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# DRAFT WHITE PAPER ON WATER SERVICES

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## **Water is Life, Sanitation is Dignity**

DRAFT FOR PUBLIC COMMENT

October 2002

Please note:

This document is a **draft** policy document.

Comments to be submitted to the Department of Water Affairs and Forestry  
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## Preface

Government's objectives for water services include:

- *improving access* to, and affordability and reliability of, water and sanitation services for both households and firms; with a special focus on sustainable access to safe and adequate clean water and sanitation for the poor;
- *improving governance* of sector institutions;
- *mobilising government funds* to focus on the pressing needs of the poor and increasing other investments by reducing risks associated with private sector financing;
- *building effective institutions* and developing skills and knowledge for the effective and efficient operation of water and sanitation services; and
- *promoting community and user involvement* in infrastructure construction, maintenance and management, especially in poor urban and rural areas, as part of establishing developmental local government.

In support of this broader vision, this White Paper sets out a comprehensive policy approach with respect to the whole of the water services sector in South Africa, ranging from small community water supply and sanitation schemes in remote rural areas to large regional schemes supplying water and wastewater services to people and industries in our largest urban areas.

These policies have been developed through a consultative process. On the basis of an initial "Issues and Options" paper, meetings and workshops with stakeholders have been held around the country and the public has been invited to comment and give input. This paper is still a draft and a second round of consultation will be held to obtain comments from stakeholders and civil society.

The provision of at least a basic water and sanitation service to all people living in South Africa remains an important policy priority. Government is committed to reducing the backlog in services by 2008 in the case of water and 2010 in the case of sanitation.

Access to a water tap and toilet is no use if the water stops flowing or the toilet no longer works. Sustainability requires that services are affordable. For this reason, we have introduced a groundbreaking policy of free basic water and sanitation services. This means that everybody in South Africa has a right to a basic amount of water and a basic sanitation service that is affordable. With this right comes a responsibility – not to abuse the right to free basic services and to pay for services where these are provided over and above a basic amount.

Providing physical infrastructure is not enough to ensure the health of our people. Emphasis will be placed on health and hygiene education so that provision of water and sanitation services will be accompanied by significant reductions in water related disease such as cholera and diarrhoea.

The capacity of government to provide services effectively is a critical constraint in many areas in South Africa. Emphasis will be placed on helping local government to develop the necessary capacity to ensure effective delivery. In this respect, the private sector has an important role to play. But in all cases, the public interest will be promoted and protected. *Water is life, sanitation is dignity.*

Minister Kasrils  
Minister of Water Affairs and Forestry  
October 2002

## Glossary and Definitions

CBO	Community-based organisation.
CG	A consolidated capacity building grant.
CMA	Catchment Management Agency.
CMIP	Consolidated Municipal Infrastructure Programme.
consumer charter	A statement by a water services provider that sets out the duties and responsibilities of both the water services provider and consumers with respect to each other.
COSATU	Congress of South African Trade Unions.
CWSSP	Community water supply and sanitation programme.
DPLG	Department of Provincial and Local Government.
DORA	Division of Revenue Act 5 of 2002.
DWAF	Department of Water Affairs and Forestry.
EHP	Environmental Health Practitioner.
ES	The local government equitable share.
grey water	Wastewater resulting from the use of water for domestic purposes but not including human excreta.
IDP	Integrated development plan, a local government plan in terms of the Municipal Systems Act 32 of 2000.
industrial water use	The use of water for mining, manufacturing, generating electricity, land-based transport, construction or any related purpose.
MIG	Municipal infrastructure grant, a proposed consolidated grant from national government to support investments in municipal infrastructure.
MinMEC	A ministerial committee for meetings between national Cabinet Ministers and Members of the Executive Committee (or Council) of Provinces. The Water MinMEC, Health MinMEC and Local Government MinMEC are of direct relevance to the water services sector.
MITT	Municipal Infrastructure Task Team.
MJMSD	A multi-jurisdictional municipal service district as defined in the Municipal Systems Act.
NEDLAC	National Economic Development and Labour Council.
NGO	Non-government Organisation.

NSTT	National Sanitation Task Team.
rudimentary water supply services	A rudimentary water supply service is one which provides households with access to water with a quality which is adequate from a health point of view and which is within a distance of 1 000 meters from the dwelling in which the household resides.
SALGA	South African Local Government Association.
sanitation services	The collection, removal, disposal or treatment of human excreta and domestic wastewater, and the collection, treatment and disposal of industrial wastewater where this is done by or on behalf of a water services authority. This includes all the organisational arrangements necessary to ensure the provision thereof including, amongst others, appropriate health, hygiene and water use education, the measurement of consumption, the associated billing, collection of revenue and consumer care.
SDA	Service delivery agreement. A contract between a water services authority and a water services provider for the delivery of municipal services, or between water services providers.
SETA	Sector Education Training Authority.
SMME	Small and Medium and Micro Enterprises.
water services	Water supply and sanitation services, or any part thereof.
water services institution	As defined in the Water Services Act 108 of 1997.
water services intermediary	A water services intermediary is any person who is obliged to provide water services to another in terms of a contract where the obligation to provide water services is incidental to the contract (as defined in the Water Services Act).
water services provider	See new definition proposed on page 7.
water supply services	The abstraction from a water resource, conveyance, treatment, storage and distribution of potable water, water intended to be converted to potable water and water for industrial or other use, where such water is provided by or on behalf of a water services authority, to consumers or other water services providers. This includes all the organisational arrangements necessary to ensure the provision thereof including, amongst others, appropriate health, hygiene and water resource use education, the measurement of consumption and the associated billing, collection of revenue and consumer care.
WSA	Water services authority, as defined in the Water Services Act 108 of 1997.
WSDP	Water services development plan, a plan for water and sanitation services in terms of the Water Services Act 108 of 1997.
WSP	Water services provider, see above.
water sector	Includes both water resources and water services.

## Table of Contents

<b>1. Introduction</b>	<b>1</b>
1.1 The challenge	1
1.2 Why a new water services white paper?	2
1.3 Scope	4
1.4 Definitions	6
1.4.1 Definition of water services	6
1.4.2 Definition of basic water supply and sanitation services	6
1.4.3 Definition of water services authority (WSA)	7
1.4.4 Definition of water services provider (WSP)	7
<b>2. Sector Vision and Goals</b>	<b>8</b>
2.1 Sector vision	8
2.2 Sector goals and targets	8
<b>3. Guiding Principles</b>	<b>10</b>
<b>4. The Institutional Framework</b>	<b>13</b>
4.1 The role of local government	13
4.2 The role of national government	14
4.2.1 Department of Provincial and Local Government (DPLG)	14
4.2.2 Department of Water Affairs and Forestry (DWAf)	15
4.2.3 National Treasury	15
4.2.4 Department of Health	16
4.2.5 Department of Environmental Affairs and Tourism (DEAT)	16
4.2.6 Department of Education	16
4.2.7 Department of Housing	17
4.2.8 Department of Public Works	17
4.3 The role of provincial government	17
4.4 Co-operative governance and co-ordination	17
4.4.1 Co-operative governance	17
4.4.2 Co-ordination	18
4.5 Water services providers	18
4.5.1 Defining water services providers	18
4.5.2 Duties of water services providers	19
4.5.3 Types of water services providers	19
4.5.4 Services provision across water services authority boundaries	21
4.5.5 Choosing water services providers	22
4.5.6 Community-based organisations as water services providers	24
4.5.7 Water services intermediaries and the provision of services on private land	24
4.6 The role of water boards	25
4.7 The role of civil society	27
4.8 Linkages to water resources management	27
<b>5. The Financial Framework</b>	<b>30</b>
5.1 Social, environmental and economic considerations	30
5.2 A changing context	30
5.3 A new financial framework	30
5.4 Funding water services	32
5.4.1 Investment needs	32
5.4.2 Future capital grant funding arrangements	32

5.4.3	The equitable share and the funding of basic services	33
5.4.4	The transition to consolidated funding	33
5.4.5	Donor funding	33
5.5	Free basic water services	33
5.5.1	Free basic water	33
5.5.2	Free basic sanitation	34
5.6	Water services authority responsibilities	34
5.6.1	Investments in infrastructure	34
5.6.2	Sustainable service provision	35
5.6.3	Use of equitable share for free basic services	35
5.6.4	Financial assistance to intermediaries	35
5.6.5	Financing high levels of service	36
5.6.6	Credit control – water services authorities	36
5.7	Pricing and tariffs	36
5.7.1	Tariff principles	36
5.7.2	Understanding the cost and pricing chain	37
5.7.3	Responsibility for setting tariffs	39
5.7.4	The economic regulation of water services tariffs	39
5.8	Water services provider responsibilities	39
5.8.1	Financial viability	39
5.8.2	Credit control – retail water services providers	40
5.8.3	Credit control – bulk water services providers	40
<b>6.</b>	<b>Planning, Delivery and Sustainability</b>	<b>42</b>
6.1	Introduction	42
6.2	Planning	42
6.2.1	Planning by water services authorities	42
6.2.2	Planning by water services providers	43
6.3	Technology and service levels	44
6.4	Delivery of infrastructure	46
6.5	Operating water services	47
6.5.1	Separating the roles of authority and provider	47
6.5.2	Performance management	47
6.5.3	Benchmarking and promoting best practice	47
6.5.4	Improving management	48
6.5.5	Maintenance and rehabilitation	48
6.5.6	Community involvement	48
6.5.7	Consumer care	48
6.5.8	Proactive rather than reactive	48
6.6	Water conservation and demand management	48
<b>7.</b>	<b>Support, Monitoring and Regulation</b>	<b>50</b>
7.1	Introduction: an approach to support and regulation	50
7.2	Support	50
7.2.1	Methods of support	50
7.2.2	Building water services authority capacity	50
7.2.3	Building water services provider capacity	51
7.3	Monitoring	51
7.4	Regulation	52
7.4.1	Objectives of regulation	52
7.4.2	Principles of regulation	52
7.4.3	What is regulated?	53
7.4.4	The regulatory framework	53
7.4.5	Enforcement of regulations	55
7.4.6	Interventions	55
7.4.7	Regulatory policy issues still to be resolved	56
<b>8.</b>	<b>The Way Forward</b>	<b>57</b>

**ANNEXURE 1:** Minimum set of key performance indicators for water services institutions \_\_\_\_\_ 58

**ANNEXURE 2:** List of relevant policies and legislation relating to water services \_\_\_\_\_ 59

**List of Figures**

*Figure 1: Water services policy context* \_\_\_\_\_ 5

*Figure 2: The relationship between water resource management and water services* \_\_\_\_\_ 28

*Figure 3: Financial framework* \_\_\_\_\_ 31

*Figure 4: Water cost and pricing chain* \_\_\_\_\_ 38

*Figure 5: Integrated resource planning* \_\_\_\_\_ 49

*Figure 6: Water services monitoring and regulatory framework* \_\_\_\_\_ 54

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# 1. Introduction

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## 1.1 The challenge

We live in a world of inequality where abundance lives side-by-side with deprivation. We know that the world has enough resources for everybody to be adequately fed and clothed, and to have access to the basic services necessary for healthy living – safe water and sanitation. Yet more than one billion people do not have adequate access to potable water services and nearly three billion people are without adequate access to basic sanitation services. In Africa, more than 38% of the population does not have access to a safe water supply, a higher proportion than in any other region in the world. This is part of the global trend towards increasing inequality between developing and developed countries. While there has been significant investment in water infrastructure, it has not been sufficient even to keep pace with population growth.

In South Africa inequality in access to basic services was, and still is, a stark reality, in spite of South Africa being a middle income country. At the dawn of democracy there were some 12 million people without adequate water and 20 million people without adequate sanitation services. However, our inequalities have specific historical roots and our ability to deal with the services backlog is greater than most developing countries. South Africa has made great strides in reducing this gross inequality. It is estimated that more than 10 million people have been provided with basic water supplies in rural and urban areas during the last eight years. This is an impressive achievement. Unfortunately progress with sanitation has been much slower and great challenges remain. Some 38% of the population is still without adequate sanitation.

Good health is dependent on the availability and use of appropriate sanitation facilities and the availability and use of sufficient safe water (at least 25 litres per person per day). Good hygiene practices are both important and necessary to promote health.

Water services are intimately linked with *poverty*. Lack of access to water supply and sanitation constrains opportunities to escape poverty. Yet poverty also constrains access to water services by constraining investments in infrastructure. It is therefore appropriate that a key focus of South Africa's water services policy should be on ensuring access of the poor to

basic and sustainable levels of water supply and sanitation services.

Last year's cholera outbreak in KwaZulu-Natal and other parts of the country was a wake-up call for us in terms of accelerating the provision of water, sanitation and hygiene awareness. It brought to our attention the unavoidable fact that we had not done enough in terms of delivering sanitation and promoting simple but critical health and hygiene. (Minister Kasrils, Budget Speech, 10 May 2002)

Reliable and efficient water services are also a crucial ingredient for *economic growth*. South Africa's low average rainfall, the high variability in rainfall, and the cyclical patterns of droughts and floods all have an impact on South Africa's economic growth potential. In this context, it is crucial that water resources are used wisely to ensure that services can be provided. *Water demand management and water conservation* are thus key elements of a water services policy for South Africa.

The water sector is an important engine of South Africa's economy. Turnover in the water services sector is estimated to be in the region of R10 billion per annum or more. Inefficiencies in the water sector will have a negative and significant impact on other economic processes. *Efficient and effective services* are therefore crucial.

Services and the use of the water resource must be sustainable to ensure that we continue to make progress, and to ensure that future generations benefit from this progress. Whilst the emphasis during the past seven years was on delivery, it is now timely to place greater emphasis on sustainability.

### What is meant by water services?

The term "water services" means both *water supply services* and *sanitation services*. Wherever this white paper refers to water services, sanitation is also included.



### THE WATER SERVICES SECTOR IN SOUTH AFRICA – AN OVERVIEW

Water services refer to water supply and sanitation services and include regional water schemes, local water schemes, on-site sanitation and the collection and treatment of wastewater. All 46 million people living in South Africa use domestic water services of some kind. However, it is estimated that some 7 million people (15%) do not have access to adequate water services and some 18 million people (38%) do not have adequate sanitation services. Water and wastewater services are also essential for businesses and industries and efficient provision of these services can help to promote economic growth and the eradication of poverty.

The main organisations currently involved in water services are the following:

- The **Department of Water Affairs** and Forestry is responsible for policy and regulation of the sector and also currently operates water resource infrastructure (such as dams), bulk water supply schemes and some retail infrastructure (providing services directly to consumers).
- Government-owned **water boards** currently operate water resource infrastructure, bulk potable water supply schemes (selling to municipalities and industries), some retail water infrastructure and some wastewater systems.
- **Municipalities** operate some local water resource infrastructure (such as dams and boreholes) and bulk water supply schemes, supply water and sanitation to the retail consumer (households, businesses and industries) and operate wastewater collection and treatment systems.
- **Community-based organisations** run small water schemes in rural areas.
- **Publicly or privately owned companies** provide services in terms of contracts with government or municipalities. Johannesburg Water is a water utility wholly owned by the City of Johannesburg. The direct involvement of privately owned companies in the operation of water services in South Africa has been limited to date. Where this has occurred, for example, the Dolphin Coast and Nelspruit concessions, the ownership of the water services assets has remained in public hands.

