failure around dams.

Yours faithfully,

Mr Brett Tungay

National Chairman

**Federated Hospitality Association of Southern Africa (FEDHASA)**