In addition to these organisations, the water services sector comprises any organisation providing water services, all **consumers** and **households** using water services, all employees in these organisations and their related representative structures, and professional bodies, contractors, the manufacturing industry and other organisations involved in supporting activities such as research. The roles and responsibilities of water services institutions are discussed in more detail in section 4.

An estimate of the overall size of the water services sector in South Africa is given below:

	DWAF	Water boards	Municipalities	Total
Assets (R billion)	40	11,2	± 50 <sup>a</sup>	± 100
Investment (R billion pa)	1,2	1,0	2,8	5 <sup>b</sup>
Turnover (R billion pa)	1,7	3,5	6,8	10 <sup>c</sup>
Staff numbers	21 700 <sup>d</sup>	8 000	± 40 000 <sup>e</sup>	± 70 000
Volume (million kl pa)				3 300 <sup>f</sup>

Notes:

- a) No reliable data available. b) Estimates. c) Does not add up due to double counting. d) Includes all staff. e) Water related staff only. f) Domestic use only.

### 1.3 Why a new water services white paper?

**A new context.** It is now more than seven years since the first Water Supply and Sanitation White Paper was published in November 1994 (referred to hereafter as the 1994 White Paper). Much has been achieved in these seven years and the 1994 White Paper played a key part in establishing an enabling policy framework. For this reason, the 1994 White Paper was focused on the establishment of a new national water department and the role of this new department in assuming a direct delivery function on behalf of national government to provide basic water and sanitation services rapidly to people living primarily in rural areas. Since 1994, the context has changed significantly.

**Local government transformation.** The local government elections in 2000 represented the final phase in the local government transformation process that commenced in 1993. It is now possible for local government to assume full operational responsibility for water and sanitation services as provided for in the Constitution of the Republic of South Africa (Act 108 of 1996). This means that the role of the Department of Water Affairs and Forestry (DWAF) will change from being a direct provider to being a sector leader, supporter and regulator. The 2002 Division of Revenue Act provides a timetable for the phasing out of DWAF's operational role over the next three years.<sup>1</sup>

We are now entering another important phase in the long process of building local democracy. We have established our new municipalities. Now we have to make sure they do their job of providing services to our people, efficiently, effectively, and affordably. We have to ensure that they play their full role in creating jobs and opportunities. And they must do this in a way which allows our people to participate in building a better life for all. (Minister Kasrils, 9 May 2002)

<sup>1</sup> According to the Act DWAF owned and/or operated schemes will be transferred to the recipient municipalities during the period from 2002/3 to 2004/5. By 2005/6 their role as service provider should have ended with the transfer of all schemes. Schemes that have not been transferred to local government by this stage will be handed over to and "managed by service providers contracted by DWAF but funded and supervised by other appropriate institutions".

The White Paper on Local Government (March 1998) was published and a suite of municipal legislation promulgated, including the Local Government Municipal Demarcation Act 27 of 1998, the Municipal Structures Act 117 of 1998, and the Municipal Systems Act 32 of 2000.

**DWAF in a new role.** The 1994 White Paper focused largely on the role of DWAF and basic services for households. This white paper is much more focused on the role of local government with respect to water and sanitation services for all consumers (urban and rural, domestic and non-domestic), and on the leadership, support and regulatory functions that DWAF and other institutions can and should perform.

**New water policies.** Important new water services policies have been developed and implemented since the 1994 White Paper and these need to be reflected in this white paper. The Water Services Act 108 of 1997 made important policy advances specifically with respect to the institutional framework. The free basic water policy represents a further policy development within broad municipal and intergovernmental policy towards the goal of access to basic water services by all. Water resources policies have been fundamentally overhauled subsequent to the 1994 White Paper, as reflected in the White Paper on a National Water Policy for South Africa (April 1997) and the National Water Act 36 of 1998. A White Paper on Basic Household Sanitation (referred to hereafter as the Sanitation White Paper) was published in 2001 and extends the sanitation-related policies in the 1994 White Paper. The White Paper on Municipal Service Partnerships (April 2000) sets out policies and procedures for engaging with public and private agencies. These extend the policies embedded in the Water Services Act.

**New financial framework.** The financial framework for water and sanitation services has changed significantly since 1994. During the past seven years DWAF has been an important funding channel for water services. In the future, government funding for water services will increasingly shift from the current situation to two consolidated grant mechanisms directed to local government, namely the local government equitable share and the proposed municipal infrastructure grant (MIG).

**Taking stock.** The 1994 White Paper itself notes that policy is dynamic and further that it is "created to serve the people and we must continually be reassessing it to ensure that it is performing its role" (1994 White Paper: 38). There have been seven years of delivery of

water and sanitation services. It is an appropriate time to take stock of what has been achieved in this period and to reflect on how improvements can be made to both the policy framework itself as well as its implementation.

**Maintaining financial & institutional sustainability.** Whilst much of the focus of the 1994 White Paper was on delivery, it is now appropriate to place more focus on ensuring that water and sanitation projects and the agencies that manage water and sanitation services can maintain, as well as expand access to, water and sanitation services in the future.

**Measuring outcomes.** The monitoring and evaluation framework will focus on outcomes and resource management rather than on inputs. The framework will be closely linked to water services development plans (WSDPs) and integrated development plans (IDPs) and will form an important component of the regulatory framework.

#### KEY CHANGES COMPARED TO THE 1994 WHITE PAPER

1. This white paper is a comprehensive policy paper for the water services sector as a whole.
2. Local government is now the key focus for delivery.
3. The roles given to water boards in the 1994 White Paper and the Water Services Act are reviewed.
4. DWAF will become a sector leader, supporter and regulator (rather than an operator).
5. The role of the private sector is clarified.
6. The financial policy framework reflects the consolidation of national government funding to local government through the equitable share and the municipal infrastructure grant (MIG).
7. More emphasis is placed on sustainability and the ongoing provision of efficient and reliable services.

## 1.4 Scope

The scope of this white paper is water services (water supply and sanitation services). It provides an overall policy orientation of government towards the water supply and sanitation sector.

Water services are the responsibility of all three spheres of government and hence this policy paper reviews the role of all government institutions and not just the role of DWAF.

The interface between water services and water resources is also addressed with the objective of achieving integrated planning and effective management through the whole water cycle.

This white paper complements the recently published White Paper on Basic Household Sanitation (2001) and addresses the full spectrum of water supply and sanitation services (not only basic services) as well as the overarching policy issues pertaining to the institutional framework, the regulatory framework, the financial framework and integrated planning.

This white paper will inform a review of the Water Services Act and other legislation relating to water services to ensure that the legislation supports and conforms to the policies set out here.

Key interfaces with other government activities and policy initiatives include:

- the powers and functions of local government;
- the proposed consolidated municipal infrastructure grant;
- municipal support and capacity building initiatives;
- municipal financial regulation (Municipal Finance Management Bill); and
- municipal financial, budgetary and planning cycles.

The overall policy and legal context for this white paper is shown in Figure 1.

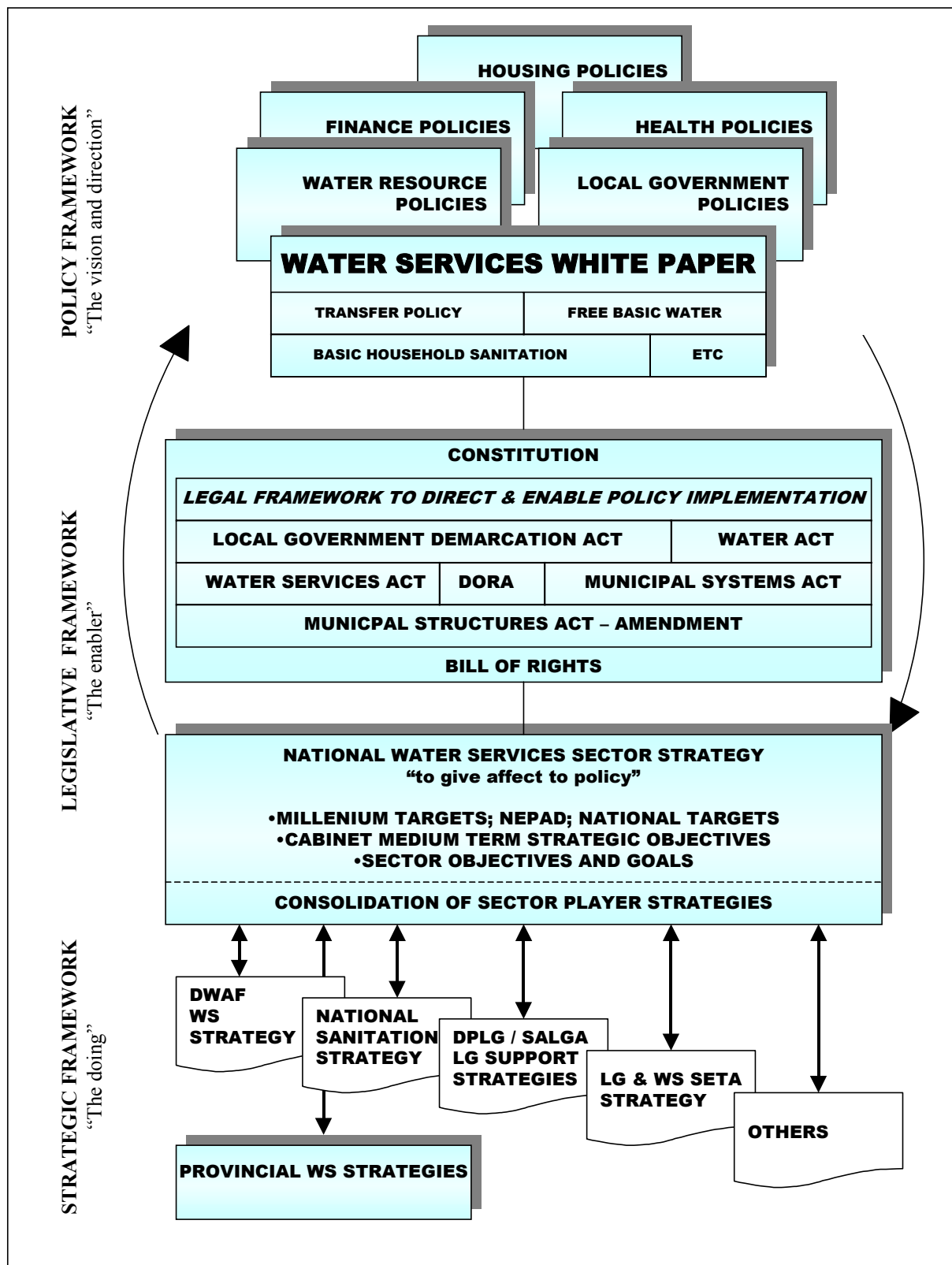


Figure 1: Water services policy context

## 1.5 Definitions

### 1.5.1 Definition of water services

Water services are defined as follows:

*Water supply services* means the abstraction from a water resource, conveyance, treatment, storage and distribution of potable water, water intended to be converted to potable water and water for industrial or other use, where such water is provided by or on behalf of a water services authority, to consumers or other water services providers. This includes all the organisational arrangements necessary to ensure its provision including, amongst others, appropriate health, hygiene and water resource-use education, the measurement of consumption and the associated billing, collection of revenue and consumer care.

*Sanitation services* means the collection, removal, disposal or treatment of human excreta and domestic wastewater, and the collection, treatment and disposal of industrial wastewater where this is done by or on behalf of a water services authority. This includes all the organisational arrangements necessary to ensure its provision including, amongst others, appropriate health, hygiene and water resource-use education, the measurement of consumption and the associated billing, collection of revenue and consumer care.

*Water services* means water supply services and sanitation services or any part thereof.

#### A change in the definition of water services

The definition of water supply services is not restricted to potable water (as in the Water Services Act) but includes all water supplied by or on behalf of a water services authority. The definitions of water supply services and sanitation services also include all aspects of the service necessary for the provision of an adequate service, specifically the business processes (such as billing and revenue collection) and hygiene and water-use education. The definitions in the Water Services Act need to be amended accordingly.

### 1.5.2 Definition of basic water supply and sanitation services

- A *basic water supply* is defined as the provision of appropriate education in respect of effective water use as well as a minimum quantity of 25 litres of potable water per person per day (or 6 000 litres per household per month) within 200 metres of a household, which is not interrupted for more than seven days in any year; and with a minimum flow of 10 litres per minute in the case of communal water points. Potable water is defined as drinking water that does not impose a health risk.

#### A change in the definition of a basic water supply service

The Section 9(1) regulations of the Water Services Act need to be amended to apply the minimum flow of 10 litres per minute to communal water points only and not all water connections.

- A *basic sanitation service* is defined as the provision of appropriate health and hygiene education and a toilet which is acceptable to the users, safe, reliable, environmentally sound, easy to keep clean, private, protected against the weather, well-ventilated, and which keeps smells to the minimum and prevents the exit of flies and other disease carrying pests.

#### A right to supply, but not an obligation

The right of water services authorities to insist on providing industrial water to industries (and treating their effluent) within their area of jurisdiction is created in Section 7 of the Water Services Act. Nevertheless, water services authorities do not have any obligation to provide these services.

The definitions of water services provided here accurately reflect this distinction. The definitions in the Water Services Act need to be amended accordingly.

#### Water services to support economic activity

Municipalities do not, and should not, only provide water services necessary for basic health and hygiene. It is important that municipalities undertake health education, facilitate the provision of higher levels of services for domestic users and provide services which support the economic development and well-being of communities. (See page 45.)

#### 1.5.3 Definition of water services authority (WSA)

The definition of a water services authority remains unchanged from that in the Water Services Act 108 of 1997 (Chapter III, Sections 11 to 21). A further explanation is given in section 4.1 of this white paper.

#### 1.5.4 Definition of water services provider (WSP)

A *water services provider* is defined as any person who:

- has a contract with another water services provider to sell water to, or accept wastewater for the purposes of treatment from, that provider (*bulk water services provider*);

and/or

- has a contract (or implied contract) with a water services authority to provide water to, and/or to collect or accept human excreta or wastewater from, one or more consumers within a specific geographic area together with or without the responsibility to collect any fees that may be due (*retail water services provider*).

This definition is discussed further in section 4.5.

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## 2. Sector Vision and Goals

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### 2.1 Sector vision

#### WATER IS LIFE, SANITATION IS DIGNITY

All people living in South Africa have access to adequate, safe and affordable water and sanitation services, practise safe sanitation and use water wisely.

Water supply and sanitation services are sustainable and are provided by effective and efficient institutions that are accountable and responsive to those whom they serve.

Water is used wisely, sustainably and efficiently in order to promote economic growth and reduce poverty.

### 2.2 Sector goals and targets

The following sector goals and targets are set for the water services sector. It is useful to set specific and realistic targets which are measurable because this makes it possible to evaluate sector progress by asking the question "How well are we doing?"

The overall responsibility for sector progress will rest with the Department of Water Affairs and Forestry as sector leader. Nevertheless, national, provincial and local government, all water services institutions and stakeholders (including consumers and households) have a responsibility to contribute to the progressive realisation of these targets, within available resources.

#### SECTOR GOALS

1. All people living in South Africa have access to an appropriate, acceptable, safe and affordable basic water and sanitation service.
2. All people living in South Africa are educated in healthy living practices (specifically with respect to the use of water and sanitation services) and the wise use of water.
3. Water and sanitation services are provided:
  - equitably (adequate services to all people, fairly)
  - affordably (no one is excluded from access to basic services because of their cost)
  - effectively (the job is done well)
  - efficiently (resources are not wasted)
  - sustainably (there are adequate resources to operate, maintain, rehabilitate and expand services in the future, as necessary).
4. All water services authorities (local government) are accountable to their citizens, have adequate capacity to make wise choices (related to water services providers) and are able to effectively regulate water services provision.
5. The price of water and sanitation services reflects the fact that they are both social and economic goods (that is, pricing promotes access to a basic safe service and encourages the wise and sustainable use of resources).
6. Water and sanitation services are effectively regulated nationally to monitor and support the ongoing achievement of these goals.

**SECTOR TARGETS****Access to services**

1. An additional 7 million people are served with at least a basic water supply service by 2008.
2. An additional 18 million people (3 million households) are served with at least a basic sanitation service by 2010.
3. All schools and clinics have basic water services by 2005.

**Education and Health**

4. Hygiene education and the wise use of water are taught in all schools by 2005 (Department of Education).
5. 3 million households served with a basic sanitation service have received hygiene education by 2010 (Department of Health).

**Free basic water and sanitation services**

6. The free basic water services policy is applied to all people with access to basic services by 2004.

**Accountable water services authorities**

7. All water services authorities have ensured that consumer charters are implemented throughout their area in accordance with sound principles by 2005.
8. All water services authorities report annually on progress against their water services development plans by 2005 and measure the involvement of their communities in their preparation as part of the Integrated Development Planning Process.



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## 3. Guiding Principles

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The policies set out in this white paper have been informed by the following guiding

principles that reflect international best practice.

### SOCIAL PRINCIPLES

**1. Everybody has a right to a basic water supply and sanitation.**

Everyone has the right to have access to sufficient water, to an environment that is not harmful to his or her health or well-being and to have the environment protected, for the benefit of present and future generations. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights. (See the Constitution, Sections 24 and 27.)

**2. A strong and active civil society has an important role to play in the water services sector.**

Government is committed to collaborating with civil society to identify local priorities, inform planning and support service delivery and implementation. Scope for partnership between government and civil society organisations such as community-based organisations and non-government organisations ranges from loose and informal collaboration to specific and formal contractual arrangements. Through innovation, flexibility and mutual respect, the energy of civil society organisations can be harnessed to support the achievement of water services sector objectives.

**3. Women should play a central role in the planning, provision and management of water services.**

Women often bear the brunt of absent or poor water services and hence are key stakeholders in the sector. A targeted effort will be needed to enable women to play a meaningful role at all levels in consultations, planning, decision-making and the operation and especially management of water services.

**4. Education is a vital component of water services in achieving and sustaining health and quality of life benefits.**

Water usually assumes a higher priority (for both government and users) than sanitation, but sanitation is equally important for health. Education on safe hygiene practices and on the linkages between unsafe water, inadequate sanitation and disease should be integral to all water services initiatives.

### ECONOMIC AND FINANCIAL PRINCIPLES

**1. Public ownership of water services infrastructure.**

Water is an important social good ("Water is life") and hence water assets that serve the public should be owned by the public, that is, by the water services authority that is responsible for the provision of services to the citizens in its area or government.

**2. Water services must be provided in accordance with sound business principles in order to ensure sustainability.**

Water services must be run in accordance with sound business principles within a sound subsidy framework. Failure to do this will substantially increase the risk of the service not being sustainable. Sound business principles include sound accounting, adequate provisions for depreciation, adequate spending on maintenance and replacement of assets, effective and efficient use of resources, and income (including subsidies) which covers expenses.

**3. Water tariffs and effective credit control are important components of any strategy to support sustainability.**

Charging for water is essential in order to generate funds for operating, maintaining and investing in water systems. However, tariffs should take into account the need for a free or affordable basic supply to the poor in terms of the free basic services policy. Aside from this subsidised element of the tariff, water tariffs should be based on full historic costs and reflect marginal costs. Effective revenue management is essential and requires effective credit control.

**4. Demand management should be given as much attention as supply expansion in planning of water services and water resource planning.**

Water demand management should be a critical and prominent component of the planning and management of water services.

**5. Water services should be provided and managed in such a way as to maximise their potential to support local economic development.**

The provision of water supply and sanitation services has significant potential to alleviate poverty through the creation of jobs, use of local resources, development of skill, and provision of a long-term livelihood for many households. Water and sanitation programmes should be designed to maximise this potential. Water supply schemes should be designed to provide water to support economic activities, and sanitation programmes should strive to leave as much of the budget as possible within the community.

### ENVIRONMENTAL AND TECHNOLOGICAL PRINCIPLES

**1. Water services should take into account their impact on the natural environment and seek to minimise any negative impacts through remedial measures.**

Integrated and sustainable management of the environment, now and in the future, is the basis of sustainable development in everything that people do (Environmental Management Policy White Paper, 1999).

**2. Rational choice of technology.**

In the choice of technology, a trade-off must be made between effectiveness, affordability, life-cycle costs, consumer acceptability and environmental impact. Users should be fully informed of the available technical choices and related financial implications. Water and sanitation technologies should be considered together. Technology choices should be made in the context of an integrated planning process involving community participation.

## INSTITUTIONAL AND MANAGEMENT PRINCIPLES

### 1. Clear definition of roles and responsibilities for government.

The respective roles and responsibilities of the different independent spheres of government and other public or statutory institutions should be clearly defined. Overlapping mandates should be minimised.

### 2. Separation of regulatory and operational responsibilities.

A clearer separation of the activities of regulation and operation can help to reduce the potential for conflicts of interest inherent in self-regulation and can improve the clarity of objectives and responsibility. Regulation should seek to protect the interests of consumers and balance this vis-à-vis the need for sustainable institutions.

### 3. User and community participation is important.

Public participation and involvement in planning and provision of services are now mandatory in terms of developmental local government, the philosophy underpinning the new local government policy.

### 4. Ongoing capacity building is necessary.

The need for capacity building is ongoing and should be prioritised. Capacity building relates not only to "hard" technical skills but also equally to "soft" skills including health education, communication, negotiation, social mediation, leadership and management. Good managers are scarce and should be sought out and nurtured.

### 5. Information should support monitoring and evaluation.

Information systems should be designed to enable better management and the effective monitoring and regulation of service provision by consumers and regulators. Systems should be as uncomplicated, practical and user-friendly as possible, and designed in a manner that requires the least data for the most information.

### 6. Knowledge management and structured learning.

Structured learning and knowledge management aim to facilitate improved decision-making and utilisation of lessons learnt by taking into account experiences in other settings, to monitor performance carefully, and to adapt as new information becomes available.

### 7. The public sector is the preferred provider of water services.

Water services for domestic use are a public good, therefore democratic local government is in the best position to make accountable decisions related to how services are provided, taking into account the social aspects of water services. For these reasons, where local government has the capacity and financial resources to provide services effectively and sustainably, local government is the preferred provider of water services, with support as necessary and appropriate by other spheres of government, the public sector and the private sector.

### 8. The private sector has an important role to play.

The private sector has an important role to play in assisting local government and other water services institutions in the water services sector. Their role includes engineering services (through, for example, design), construction (as contractors, for example), support services (laboratory, security, training, cleaning, maintenance, etc.), operations, investment (through, for example, loan, bond or equity financing), management, consulting services and capacity building.

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## 4. The Institutional Framework

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### 4.1 The role of local government

**Primary responsibility:** The primary responsibility for water services provision rests with local government.

**Designation as a water services authority.** In terms of Section 84 of the Municipal Structures Act, the responsibility for providing water services rests with district and metropolitan municipalities. However, the Act allows the Minister of Provincial and Local Government Affairs to authorise a local municipality to perform these functions or exercise these powers. The district (or authorised local) municipality is the water services authority as defined in the Water Services Act. There can only be one water services authority in any specific area (that is, water services authority areas cannot overlap).

**The role and functions of water services authorities.** Water services authorities have the following primary responsibilities:

**Realisation of the right of access to basic water services:** ensuring progressive realisation of the right to basic water services subject to available resources (that is, extension of services), the provision of effective and efficient ongoing services (performance management, by-laws) and sustainability (financial planning, tariffs, service level choices, environmental monitoring).

**Planning:** preparing water services development plans (integrated financial, institutional, social, technical and environmental planning) to progressively ensure efficient, affordable, economical and sustainable access to water.

**Selection of water services providers:** selection, procurement and contracting water services providers (including itself).

**Regulation** of water services provision and water services providers (by-laws, contract regulation, monitoring, performance management).

**Communication:** consumer education and communication (health and hygiene promotion, water conservation and demand management, information sharing, communication, and consumer charters).

**Separation of the authority and provider functions.** There must be a clear separation of authority and provider functions. Within this framework, the water services authority is the regulator of the services and is responsible to ensure that services are provided effectively, efficiently, sustainably and affordably. The operational function is undertaken by the water services provider, the institution that actually provides the service. There must always be a contract between the water services authority and the water services provider.

**A water services authority may provide water services itself (internal mechanism).** In this case, the water services authority must manage and account separately for the two functions. In practical terms this might mean that a municipal manager, acting on behalf of the municipality, contracts (as the water services authority) with the manager of the water services department to provide water services in terms of a performance contract with the municipality.

**A water services authority may contract with a water services provider to provide water services (external mechanism).** In this case, there is a classic regulator–operator relationship which must be governed by a contract specifying clearly the allocation of roles and responsibilities between the regulator and the provider.

**Choice of service provider.** Policies related to the choice of water services providers are discussed in section 4.5.

**Capacity of water services authorities.** Policies related to the development of the capacity of water services authorities are presented in section 7.2.

**Performance of water services authorities.** Policies related to the performance of water services authorities are presented in section 6.

**Regulation of water services authorities.** Policies related to the regulation of water services authorities are presented in section 7.3.

**Interventions.** Policies related to interventions in the affairs of service authorities (arising, for example, as a result of institutional failure or the absence of capacity to undertake essential functions) are presented in section 7.3.

**Statutory water services committees.** The 1994 White Paper provided for statutory water services committees to undertake the task of the water services authority where there is a failure of local government. No statutory water services committees were formed in the period 1994 to 2001 and this provision is now obsolete and will be removed from the relevant legislation.

Statutory water services committees should not be confused with community-based organisations (CBOs) which may act as water services providers in small rural communities, operating with the agreement and support of the relevant local government.

#### Amendment to Water Services Act

The provision for statutory water committees will be removed from the Water Services Act.

## 4.2 The role of national government

The Constitution obliges the state, that is, all three spheres of government, to realise the rights entrenched in the Bill of Rights. Sections 154(1) and 155(7) of the Constitution task both provincial and national government, by legislative and other measures, to support and strengthen the capacity of local government to manage their own affairs, to exercise their powers and to perform their functions. The Bill of Rights also gives provincial and national governments the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise of this executive authority.

Section 152(1)(b) of the Constitution states that one of the objectives of local government is to ensure the provision of services to communities in a sustainable manner and Schedule 4B specifically identifies water and sanitation services (limited to potable water supply systems and domestic wastewater and sewage disposal systems) as a local government function. The provision of access to water services is thus a functional area of *concurrent national and provincial legislative competence*.

National and provincial government thus have a dual role to play in respect of local government, that is, to support and strengthen its capacity, and to regulate its performance.

The recent “Grootboom” Constitutional Court judgement implied that where a municipality has failed to progressively plan and implement strategies for addressing the needs of its consumers, and where a municipality does not have the financial resources to address these needs through a strategy of progressive realisation, it is the responsibility of provincial government, in the first instance, and thereafter national government to support, strengthen and regulate, to ensure the provision of basic services to those persons in dire need.

All three spheres thus have a real responsibility and obligation to see to the realisation of basic rights to water supply and sanitation and must exercise their roles in a manner that indeed provides for the progressive realisation of those rights.

The Water Services Act provides a developmental regulatory framework for the provision of water services. The Act enables national government to set national norms and standards for tariffs to ensure efficient, reliable, affordable and equitable water services, while building capacity in and assisting local government (defined as water services authorities in the Act) to perform its functions.

### 4.2.1 Department of Provincial and Local Government (DPLG)

DPLG has overall responsibility for the affairs of local government in the national sphere. This includes policy, legislation, capacity building, grant allocation and regulation as these apply to the integrated aspects of municipal services provision. These integrated aspects include governance, administration, municipal finance and integrated planning.

DPLG exerts many of its responsibilities with regard to local government primarily through provincial government, specifically the departments of local government established within each provincial administration.

With regard to water services, the role of DPLG is to ensure that water sector specific policy, legislation, capacity building arrangements and regulatory responsibilities are integrated into a coherent relationship between national government and local government. This implies oversight of the relationships which individual sector departments (such as DWAF) have with local government.

The specific responsibilities of DPLG that are particularly important with regard to water services include:

- legislation relating to municipal systems which includes provisions for establishing partnerships and for approving integrated development plans;
- allocation of equitable share finance and municipal infrastructure grants and advice to National Treasury on other grants to the local government sphere; and
- regulation of municipal affairs with provisions for intervention in the case of non-performing municipalities.

#### 4.2.2 Department of Water Affairs and Forestry (DWAF)

DWAF is the national department responsible for water matters addressing both water resource management and water services provision. DWAF has a central role to play in four areas:

1. **Policy:** overall responsibility for the water sector.

Because of water scarcity, serious service backlogs and the linkages between water resources and water services, water services is not “just another” municipal service. DWAF has overall responsibility for the management of the water resources and for water sector policy (water resources and water services). DWAF's specific functions in this regard include sector leadership, promotion of good practice, development and revision of national policies, oversight of all legislation impacting on the water sector, co-ordination with other national departments on policy, legislation and other sector issues, national communications, and the development of strategies to achieve water sector goals.

2. **Support:** support of other spheres of government and water institutions to achieve the goals of the water sector.

This support is to be undertaken in terms of the Constitution and the principle of co-operative governance. In particular, support to local government needs to be co-ordinated with DPLG and provincial government.

The nature of the support will depend on the specific needs and requirements of local government and water institutions. It will include, but is not be limited to, capacity building, the development of

guidelines and practical tools (for example, manuals and courses on how to set tariffs or how to contract with a water services provider), and technical support with respect to water services issues (for example, how to manage unaccounted-for water).

3. **Regulation** comprising three functions: establishing national standards, monitoring sector performance and making regulatory interventions (to improve performance and/or to ensure compliance).

DWAF's monitoring and regulatory functions are discussed in more detail in section 7.

4. **Information:** development and maintenance of an information base for the sector for purposes of management, support, monitoring and regulation.

The role of information in management, monitoring, evaluation and regulation is discussed in more detail in section 7.

DWAF has been and currently is performing certain functions that are not part of its future core business, particularly operation and maintenance of water services works and implementation of new infrastructure. In the medium term (five years) DWAF will no longer provide water services directly or implement infrastructure projects.

#### 4.2.3 National Treasury

National Treasury monitors and regulates the finances of all public bodies (including national, provincial and local government, water boards and municipal entities). These policies are set out in the Public Finance Management Act and the soon-to-be promulgated Municipal Financial Management Bill.

National Treasury's primary role in respect of local government is to manage the impact of local government fiscal activities on national economic policies, economic activities across municipal boundaries, the national mobility of goods, services, capital or labour and to provide a framework for sound municipal financial management aimed at accountability in terms of revenue and expenditure.

National Treasury has a role to play in supporting DWAF and other departments in fulfilling their support and regulatory roles in as far as these roles relate to fiscal matters.

National Treasury's role is similar to that of DPLG in providing general financial oversight in a manner that recognises the role of DWAF as the water services sector leader and takes into account water services sector objectives and requirements.

#### 4.2.4 Department of Health

The Department of Health is responsible for policy and operational activities that impact directly on the water sector. Close co-operation between DWAF and the Department of Health will continue on aspects such as the determination of standards for potable water quality

The promulgation of the new National Health Act will devolve responsibility for primary health care (including environmental health) from provinces to district municipalities. District municipalities will be responsible for ensuring that the planning of district health services is co-ordinated with water services planning. The integrated development plan provides a mechanism for achieving this.

Health structures have a particularly important role to play in the national sanitation programme as these are responsible for the vital health and hygiene education work that must be carried out together with the building of facilities. The national department will guide provincial and local government health structures to train staff based in clinics and rural hospitals to do this work. They will also train and support community members to work as hygiene educators and promoters on sanitation projects.

#### 4.2.5 Department of Environmental Affairs and Tourism (DEAT)

The sound management of water is central to environmental sustainability. While the interface between water and the environment occurs primarily through water resources, DEAT has a role to play with regard to water services insofar as environmental impact assessments are required for water services infrastructure projects.

#### 4.2.6 Department of Education

The national Department of Education is responsible for developing national education curricula and supporting and monitoring the provincial education departments. The latter are responsible for funding schools, including the provision of water supply and sanitation

facilities and the achievement of good sanitation practices.

The Department of Education, together with the Department of Health, will develop curricula, guidelines and other support mechanisms required by teachers and other educators to educate about health, hygiene and sanitation in their classrooms. Schools are also an important conduit for the education of the broader community.

Furthermore, the Department of Education together with the Department of Health, introduced the *Health Promoting Schools Programme* in some parts of South Africa. The provincial departments are responsible for implementing this strategy. The following strategies provide a framework for promoting schools as sites of learning (with respect to health):

- developing education and school policies which support health and development, and well-being;
- creating safe and supportive teaching and learning environments;
- strengthening community action and participation through enhancing and expanding the relationship between sites of learning and the community;
- promoting life-skills and adult education; and
- re-orienting health and hygiene support services towards an accessible, integrated, systematic, preventative and health promotion approach.

*Big doors swing on little hinges. Sometimes the most important thing we do in a day can be one of the smallest acts. Washing our hands with soap and water after going to the toilet and especially before preparing and eating food is one of these small acts that can have a major effect in our lives. It is quite simple, if we all wash our hands and the hands of our children every time we and they go to the toilet, less children and adults will get sick and die from waterborne diseases. (Minister Kasrils, speech on Water, Sanitation and Health [WASH] programme, 11 April 2002)*

#### 4.2.7 Department of Housing

The Department of Housing is responsible for, amongst others things, developing housing policy, including the norms and standards in respect of housing development and co-ordinating the application of the housing subsidy that is administered by the provincial housing departments. Potable water supply and adequate sanitation facilities on housing premises (or sites) are part of the internal services "package" which is provided as part of the "housing package" funded through the housing subsidy.

Provincial housing MECs in the provinces have, in some cases, prescribed standards relating to housing and services. There are concerns regarding consistency of such standards with water services policy. In particular there has been a trend for waterborne sanitation to be specified where there is limited bulk infrastructure and where the costs of providing such a service are unaffordable. In order to avoid such situations there is a need for greater co-operation between DWAF, the Department of Housing and provincial housing MECs. Furthermore, in the municipal sphere it is essential for housing planning to be consistent with water services development planning.

#### 4.2.8 Department of Public Works

The national Department of Public Works acts as the implementing agent on behalf of national government departments when facilities are constructed or rented. The Department's activities include the planning of projects to construct facilities (usually buildings), administering projects and managing facilities for client departments. The Department thus has an important responsibility in ensuring that adequate provision is made for water and sanitation facilities in government and public buildings, in line with national policy.

The Department of Public Works is also responsible for implementing the community-based public works programme and should co-ordinate with water services authorities to align priorities and approaches in this respect.

The role of *provincial* public works departments includes the implementation of infrastructure on behalf of other departments in the province. This includes schools and clinics where they influence norms and standards and delivery mechanisms. Nevertheless, client departments remain ultimately responsible for the water supply and sanitation services within their installations, including the associated costs of

bulk water and sanitation infrastructure where appropriate.

The provision and operation of infrastructure to provide water services to *schools and clinics*, and to any other institution in the relevant area of jurisdiction, is the responsibility of the water services authority. However, the provision of the school and clinic itself, including its internal facilities, is the responsibility of the province. Where the water services authority undertakes to provide such "on-site" facilities, including sanitation facilities, this must be done under agreement with the province. This agreement must include funding responsibilities.

### 4.3 The role of provincial government

Many of the general roles and responsibilities of provincial government are discussed in section 4.2.

Despite the apparent overlap in provincial and national functions as stated in the Constitution, the practice and execution of powers since 1996 has shown a clear separation of roles. Provincial government has focused on direct support to local government and regulation of a general nature. National departments are focusing more on the functional areas within local government (including national standards, regulation, policy and support).

The co-ordinating role of province is discussed in section 4.4.2.

### 4.4 Co-operative governance and co-ordination

#### 4.4.1 Co-operative governance

The Constitution of the Republic of South Africa lays down the principles of co-operative governance and intergovernmental relations. All three spheres of government must apply these principles. An Act of Parliament will be promulgated providing for structures and institutions to promote and facilitate intergovernmental relations. Pending this legislation, the Department of Water Affairs and Forestry will strive to facilitate effective and efficient intergovernmental relations on all issues related to the water sector by:

- recognising the authority of municipalities to provide water services;
- recognising and supporting the role of provincial governments in respect of municipalities and water services;



- supporting and strengthening municipal capacity to provide water services through mechanisms identified in this white paper; and
- monitoring and regulating the effective performance of municipalities in respect of water services in a flexible manner, taking into account the different circumstances and capacity of municipalities.

#### 4.4.2 Co-ordination

**National co-ordination.** There is currently no formal institution or structure in place at the national level specifically facilitating co-ordination between government institutions in respect of water services and related matters, across the water services sector. Existing structures, such as the water and forestry MinMEC and, at an official level, the Municipal Infrastructure Task Team (MITT) and the National Sanitation Task Team (NSTT) have been effective in ensuring co-ordination in respect of matters affecting water services. The Local Government MinMEC may also provide a forum at which water services issues may be discussed and co-ordinated. In addition, organised local government and other representative bodies have been instrumental in representing the views of their members and engaging government. These and similar institutions will continue to play an important role in this regard. Nevertheless, there is a need to strengthen and improve co-ordination between national government departments involved in the provision of water services.

**National Water Advisory Council.** The National Water Advisory Council, established in terms of the National Water Act, deals with both water resource and service issues and has an important role to play in strengthening the voice of civil society at national level.

**Provincial co-ordination.** Various structures have been established in provinces for the purpose of co-ordination. Provincial liaison committees (PLCs) liaise with DWAF and other stakeholders with respect to water related matters. They identify priorities and critical areas of need and advise on the implementation of water and sanitation services investments. Provincial Sanitation Task Teams (or Task Groups or Co-ordinating Offices) have been set up in each province, composed of representatives from all the key provincial departments and municipalities, to co-ordinate the provincial sanitation effort.

Successful co-ordination depends on active participation and co-operation rather than on

the form of the co-ordination structure. Provinces and regions may establish co-ordination mechanisms that are appropriate to their particular needs.

**Regional and local co-ordination.** The water services development plan (WSDP), the integrated development plan (IDP), and the related consultation processes play an important role in ensuring co-ordination in respect of water services. As the WSDP planning process becomes embedded within municipalities, the lessons learned from planning and implementation will start to emerge and the co-ordination role of WSDPs and IDPs will be strengthened.

**Co-ordination with water resource planning.** The link between WSDPs and water resource planning needs to be strengthened. This will occur through the development of catchment management capacity and ongoing improvements in the water resource and services planning processes. The National Water Act requires the development of a national water strategy which informs (and is informed by) catchment management strategies. Catchment management strategies inform (and are informed by) water services development plans. The Department of Water Affairs will focus on using these strategies and plans as key instruments in facilitating co-ordination between water services and water resources. In order to ensure adequate supplies of raw water, municipalities should ensure that their water services development plans are taken into account by the relevant catchment management strategy.

## 4.5 Water services providers

### 4.5.1 Defining water services providers

The definition of a water services provider is given in section 1.5. The definition of a *bulk water services provider* is straightforward and does not need explanation. Rand Water is an example of a bulk water services provider in that it sells water to other water services providers (mostly municipalities). There are, however, important points to note concerning the definition of the *retail water services provider*:

- **Single consumer interface.** The end-consumer or "end user" of the services should have, at any one time, no more than two water services providers – a retail *water WSP* and a retail *sanitation WSP*, or preferably a retail WSP which provides both water and sanitation services. All

consumers should always know who their retail sanitation WSPs are and who their retail water WSPs are.

- **Single contractual interface.** Equally important and for the sake of practical accountability, a municipality should only have a contract with one retail WSP to be responsible for water services in a specific area.
- **Single chain of contracts.** There should be a single chain of contracts that ensures the effective delivery of water from the resource to the consumer and the effective return of wastewater and human waste from the consumer to the resource.
- **Contract area defined.** A retail WSP's responsibility to provide services should be geographically defined and there should not be overlap in contract areas between two retail WSPs providing retail water supply services and two retail WSPs providing retail sanitation services. (There may be exceptions to this, for example, in the case of water vendors who are retail WSPs.)
- **Responsibility and risk.** The defining characteristic of a retail WSP is that the WSP has *responsibility* both to provide the water and/or sanitation services physically (even if it does not do so itself) and to manage the consumer interface related to those services. The collection of income may be done by somebody else, but a retail WSP is the agency that assumes the *financial risk* related to the provision of the services and the collection of fees.

#### 4.5.2 Duties of water services providers

The main duty of water services providers is to provide water services in accordance with the Constitution, the Water Services Act and the by-laws of the water services authority, and in terms of any specific conditions set by the water services authority in a contract.

A water services provider must publish a consumer charter which is consistent with by-laws and other regulations, is approved by the water services authority, and includes the duties and responsibilities of both the water services provider and the consumer, including conditions of supply of water services and payment conditions.

#### 4.5.3 Types of water services providers

The most common "types" of water services providers are described below for the purposes of illustration. This listing is both brief and incomplete. This is because the definition of water services provider is broad and a variety of possible organisational forms for water services providers exist. Both the content of the contract between a water services authority and water services provider and its enforceability (that is, the ability to perform the services effectively) are more important than the type of water services provider. Policy considerations related to the choice of water services providers, and the regulation of water services providers by contract, are discussed in more detail in sections 4.5.5 and 1 respectively.

- **Municipalities.** As already mentioned, a water services authority can also be a water services provider, both within its own area as well as by contract with another water services authority or water services provider.
- **Municipal entities.** These are municipal-owned and controlled public providers that can be set up in terms of either a by-law or the Companies Act.
- **Water boards.** These are water services providers whose primary function is the provision of water services to other water services institutions. The role of water boards is discussed separately in section 4.6.
- **Community-based organisations.** A community-based organisation, acting as a water services provider, is a not-for-profit organisation within a specific community providing a municipal service to that community with the mandate of that community, where the organisation is acting in the overall interests of the community. A more specific detailed definition of a CBO, together with a discussion of CBOs acting as water services providers, is given in section 4.5.6.
- **Private operators.** These can vary from small, medium and micro enterprises (SMMEs) to more established larger private operators. They could be locally or foreign owned and can include multinational corporations.
- **Other types of water services providers.** In some cases water user associations, industries and mines provide water services

to or on behalf of municipalities (but not as an intermediary – see section 4.5.7). In these cases, the organisation is a water services provider even though the provision of water services is not the main business of the organisation and the provision of water

services is undertaken for the purposes of assisting municipalities who have limited alternatives. The relationship between the water services provider and the water services authority must be defined in terms of an appropriate contract.

EXAMPLES OF WATER SERVICES PROVIDERS		
Type	Services provided	Example
Bulk water WSP	Sale of bulk water to another WSP by contract.	Rand Water
Bulk wastewater WSP	Treatment of wastewater received from another WSP by contract.	ERWAT, WSSA contract to run Zandvliet Treatment Works in Cape Town
Retail water WSP	Only provides retail water services and takes risk on income from water sales (even though income is collected by the municipality on its behalf).	Johannesburg Water
Retail water and sanitation WSP	Takes full responsibility for provision of services and accepts risk on the income from water and sanitation services.	Durban Water and Waste (Note: Also provides some of its own bulk services)
Bulk water WSP and retail water and sanitation WSP	Provides bulk water services to other water services providers as well as retail water and sanitation services in its own area.	City of Cape Town

Examples of arrangements which are NOT water services providers		
Example	Services provided	Comment
JOWAM	Management contract in support of Johannesburg Water	Does not itself take full responsibility for operations and income, only supports Johannesburg Water, who is the WSP.
Queenstown	Partial operation of retail water services	No responsibility for customer interface and no risk related to collection of income.

**Internal and external water services providers – some examples**

The Municipal Systems Act defines “internal” and “external” service delivery mechanisms. The Municipal Systems Act sets out a process to be followed when selecting an external service delivery mechanism. (See section 4.5.5.) For the sake of clarity, examples of internal and external water services providers are given in the table below.

Internal water services providers	External water services providers
<ul style="list-style-type: none"> <li>• The municipality itself</li> <li>• A department within the municipality</li> <li>• A ring-fenced business unit within a municipality</li> </ul>	<ul style="list-style-type: none"> <li>• A municipal entity</li> <li>• A community-based organisation</li> <li>• Another municipality</li> <li>• A water board</li> <li>• A private company (operating the services)</li> <li>• Any other arrangement</li> </ul>

**4.5.4 Services provision across water services authority boundaries**

Where regional water supply systems cross water services authority boundaries, water services authorities must co-operate with one another to establish arrangements to manage the cross border infrastructure. There are three broad options available to these water services authorities:

- **Service agreements.** The authority reliant on a service from a neighbouring municipality may enter into a contract (service delivery agreement) with its neighbour who would then be a water services provider in relation to this authority.
- **Water board or municipal entity.** The water services authorities may contract with an existing external water services provider (for example, a water board) or establish an external water services provider (for example, a municipal entity) to serve the region. Each water services authority will then contract separately with this external water services provider.
- **MJMSD.** The water services authorities concerned may establish a multi-jurisdictional municipal service district (MJMSD). The MJMSD could then be the water services provider for the combined municipal area itself or it could contract other services providers. A water services authority may not delegate its key responsibilities (for example, the setting of tariffs) and hence an MJMSD may not become (or assume the responsibilities of) a water services authority.

**Regional co-operation based on a services delivery agreement**

Municipality A is a water services authority but is reliant on a bulk water supply system located in neighbouring Municipality B. Municipality A contracts with Municipality B in terms of a contract (service delivery agreement) to provide Municipality A with bulk water at the point where the pipeline crosses the municipal boundary. In this context Municipality B is a bulk water services provider to Municipality A.

**Regional co-operation based on the establishment of a municipal entity**

Two municipalities agree that there are practical and economy-of-scale advantages to operating their water services on a regional scale. After considering various options, as required under the Municipal Systems Act, they decide to set up a municipal entity in the form of a company with each municipality a shareholder. They decide that this entity will be the water services provider for their whole area, taking responsibility for bulk and retail services. (This arrangement could apply to bulk water services only.)

### Regional co-operation through a water board

A water board provides water services to (or on behalf of) a grouping of municipalities in terms of contracts (service delivery agreements), but ownership and control of the water board rests with national government.

#### 4.5.5 Choosing water services providers

**Preference for public sector provision.** Section 19 of the Water Services Act states a *preference for public sector provision* by requiring that public sector provision options are considered prior to the consideration of provision of water services by the private sector. This is repeated in the "Framework for the Restructuring of Municipal Service Provision" (concluded between SALGA and COSATU on 11 December 1998) that includes a set of guiding principles which state that public sector provision of municipal services is the preferred option. This preference arises from two primary concerns:

- the concern that the profit motive, an important motivating factor within the private sector (in addition to good service), will result in unaffordable services and lack of focus on servicing people without access to basic services; and
- the concern that private sector participation in the operation of water services could result in the loss of jobs, specifically public sector jobs.

As a result of this agreement, the Section 78 process in the Municipal Systems Act prescribes a procedure for the selection of the mechanism of municipal service provision in which *municipal provision of services is to be considered first*.

**Protecting the public interest.** It is important to bear in mind that protection of the public interest should be the primary consideration when selecting a water services provider and that consumer and other interests need to be balanced. In a context of resource and capacity constraints, it may be that the involvement of the private sector in the provision of water services could result in the more effective and efficient provision of water services and that this would promote the public

interest more effectively than a service provided wholly by the public sector which is inefficient and/or ineffective. The ultimate test is the protection and promotion of the public interest. *For this reason, there is scope for private sector participation in the provision of water services notwithstanding the government's stated preference for public sector provision.*

### PRIVATISATION, PRIVATE OPERATION AND PRIVATE SECTOR INVOLVEMENT

In common South African parlance, the term privatisation often is used to refer to any private sector involvement in a service. This is not a correct definition of privatisation. In this white paper a distinction is made between various roles that the private sector can play in the water sector (which do not amount to privatisation) and privatisation itself (which is the sale or divestiture of assets into private ownership). In South Africa private sector consultants and contractors have always played an important role in the water sector and hence the use of the term privatisation to refer to private sector involvement in the water sector is inappropriate.

### DEFINITIONS

The following definitions are used in this white paper:

**Privatisation:** the permanent sale of fixed assets (that is, divestiture) by the public sector to the private sector, and/or private investment and perpetual ownership of assets.

**Private operation:** the operation of water assets by the private sector. Where this is done on behalf of government, this could be through a lease contract, a concession contract and a build-operate-transfer (BOT) contract. These activities are not considered privatisation because the ownership of the water infrastructure assets remains in public hands.

**Definitions (cont.):**

**Private sector involvement** includes, but is not limited to, support services (consulting services, outsourcing of various activities such as meter reading, cleaning, maintenance etc.), contracting (construction, operations, management), the management of operations (private operation as defined above) and financing (bank loans, bonds, equity). None of these activities are considered privatisation because the ownership of the water infrastructure assets remains in public hands.

**Choosing external water services providers.**

Water services authorities may choose to contract with external (including private sector) operators as water services providers provided that (1) they follow a defensible process and have applied their minds to the respective merits of available choices, (2) they are able to show the merits of choosing an external water services provider over and above an internal water services provider, (3) they employ best practice with respect to entering into contracts with external water services providers, and (4) they use competitive procurement when entering into contracts with private water services providers.

In practical terms, this means the following:

- A water services authority must have applied its mind to the merits of providing water services itself prior to making a decision to consider other service delivery options. It should take into account (1) the implications of providing the services itself (that is, the "costs and benefits" which are defined broadly to include financial, environmental, social and economic factors), (2) the municipality's current and future capacity to effectively provide the services, and (3) general trends in the sustainable provision of municipal services.
- A water services authority should identify possible providers including water boards, other municipalities and CBOs.
- A water services authority must have compared the respective merits of public versus private provision of the services, taking into account the factors listed above. If it chooses the private provider option, it should be able to make a rational and sound case for this, including a motivation for the strategic and

operational benefits for the water services authority.

- Furthermore, the water services authority must report on the respective forms of private sector involvement considered and account for the selection of the proposed form.
- When choosing a private water services provider, the water services authority must employ a competitive tendering process and be able to show that the contract will provide value for money, be affordable to the institution and transfer appropriate technical, operational and financial risk to the private party.
- The *extent of consideration* referred to above in the case of the choice of a private water services provider will depend on the extent and nature of the contract. It is obvious that the extent of consideration should be related to the level and complexity of the function being contracted.

**Choosing CBOs.** Refer to section 4.5.6 below.

**Form and content of contracts (service delivery agreements).**

Whenever a water services authority chooses a water services provider to operate water services on its behalf, it must enter into a written contract (service delivery agreement) with the water services provider. This contract should follow best practice contracting guidelines. In general, and where practical, *it is preferable for a water services authority to enter into a single contract with one water services provider who assumes full responsibility for the provision of the full service in a specific geographic area within the area of that municipality.* This does not mean that a WSA should only have one WSP for its whole area, but rather that every identified geographical area within a municipality should have only one water (and one sanitation) services provider. This means that, for example, a municipality may have contracts with numerous different WSPs to cover its entire area of as many settlements, but each consumer should only have one service provider (one for water and one for sanitation). This ensures that accountability is clearly defined and that both the WSA and the consumer know who is responsible for service delivery in any specific area. It is also preferable that contracts include both water and sanitation so as to promote integrated water and sanitation planning. Where appropriate, a WSA may enter into separate contracts for bulk and retail services.

The regulation of contracts is discussed further in section 7.

#### 4.5.6 Community-based organisations as water services providers

**Definition.** A community-based organisation is a not-for-profit organisation situated within a defined community that is mandated by that community to provide a specific municipal service to that community on behalf of the municipality, provided that (1) all members of the governing body of the organisation are nominated members of the community and are permanently resident within the community, (2) all employees of the organisation are members of the community and are permanently resident within the community, and (3) the area constituting the community is defined by the municipality.

**Policy.** National government supports the continuation of services provision by CBOs in appropriate circumstances, but it is necessary for water services authorities to appoint CBOs to act as water services providers on behalf of the water services authority.

**Legal form.** A community-based organisation must be a legal entity. There are various ways of forming a legal entity, but a voluntary association is the most appropriate legal form for CBOs providing water services at a relatively small scale in rural communities.

**Establishment and support of CBOs.** Ideally, CBOs should be established as a result of a broadly participatory community process. It is likely that this establishment process will require support. This support (which may need to be ongoing) could be undertaken directly by the water services authority or by an agency on behalf of the water services authority.

**Criteria for choosing a CBO as WSP.** There are two key criteria that a water services authority must take into account when considering entering into a service agreement with a community-based organisation to provide water services:

- the appropriate legal status and
- the ability to provide water services as (or more) cost-effectively compared to other alternatives.

**Process for selecting CBOs.** The Municipal Systems Act classifies CBOs acting as water services providers as an external mechanism. This means that the selection of CBOs as water

services providers requires a competitive tendering process. This is not appropriate and a recommendation to change the Municipal Systems Act will be made.

A water services authority may undertake a "generic process" (in terms of Section 78 of the Municipal Systems Act) which identifies the general conditions where the selection of CBOs as water services providers is appropriate. This means that a water services authority does not need to undertake a Section 78 process for every decision to appoint a CBO as a water services provider.

**Selection of CBOs and the Water Services Act.** The feasibility of CBOs acting as water services providers should be considered prior to engaging with private operators in terms of the Water Services Act.

#### 4.5.7 Water services intermediaries and the provision of services on private land

##### Examples of intermediaries:

- **Farmers:** Where farm workers (and their families) receive water services (usually associated with accommodation) as part of their employment contract with the farmer, the farmer is an intermediary to his workers. This also applies to retired workers and their families. Where there are other people living on the farm who are not linked through a current or former employee relationship, and where the farmer agrees to provide services to these people, the farmer becomes a water services provider.
- **Mines and other industries:** Where employees receive water services (usually associated with accommodation) as part of their employment contract with the mine or industry, the mine or industry is a water services intermediary to these employees and not a water services provider.
- However, if there are people living in the town who are not employed (or no longer employed) by the mine/industry and the mine/industry decides to provide these people with water services, then the mine/industry is acting as a water services provider.

**Examples of intermediaries (cont.):**

- Where a mine/industry provides bulk and/or retail water services to a neighbouring town on behalf of a water services authority, the mine/industry is a water services provider.
- **Sectional title or lease of property:** Where co-owners or tenants receive water services as part of their contract for management of the total property or lease of a property, the owner/landlord/body corporate is an intermediary to the co-owners or tenants.
- **Water user associations:** Where employees receive water services (usually associated with accommodation) as part of their employment contract with the water user association (WUA), the WUA is an intermediary to its employees.

A water services intermediary is any person who is obliged to provide water services to another in terms of a contract where the obligation to provide water services is incidental to the contract (as per the Water Services Act). This means that the intermediary must have a contract with the consumer for a purpose other than the provision of the water services (for example an employment or property lease contract) in order for it to be recognised as an intermediary rather than a service provider.

Where a person providing water services does not have a primary contract with the consumer for a purpose other than providing water services, but continues to provide water services, the person providing services is not an intermediary but a water services provider. This is the case irrespective of whether the provision of such services are incidental to the main purpose of that institution. Water services authorities must ensure that appropriate contracts are in place between itself and these water services providers.

The central objective of water services policy is to promote access to basic services by the poor. Intermediaries have a key role to play in this regard, considering that approximately 8% of South Africans live on commercial farms and probably another 2% or so live in "private towns" run by mines, ESKOM and other big companies. Under this policy water services intermediaries are required to provide services to these people and the water services

authority must ensure that this is done. The water services authority may regulate water services provided by intermediaries in terms of municipal by-laws.

Another important issue is the provision of water and sanitation services to areas where there are unauthorised settlements where those living in the settlements do not have rights to use the land. In this context the provision of rudimentary services should be encouraged pending the speedy resolution of *security of tenure* issues to allow water services authorities to invest in more durable and longer term assets.

## 4.6 The role of water boards

### Context

Water boards represent an important link between water resource management and the provision of water services directly to consumers. Water boards were initially established to provide bulk water services to municipalities and other large water users. The primary advantages of this institutional model were the regional economies of scale in respect of bulk water supply infrastructure which could be realised as well as the simplification of institutional arrangements through better co-ordination of schemes, especially where complex integrated schemes supplied water to a number of municipalities and large consumers.

Prior to the promulgation of the Water Services Act, water boards had a monopoly in the provision of bulk water services within their area of supply, which was protected by legislation. That is, municipalities were obliged to use the bulk water services provided by a water board. The relationship between water boards and municipalities was changed by the Water Services Act in order to ensure consistency with the Constitution, which allocated the primary responsibility for ensuring the delivery of water services to local government. This change means that water services authorities are no longer obliged to use the services of water boards and that all services provided by water boards to municipalities must be undertaken by means of mutually agreed contracts.

At the same time, water boards were also given additional "non-primary" roles, namely to support water services authorities in the direct provision of water services to consumers and to provide retail services to consumers on behalf of water services authorities (with their agreement and in terms of a contract). This



was done in recognition of the fact that some municipalities would not be able to act as water services providers and to ensure that there was a family of public water services providers to which they could turn.

A significant amount of capacity exists within water boards and they have played an important part in the development of water services both historically as well as in the period after the democratic transition in South Africa. Nevertheless, there is a need to clarify the changed roles and functions of water boards.

### Policy discussion

The policy for water boards seeks to:

- **ensure equity**, in particular, by seeking to ensure that poor people are able to count on the support of a strong and competent water services provider where their water services authority is unable to provide services directly;
- **improve accountability** by clarifying accountability arrangements;
- **improve economic regulation** by defining the economic regulatory framework more clearly, including the regulation of pricing and the level of debt, as well as monitoring the impact of secondary activities on the finances and risk profile of water boards;
- **provide a common vision** with respect to the future of water boards as bulk utilities and/or regional source to tap service providers;
- **provide flexibility** recognising that there is not a “one size fits all” model: the rationale for the origin of water boards differs markedly for different areas, each of which has its own particular institutional history, economic context and social challenges, hence it may be inappropriate to impose one national institutional model on water boards as a whole;
- **ensure the financial viability** of all water boards in a context where water boards will derive all of their future revenues from the sale of water and provision of water services to other water institutions; and
- **create regional entities** through the promotion of operational efficiencies, economies of scale and maximise existing capacity through rationalisation.

There are three broad institutional and governance options relating to the future of water boards:

#### **DWAF ownership and control of water boards.**

This is the current policy as reflected in the Water Services Act. The Minister of Water Affairs and Forestry has the power to establish and disestablish water boards. The Minister is responsible for the regulation of water boards, including economic and financial regulation in terms of the Public Finance Management Act. In terms of the Water Services Act, water boards are also required to enter into contracts with water services authorities and other water services providers to whom they provide services. There is a need to distinguish between the accountability arrangements for water boards to national government as “owners” on the one hand and through contractual obligations with other water services institutions on the other.

**Water boards retained selectively.** In this option, water boards will be retained where regional bulk schemes cross WSA boundaries. In these cases, the ownership and control of water boards is the same as for option 1 (national government ownership and control). In other areas, where the “regional” water services assets of currently constituted water boards are wholly contained within the geographic area of one water services authority, the water board would be disestablished and the assets transferred to the water services authority (unless the WSA requested the continuation of the water board within their area).

**Regional source to tap utilities.** In this option, regional source to tap utilities are created (either wall-to-wall across South Africa or in selected areas). The ownership and control of these utilities would be agreed by national and local government. This option (the equivalent of the regional electricity distributors contemplated in the electricity industry) would require a change to the Constitution. It should be noted that regional source to tap utilities under the ownership and control of water services authorities could be established. However, this would be a model that might evolve over time under the control and direction of water services authorities.

#### **The way forward**

Accountability of water boards to water services authorities can be strengthened through appointing representatives on to the boards of water boards in consultation with water service authorities. Within this institutional

option, it is possible to strengthen the accountability of representatives on the boards of water boards. It is also possible for water boards to be rationalised to ensure viability and to promote economies of scale.

It is recommended that, in the short term, a national task team will be established to review the role of water boards. The purpose of this task team will be to establish a set of commonly agreed principles for the reform of water boards and to use these principles as the basis for policy proposals related to their governance and reform. This process will be informed by the experience of reform of the electricity sector in which the role of ESKOM and the proposed Regional Electricity Distributors (REDs) raises similar issues.

#### 4.7 The role of civil society

A vibrant and durable democracy needs a strong civil society. Government is committed to promoting the active involvement of civil society in the provision of sustainable and affordable water services. This will be done through:

- public communication and invitations to offer comment and input during policy making and planning processes;
- engaging with representatives of civil society including trade unions, women's groups, church groups, community-based organisations, consumer groups and other non-government organisations;
- supporting the development of the capacity of civil society; and
- encouraging civil society to help monitor sector performance at all levels.

#### 4.8 Linkages to water resources management

##### Integrated water resource management

Integrated water resource management promotes the co-ordinated development and management of water, land and related resources, in order to maximise the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems.

The National Water Act gives effect to integrated water resources management (IWRM) by ensuring that the nation's water

resources are protected, used, developed, conserved, managed and controlled in ways which take into account at least the following water services related matters:

- meeting basic human needs;
- promoting equitable access to water;
- redressing the results of past racial and gender discrimination;
- promoting the efficient, sustainable and beneficial use of water;
- facilitating social and economic development;
- providing for growing demand for water use; and
- reducing and preventing pollution and degradation of water resources.

##### Water Management Institutions

Three types of water management institutions are conceived by the National Water Act to give effect to integrated water resource management:

- catchment management agencies;
- water user associations; and
- bodies responsible for international water management.

**Catchment management agencies** will be established to manage water resources in each of the 19 water management areas (which cover the entire country), as defined in the National Water Resource Strategy. The DWAF regional offices will act as the catchment management agency in water management areas where catchment management agencies have not yet been established.

The initial functions of a catchment management agency are to:

- investigate and advise on the protection, use, development, conservation, management and control of the water resources in its water management area;
- develop a catchment management strategy;

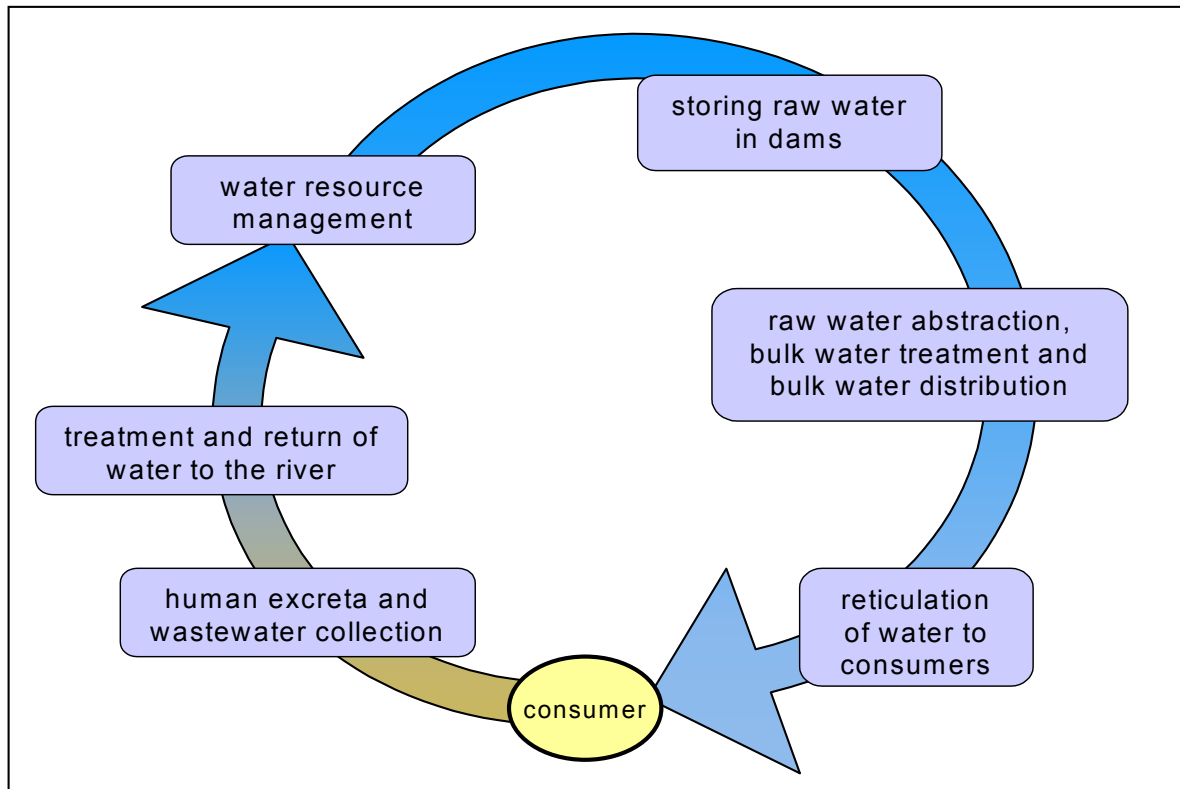


Figure 2: The relationship between water resource management and water services

- co-ordinate the activities of water users and water management institutions;
- promote the implementation of water services development plans; and
- promote community participation.

As the catchment management agency develops capacity more water resource management functions will be delegated. The catchment management agency may:

- make rules to regulate water use;
- require the establishment of management systems;
- require alterations to waterworks; and
- temporarily control, limit or prohibit the use of water during periods of water shortage.

**Water user associations** are co-operative associations of individual water users who wish to undertake water-related activities for their mutual benefit. Although water user associations are water management

institutions, their primary purpose, unlike catchment management agencies, is to encourage co-operation between water users to help meet their needs. A water user association may provide bulk water services on behalf of a municipality, in which case it should be appointed as a water services provider. (See section 4.5.)

**International water management bodies** are established to co-ordinate water resource management activities with neighbouring countries and have little direct impact on water services provision.

#### **Co-ordination between water services and water resources management**

The provision of water services is dependent on the availability of an adequate quantity and quality of water resources. They must therefore be provided in a manner that is consistent with the broader goals of integrated water resource management.

The catchment management agency will be responsible for the development and implementation of a catchment management strategy. This catchment management strategy must take into account the water

services development plans and the business plans of water services providers and it will be important for water services authorities to give early warning of their requirements. The water services development and business plans must be informed by the catchment management strategy.

Where a water resource is shared between different users, co-ordination of the management, allocation and development of the resource will be achieved through the implementation of the catchment management strategy.

#### **Development of water resource infrastructure**

Any institution (or person) may construct and operate a dam if that institution is authorised to do so. For most large-scale infrastructure (major

dams and transfer schemes) DWAF has assumed primary responsibility. In some instances, special purpose companies have been set up for specific (typically large) infrastructure projects such as the Lesotho Highlands Water Project. Some water boards and many municipalities have developed raw water resource infrastructure.

A policy process is currently underway to consider the creation of a new national public entity, taking responsibility for major national or regional water resource development. Such an entity would assume the responsibility for water resource development and operation of the associated infrastructure on behalf of DWAF, and develop local water resource infrastructure as a service provider to catchment management agencies, water services authorities and water user associations.

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## 5. The Financial Framework

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### 5.1 Social, environmental and economic considerations

In order to achieve the desirable social benefits related to the provision of adequate basic water supply and sanitation services to all people living in South Africa, government will continue to fund these services. This funding is in three basic forms: (1) funds for capital investment in infrastructure to extend basic services to those without an adequate service, (2) funds to ensure that the ongoing provision of basic water services is affordable to the poor, and (3) funds to develop the capacity of water services institutions.

Because water is inextricably linked to the environment, the financial and pricing arrangements will also take into account the effects of the use of water services on the environment.

Beyond these social and environmental mandates, water services will be managed in terms of normal financial and economic principles that will be applied to the financing and pricing of water services that are not basic services, provided that environmental impacts are appropriately managed.

### 5.2 A changing context

At present, national government provides funds in support of capital investment in the water services sector and ongoing operation of water services. These funds are provided directly and indirectly through a number of channels, including (but not limited to) the equitable share, transition grants, a Community Water Supply and Sanitation (CWSS) operating grant, the Consolidated Municipal Infrastructure Programme (CMIP), an “implement water services projects” capital fund, the community-based public works programme, a financial management grant, a local government support grant and the restructuring grant.

In the medium term it is the intention of government to consolidate these transfers to local government into three primary channels:

1. a consolidated municipal infrastructure grant (MIG);
2. the equitable share (ES); and

3. a consolidated capacity building grant (CG).

The proposed changes will be undertaken in a manner that ensures that government's water services objectives can be met. To this end it will be necessary to:

- define the role of various organs of national government in ensuring the sustainable provision of free basic water supply and sanitation services by local government within this funding context;
- ensure that adequate capital funds are made available (both nationally and by water services authority areas) to provide basic water supply and sanitation services to the poor within the target period;
- ensure the financial viability and sustainability of water services providers;
- ensure water services providers (including community-based organisations acting as water services providers) are allocated subsidies to provide free basic water supply and sanitation services;
- create the right incentives and regulatory framework to ensure good financial management and that available resources are allocated equitably, promote efficiency and ensure sustainability, including the appropriate pricing of services;
- create appropriate mechanisms to finance higher levels of service, particularly in rural areas, where these are affordable and sustainable; and
- manage the transition between the current multiple funding streams between national and local government and the consolidation of these into three funding streams.

### 5.3 A new financial framework

A new financial framework is proposed to accommodate the social, environmental and economic considerations outlined above, as well as the change in context and the challenges that these impose.

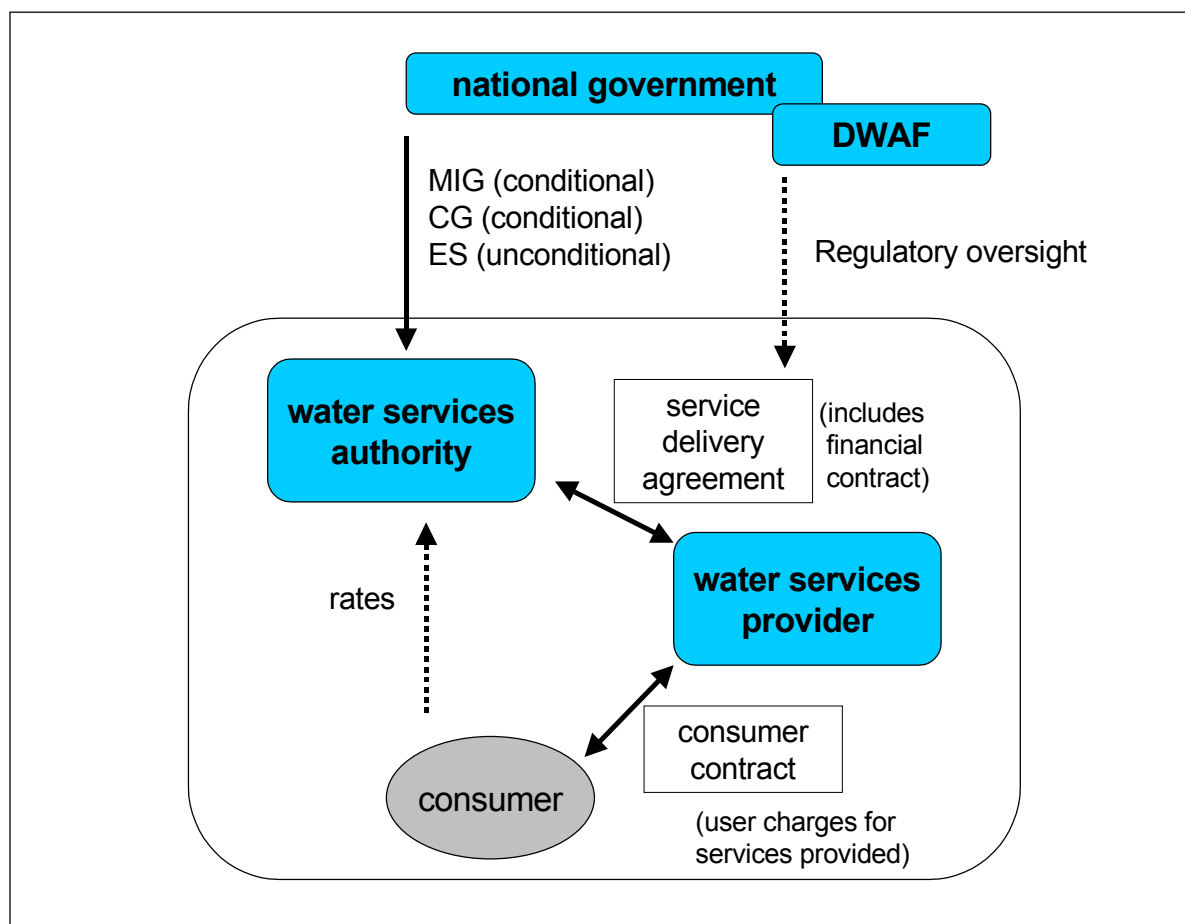


Figure 3: Financial framework

The essential elements of the new financial framework are set out below in relation to Figure 3.

- Ownership of assets.** Water services assets used to provide services to the public shall remain in public ownership. There shall be no sale or divestiture of water infrastructure assets by the public sector to the private sector. Water services assets will be owned by water services authorities except where these are owned by national government (for example, through a national water entity or water boards).
- Subsidies for infrastructure investment** for basic municipal services will be provided by national government in the medium term through a new municipal infrastructure grant (MIG). This is a consolidated conditional grant, consolidated because funds will be channelled through a single department, and conditional because the allocation of funds to municipalities will be made conditional. The nature and details concerning the conditions to achieve government's objectives will be developed in consultation with the relevant departments and SALGA.
- Subsidies for operating costs** (to support the provision of affordable basic services to poor households) will eventually be provided by national government through the local government equitable share (ES). In view of the fact that it is not possible for government to impose direct conditions on the use of this grant, a transition from the current DWAF "grant in kind" to the new system will be developed in consultation with the relevant departments and SALGA.
- Subsidies for capacity development** in local government are provided through a single consolidated capacity grant (CG). Since this is a conditional grant, it is possible for government to ensure that adequate resources are made available for the development of appropriate water services capacity in municipalities.
- User charges** (tariffs) are set by water services authorities. These are regulated in terms of Section 10 of the Water Services Act and regulations gazetted in terms of

Section 10 and the national economic regulatory framework.

- **Contract or service delivery agreement.** A key instrument of regulation is the contract or service delivery agreement between the water services authority and the water services provider. In terms of Section 19(5) of the Water Services Act the Minister has regulated the content of such contracts by means of regulations. (Notice R 980 of 19 July 2002 in the Government Gazette.)

In view of the fact that many different kinds of financial contracts are possible depending on the nature of the contract (service delivery agreement) between water services authorities and water services providers, it is not possible to be prescriptive as to the form and content of this financial contract. Nevertheless, the following principles should be observed:

Subsidies should be targeted to poor households, in the first instance for the provision of basic services where these are inadequate (capital subsidies), and in the second instance in support of the affordability of the ongoing provision of basic services (operating subsidies).

The water services development plan should be used as the basis for the development of the contract and the financial component of this contract.

The contract should form the basis for the regulation of the water services provider by the water services authority.

## 5.4 Funding water services

### 5.4.1 Investment needs

The total capital investment needs of the water services sector are estimated in Table 1. These numbers are indicative and depend on service levels proposed, but do indicate the scale of the investment required, some R5 billion per annum or more.

### 5.4.2 Future capital grant funding arrangements

National government has proposed the introduction of a new integrated *municipal infrastructure grant* (MIG) to provide a formula-based allocation to municipalities for providing all the necessary infrastructure (including water supply and sanitation) for poor households. When introduced, the current water services-specific infrastructure grants will be phased out. To enable the introduction of this grant, arrangements will have to be put in place to ensure that the basic objectives of government, being equity, access and sustainability, are met. In addition there are concerns about the capacity of some municipalities to implement the projects that will be funded by the grant and the planning and implementation of regional infrastructure that crosses municipal boundaries. There will be a need to attach sector-specific conditions to the allocation and spending of the infrastructure grant and the process will be discussed with the relevant government departments and SALGA.

Table 1: Estimated capital investment requirements over 10 years, R million

	Urban		Rural		Total
	Water	Sanitation	Water	Sanitation	
<b>New infrastructure</b>					
Low income residential	8,009	13,154	4,496	10,164	35,823
Non-residential and high income residential	1,602	2,631	450	1,016	5,699
<b>Asset replacement</b>					
Low income residential	1,728	2,802	677	101	5,308
Non-residential and high income residential	346	560	68	10	984
<b>Total</b>	<b>11,684</b>	<b>19,148</b>	<b>5,690</b>	<b>11,291</b>	<b>47,813</b>

Source: National Treasury, June 2002

### 5.4.3 The equitable share and the funding of basic services

**Constitutional basis.** In terms of the Constitution, national government must provide for an equitable division of revenue raised nationally to be allocated to local government. This allocation of funds takes into account *inter alia* (1) the need to ensure that local government is able to provide basic services and perform the functions allocated to it, (2) the fiscal capacity and efficiency of municipalities, (3) the developmental and other needs of local government, (4) the obligations of the municipalities in terms of national legislation, and (5) the desirability of stable and predictable allocations of revenue shares.

**Purpose.** It is readily apparent from the Constitution that a primary purpose of the equitable share is to ensure that local government is able to provide basic services to all its residents in an efficient and sustainable manner. However, the equitable share is not limited to this purpose, but is also intended to assist local government in carrying out any obligations set out by national government.

**Conditionality.** The equitable share is an unconditional grant protected by a constitutional right. However, should a local government not fulfil its constitutional responsibility of providing basic services to all its citizens whilst at the same time receiving an equitable share allocation, the local authority could expose itself to legal challenge (assuming the equitable share adequately covers the gap between the expenditure needs of the municipality for the provision of basic services and its revenue raising capacity). At present, the operation of services in many poor areas is funded by a "grant in kind" from the DWAF budget. This conditional grant will be maintained until appropriate mechanisms are designed to ensure that government's objectives are met under the new arrangement.

### 5.4.4 The transition to consolidated funding

At present, DWAF is an important provider of funds for water services, currently having control over some R800 million for infrastructure investment and R700 million for the operation of water services each year. In terms of the Division of Revenue Act of 2002 (DORA), this funding will decline over a three year period and be replaced with the consolidated funding channels to local government already described above. To meet these targets, new

processes have to be defined, as mentioned in the previous paragraph.

This will pose significant challenges for DWAF if it is to move from direct financial involvement in the funding of water services to the indirect roles of support, monitoring and regulation. A key challenge will be the establishment of mechanisms by which DWAF, as sector leader, can promote the achievement of the sector goals (set out in section 2.2) without any direct financial leverage.

### 5.4.5 Donor funding

International donors have played an important part in the development of the water services sector in South Africa, although it is expected that this will reduce as attention turns to supporting the NEPAD agenda on the continent. Donor funds will be integrated with local funding strategies and be managed in terms of national policies for the sector as a whole.

## 5.5 Free basic water services

### 5.5.1 Free basic water

Prior to the introduction of the equitable share as part of the local government financial system, the "user pays" principle was one of the cornerstones for achieving the sustainability and viability of water services. The adoption of the free basic water policy has not negated this principle. On the contrary, the free basic water policy strengthens the principle in that it clearly requires consumption in excess of the basic service to be paid for while enabling free access by the poor to *basic water services* necessary to sustain life. This policy thus supports the constitutional rights already described in section 3.

The right to basic water services is not an absolute right. It is subject to the state taking reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights. It is also subject to specific obligations such as payment for services (over and above the basic amount) and the limitation and disconnection of the service in certain circumstances.

In terms of the free basic water policy, the provision of the first 6 kilolitres consumed by a household per month is free of charge. The policy provides for flexibility in the application of this policy by municipalities, as the sphere of government responsible for providing water services. Municipalities are not obliged to



implement the policy with immediate effect, but must take reasonable measures, within available resources, to achieve the progressive realisation of the policy.

The cost associated with providing free basic water services to poor households is not large for a country of our economic size and strength. The total cost is estimated to be some R1,5 billion per annum, which is equivalent to 0,15% of GDP. This cost can be funded by national government through an allocation to the local government equitable share. This can also be supplemented where appropriate through cross subsidisation between users within a system of supply or water services authority area.

The real challenge of the free basic water services policy is an institutional one – how to ensure that any subsidies made available to support the policy benefit those who most need it, that is, households in remote rural areas, especially those served by small local systems. It is these people who are most vulnerable.

### 5.5.2 Free basic sanitation

Free basic services policies are intended to ensure that all households enjoy at least a basic level of service. The equitable share has been increased significantly to support this objective. In relation to sanitation, municipalities need to adopt a flexible approach in assessing what level of services they can afford to subsidise. Government's priority is to ensure that the needs of the vast number of people who do not have even a basic level of service are served first, before considering a subsidy for those who already have a high level of service.

The free basic sanitation policies, which are being developed, will distinguish between capital costs and operating costs. There are already several programmes underway which fund or subsidise the capital cost of providing basic toilets. (See section 5.2.)

The routine operation and maintenance costs of a basic level of sanitation service are low, and households themselves are best placed to address these. The intermittent costs of pit or tank emptying may be significant. Municipalities should develop clear policies on what assistance, if any, they will provide when on-site pits or conservancy tanks are full.

In most instances, waterborne sanitation should not be regarded as a basic level of service. Where a municipality is able to offer a high level of sanitation service, the proposed 6 kiloliters monthly free water allocation

incorporates a subsidy on the cost of operating a flush toilet. A municipality should only consider subsidising flush toilets further where it is confident it can fund, administer and sustain these subsidies.

#### Fairness in the application of the free basic sanitation policy

Municipalities should think carefully when implementing the free basic sanitation policy. The priority focus should be on households without sanitation and on households with basic sanitation. Subsidising flush sanitation systems is likely to be inequitable in contexts where many households have no sanitation at all. The sustainability of such a policy should also be carefully considered.

Subsidised flush sanitation should not be confused with free basic sanitation. Some municipalities can and do subsidise the costs of flush sanitation for poor households, but this is not likely to be viable for all municipalities. An important principle is that each municipality should assess its own resources in relation to its constitutional responsibilities. There cannot be one national model.

## 5.6 Water services authority responsibilities

### 5.6.1 Investments in infrastructure

Water services authorities generally own the water services assets within their areas and are responsible to ensure that adequate investments are made in water services infrastructure and that these investments are sustainable over time.

The water services development plan (discussed in section 6) is an important tool to assist the water services authority to develop a realistic long-term investment plan which prioritises the provision of basic water services, promotes economic development and is affordable and sustainable over time.

The primary sources of funds for investments in water services infrastructure are as follows:

- national infrastructure grants (to be consolidated in the MIG);
- loans from development institutions and commercial banks;

- retained earnings (from user charges);
- local taxes; and
- private equity, for example in the case of concessions where ownership of the assets remains in public hands although the right to use the assets is contracted to a private company in terms of a long-term concession contract.

The appropriate financing structure for each water services authority must be determined through the development of a long-term investment and financing plan.

### 5.6.2 Sustainable service provision

The primary operational responsibility rests with water services providers. Nevertheless, it is the responsibility of the water services authority to ensure that water services providers are *financially viable and sustainable* so as to ensure the ongoing operation of services and adequate maintenance and rehabilitation of assets.

The water services authority can influence the financial viability of water services providers through the following mechanisms:

- choices related to the use of the equitable share (see section 5.4.3);
- the tariff policy and the setting of tariffs (see section 5.7); and
- the details of the contract between the water services authority and the water services provider, specifically the service obligations and the financial conditions of the agreement. (See section 5.3.)

### 5.6.3 Use of equitable share for free basic services

Three primary mechanisms for funding the free basic water services policy are:

- cross-subsidisation within the service (usually by means of a rising block tariff);
- direct targeted credits to poor households (monthly credits to household trading account invoices) using the equitable share; and
- service levels targeting using the equitable share.

Different subsidy targeting mechanisms (and combinations of these) are likely to be appropriate in different circumstances. Local authorities should be encouraged to make decisions most appropriate to their own local circumstances. This will be accomplished by creating the right incentive environment and providing support through information, technical assistance and the sharing of best practices. While national government will not dictate to municipalities how the equitable share should be used, it will demonstrate how different mechanisms can be used in different circumstances.

### 5.6.4 Financial assistance to intermediaries

In the case of poor households living on their own plots or on communal land, water services authorities can make funds available to install the necessary infrastructure and provide operating subsidies to enable the poor to get free basic services on an ongoing basis. In most cases this has not been applied where poor people live on private land. Here reliance has been placed on the intermediary to fund both the capital and operating cost of such services.

There is no legal impediment to the use of grants for municipal infrastructure (including water services) to fund infrastructure for the poor on private land, subject to certain conditions. The most important of these conditions is that intermediaries must make a financial contribution as they become the owners of the infrastructure once it is installed. Specific policies regarding the appropriate level of contribution will be developed in collaboration with other relevant government departments.

Similarly, water services authorities can provide operating subsidies to intermediaries in terms of two possible arrangements:

- The subsidy may be provided to the intermediary directly in terms of a contract between the water services authority and the intermediary specifying the duties and obligations of both parties.
- The subsidy may be provided directly to the beneficiaries, that is, the poor households living on private land. This may be done through a user association.

The reluctance on the part of water services authorities to provide infrastructure and operating subsidies for water services to intermediaries is understandable given the difficulty (and cost) of adequately monitoring and regulating these arrangements.

Farmers are employers and are responsible for housing and related services of their employees living on farms. Farmers are therefore responsible for the provision of basic water services to farm workers and their families living on their farms, a policy supported by AgriSA.

Another important issue is the provision of water and sanitation services to areas where there are unauthorised settlements where those living in the settlements do not have rights to use the land. In this context the provision of rudimentary services should be encouraged pending the speedy resolution of *security of tenure* issues to allow water services authorities to invest in more durable and longer term assets.

### 5.6.5 Financing high levels of service

In order to promote higher than basic levels of water services where these can be provided in an economically viable and sustainable way, water services authorities should put in place appropriate financing mechanisms to make this possible. (See also section 6.3.) There is a wide range of options available, but the key to their application will be to always ensure that there is adequate income to support the proposed investments. Water services infrastructure requires long-term investments and since financing is often difficult to obtain, DWAF will work with National Treasury, DPLG, SALGA and other institutions (such as DBSA) to design appropriate financial instruments.

### 5.6.6 Credit control – water services authorities

Water services authorities have the responsibility to develop a credit control policy. This policy should provide for credit control procedures which (1) are fair and equitable, (2) provide for adequate notice, (3) provide for consumer representations, (4) allow alternative payment arrangements, and (5) set out a fair procedure that will be applied in the event of non-payment.

Where a consumer continues to fail to pay for services provided after the application of such procedures, a municipality should be able to take action that will limit its financial loss and promote payment. When a municipality formulates its credit control policy it should take into account (1) the need for financial viability to support the sustainable provision of services, (2) the effectiveness of the proposed credit control mechanisms, and (3) the impact of these mechanisms on the community.

The following principles should be considered in formulating credit control policy:

- Consumers should be *informed and educated* in respect of water use and credit control and debt collection policies.
- The *restriction* of water services to the free basic quantity is preferred rather than disconnection. Alternatively, where disconnections are implemented, an alternative basic supply should be made available if practical (for example, a communal water supply point). This is particularly important in poor areas. However, where the costs associated with limiting water services in this manner would have a substantial impact on the viability of the water services provider, water services may be disconnected after proper procedures have been followed, and until such time as the consumer has made an arrangement for settlement of the outstanding amount. Immediate disconnection may be appropriate where services equipment has been tampered with, since this may jeopardise the health of consumers and the security of the system.
- Where a consumer's access to water services has been limited and that consumer interferes with the restriction in a manner that renders the limitation less effective, the municipality may disconnect such a consumer until such time as the consumer has made an arrangement for settlement of the outstanding amount and paid any fine that the water services provider may impose.
- Where a consolidated municipal account is rendered and a municipality provides electricity services, that electricity may be used as the preferred credit control mechanism.

The limitation (and disconnection) of water services is a sensitive issue that requires the balancing of rights and obligations. Consumers have a right to a basic water supply. However, this right also embodies the obligation to exercise that right reasonably and in accordance with general limitations placed on that right. At the same time, water services authorities must ensure sustainable provision of water services and ensure the financial viability of the water services provider.

## 5.7 Pricing and tariffs

### 5.7.1 Tariff principles

A user tariff is just one means of raising revenue to pay for the costs of constructing and

operating water services. Alternative sources of income include taxes and subsidies of various kinds. Nevertheless, tariffs are the primary source of revenue for water and wastewater services in South Africa. (Over 80% of income in the water sector is derived from the sale of water.) In terms of the government's policy of inflation targeting, it is desirable to maintain tariff increases below the rate of inflation.

**Consumer incentives.** Tariffs directly affect the usage or consumption of a service by consumers. Tariffs that are based on sound economic principles can play an important role in promoting the efficient use of resources and hence reducing wastage. For example, a consumer who does not pay for water in relation to the amount of water consumed has no incentive not to waste water.

**Agency incentives.** Tariffs also affect the behaviour of water services providers. For example, private water services providers will want to maximise profits whereas public water services providers may have little incentive to collect income owing to them. The likely behaviour of water services providers in response to different incentives needs to be taken into account when setting tariff policy and tariff levels and specifying the financial component of contracts (service delivery agreements).

**Promoting sustainability.** Tariffs should be used to promote *sustainability* that may be understood in two broad senses:

- **Financial sustainability** of the relevant water services institution means that, subject to explicit external subsidies, tariffs should at least recover fully capital (financing and depreciation) costs in addition to operating and maintenance costs.
- **Environmental sustainability**, the protection of the environment, can be promoted by tariffs that ensure that external environmental costs are internalised into the tariff. A "rising block" tariff structure which discourages excessive use and reflects the marginal cost of expanding supply capacity, is particularly helpful. This is regulated in terms of Section 10 of the Water Services Act. Where this is not adequate, other measures should be adopted to ensure environmental sustainability.

**Other tariff policy principles.** Additional principles that need to inform tariff policies are given in both the Municipal Systems Act as well

as the Water Services Act. Key principles are summarised here:

- **Equity.** Tariffs should be applied equitably.
- **Proportional to use.** The amount individual users pay for services generally should be in proportion to their use of that service.
- **Affordability.** Tariffs for *basic* water services should be affordable.
- **Reflect costs.** Tariffs must reflect all of the costs reasonably associated with rendering the service.
- **Differentiation.** A tariff policy may differentiate between different categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination.
- **Transparency.** Subsidies should be fully disclosed.

### 5.7.2 Understanding the cost and pricing chain

The structure of the full cost of water supply and sanitation services and the related tariffs and charges are shown in **Figure 4**.

**Water resource management charge.** This charge recovers the costs of water resource management including evaluating and issuing licences, monitoring water resource quality against the water resource objectives, detecting and prosecuting unlawful use, promoting water conservation and demand management and removing and managing alien vegetation.

**Raw water tariff.** This tariff includes the water resource management charge and recovers the costs of (1) developing infrastructure to store raw water, (2) repaying loans and interest on loans related to this infrastructure, and (3) operating and maintaining this infrastructure.

**Bulk water tariff.** This tariff includes the raw water tariff and recovers the costs of developing the necessary bulk water infrastructure, repaying loans and interest, and operating and maintaining this infrastructure.

**Retail water tariff.** This is the tariff to the consumer. (It is also called the municipal water tariff in many cases.) This tariff includes the bulk water tariff and recovers the costs of distributing water to consumers (developing, operating and maintaining the distribution infrastructure,

and all the business processes associated with this, such as metering, billing, income collection and consumer care).

**Sanitation charge.** This is the charge or tariff applied to consumers for collecting human excreta and wastewater from their premises. It also may include the costs of hygiene and health promotion. This charge may include the bulk wastewater tariff (see below) or the costs associated with bulk wastewater treatment if this function is done by the same water services provider which undertakes the collection function.

**Bulk wastewater tariff.** This tariff recovers the cost of treating wastewater. This tariff is usually applied when one water services provider provides a bulk wastewater treatment service to another water services provider. The tariff will include an effluent charge if implemented.

**Effluent charge.** This is a water resource charge based on the "polluter pays" principle. This charge is not implemented at present. The charge will be implemented in future by catchment management agencies.

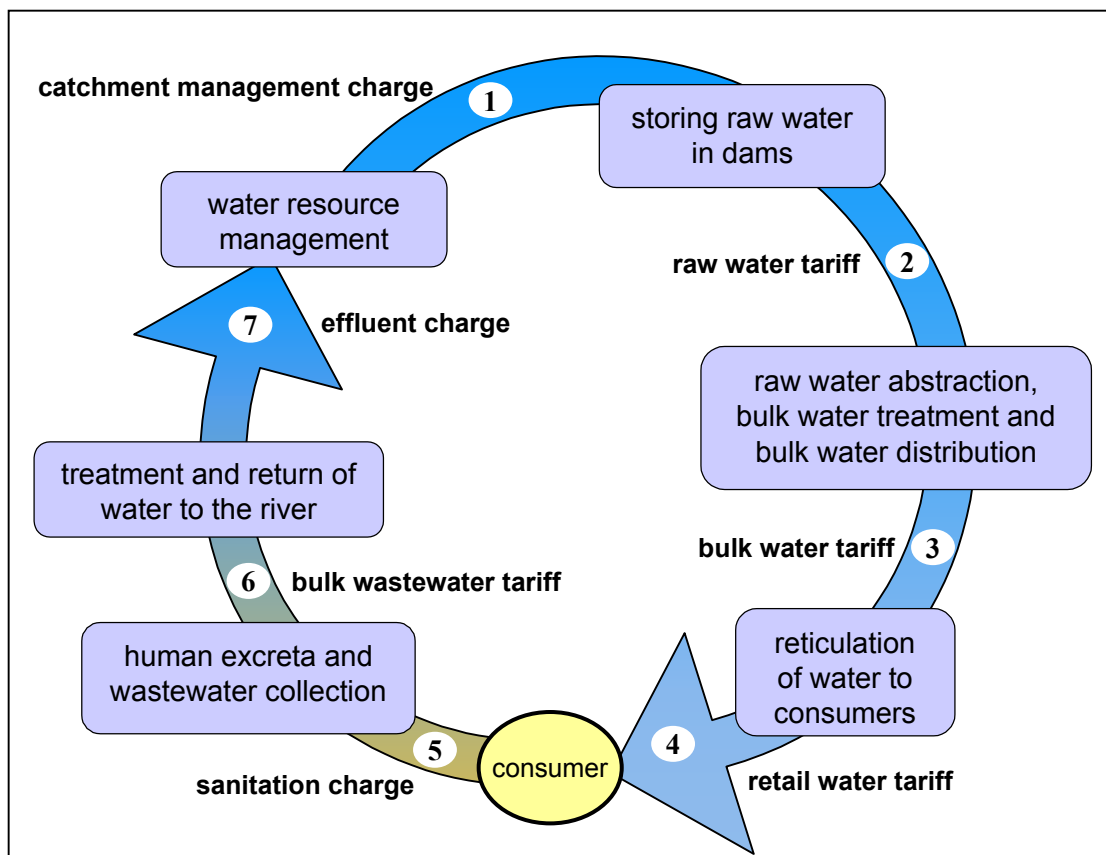


Figure 4: Water cost and pricing chain

### 5.7.3 Responsibility for setting tariffs

The responsibilities for setting water and sanitation tariffs are summarised below:

Tariff / charge	Responsibility	Source of authority
Catchment management charge	Catchment management agency	National Water Act
Raw water tariff	DWAF Water board Water services authority	DWAF's raw water pricing strategy Directly regulated by DWAF National Water Act
Bulk water tariff	Water board Bulk water services providers	Directly regulated by DWAF Water Services Act
Retail water tariff	Water services authority	Water Services Act and Municipal Systems Act
Sanitation charge	Water services authority	Water Services Act and Municipal Systems Act
Bulk wastewater tariff	Bulk wastewater services providers	As for bulk water tariffs
Effluent charge	Catchment management agency	National Water Act

Where DWAF or a water services authority is responsible for tariff setting, due regard must be paid to the need for the water services provider to be financially viable as well as to the imperative of equitable access to services.

### 5.7.4 The economic regulation of water services tariffs

See section 7.

## 5.8 Water services provider responsibilities

### 5.8.1 Financial viability

The key financial responsibilities of water services providers are as follows:

- to operate water services effectively and efficiently;
- to be financially viable; and

- to honour the services delivery agreement with the water services authority.

(The general responsibilities of water services providers are discussed in section 4.5.)

Financial viability is dependent on an appropriate services delivery agreement (contract) which matches service delivery obligations (and the associated costs) with the ability to generate the required revenue, taking into account any available subsidies.

Once an appropriate contract (service delivery agreement) has been put in place, a water services provider has primary control over two important financial aspects of service provision: (1) *controlling costs*, and (2) *managing revenue collection*.

Effective *credit control* is a critically important component of revenue collection.

### 5.8.2 Credit control – retail water services providers

**Water services authority determines credit control policy.** The responsibility for establishing a credit control policy rests with a water services authority. (See section 5.6.6.)

**The right to disconnect and/or restrict.** In order to protect the financial viability of a water services provider, a water services authority must give the water services provider the right to disconnect and/or restrict water services connections, subject to the general credit control policy of the water services authority. It must be undertaken in such a way as to protect consumer and public interests. (See below.)

**Fair process.** All disconnections and/or restrictions must be done in terms of a fair process and as a result of the failure of a consumer (or consumers) to fulfil their obligations in terms of a mutually agreed contract.

**Non-domestic water supplies.** The implementation of credit control in the case of the use of water for non-domestic purposes is straightforward. A water services provider has the right to disconnect water services where a consumer breaks its contract with the water services provider.

**Domestic water supplies.** The application of a credit control policy in the case of domestic water supplies must seek to protect the right of poor households to receive a basic water supply service at no cost in terms of the free basic water policy. The right to a free basic water supply is not an absolute right, however, and the abuse of the right to free basic water can result in the restriction and/or disconnection of the water supply, provided fair and equitable procedures are followed and special arrangements for indigent persons are made. Where households act in a way that may harm the safety of others or the security of the system (for example, through unauthorised connections) immediate disconnection is permitted.

### 5.8.3 Credit control – bulk water services providers

Water boards and municipalities acting as bulk water services providers have an obligation to function in a financially viable and sustainable manner. Effective credit control mechanisms are an important component of any strategy to achieve sustainability.

The Water Services Act specifically authorises bulk water services providers to limit and/or disconnect bulk water services to water services providers that default on payment for services provided. However, in view of the implications of this for ordinary consumers, this should be regarded as a last resort.

The extent and scope of credit control processes, procedures and mechanisms should be addressed in the contractual relationship between the water services authority and the bulk water services provider. In terms of the Water Services Act, these should provide for at least:

- adequate notice to a water services authority to pay for services provided;
- an opportunity for the water services authority to make representations;
- alternative arrangements for payment of the amount due;
- notification of the mechanism that will be applied in the event of non-payment; and
- notification of the MEC for local government and the Minister of Water Affairs and Forestry.

When a bulk water services provider negotiates its credit control and debt collection process it should take into account its financial viability, the need to support the sustainability of services, the effectiveness of such mechanisms, the impact of such mechanisms on the affected community and the public interest.

It is recommended that the following principles be adhered to:

- Where the bulk water services provider is another municipality (or a water board) every effort should be made to support the defaulting water services authority in addressing the reasons for non-payment. The principles of co-operative governance and intergovernmental relations should be applied.
- Where a water services authority fails to react to actions taken in accordance with the above-mentioned principles, the bulk water services provider should request the relevant provincial executive and Minister of Water Affairs and Forestry to intervene in accordance with legislated processes guiding such intervention.

- Where the relevant provincial executive and Minister of Water Affairs and Forestry fail to intervene in a manner that alleviates the non-payment, appropriate relief may be sought in the Courts.



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## 6. Planning, Delivery and Sustainability

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### 6.1 Introduction

This section deals with policies related to the *planning, delivery and operation* of water services. The policies emphasise the importance of integrated planning, the appropriate choice of technology and service levels, the effective delivery of infrastructure (physical investments) and the efficient and sustainable operation of services. In the context of water scarcity, water demand management and conservation are critically important to all of these activities.

**Integrated planning.** One of the major lessons learned since 1994 is the need to focus on an integrated and planned approach to the provision of water services infrastructure. An integrated approach focuses on programmes and ongoing operations, rather than only on infrastructure construction. It seeks to promote a developmental approach that includes proper integrated planning, consideration of the total business cycle, and adequate attention to ongoing operations. The primary instrument of planning in the water services sector is the *water services development plan* (WSDP). This plan requires the consideration of the physical, social, economic, financial, environmental and institutional aspects of water services provision. In particular, it must reflect the intentions of the local government's integrated development plan (IDP), of which it forms part.

The choice of **technology and service levels** is a very important component of planning. For this reason, policies related to these choices are dealt with as a separate section even though many of these choices are made during planning.

The **delivery of infrastructure**, that is, investments in physical infrastructure (and the associated components such as capacity building) must be undertaken in terms of the water services development plan. It is important that project implementation arrangements are both effective and efficient so as to maximise the use of scarce resources. It should also be guided by objectives such as job creation and black economic empowerment.

**Operations.** While the water services authority is primarily responsible for the planning of water services provision, the water services provider is responsible for all operational aspects. Policies related to the operation of services emphasise

the need for efficiency, sustainability and financial viability, drawing on best practice.

**Water demand management and conservation** are especially important in the context of water scarcity. A holistic approach to water demand management and conservation requires that water demand management be taken into account during the planning, delivery and operating activities associated with water services. Specific policies and strategies related to water demand management and conservation are set out in the last section.

**Linkages.** There is substantial overlap between the content of this section and the rest of the white paper, and especially between this section and section 5 (Financial framework) and section 7 (Monitoring, support and regulation). This is because the activities of planning, delivery and operation give practical effect to many of the policies contained in the rest of the white paper.

**Sustainability is the golden thread.** Organisational, financial, technical and environmental sustainability is given prominence in both the title and content of this section because this is the golden thread that must run through all of the activities in the water services sector.

### 6.2 Planning

#### 6.2.1 Planning by water services authorities

A framework for planning by water services authorities is set out in the Water Services Act. The key instrument of planning is the *water services development plan*. This is designed and intended to be part of the relevant municipality's IDP and should ideally be prepared as part of the same process.

#### The planning process

The key elements of the planning process are as follows:

- All water services authorities must develop a water services development plan (WSDP).
- A new plan must be developed every five years and the plan should be updated as necessary and appropriate in the interim years.

- The WSDP must be integrated with the integrated development plan of the municipality, as required in terms of the Municipal Systems Act.
- The WSDP must integrate water supply planning with sanitation planning.
- The WSDP must integrate technical planning with social, institutional and financial and environmental planning.
- The WSDP must integrate with the catchment management strategy.
- The planning process must take into account the views of all important stakeholders, including communities, through a consultative and participatory process.
- The draft plan must be made available for public and stakeholder comment and all comments made must be considered when preparing the final plan.
- The contents of the WSDP must be communicated to all important stakeholders.
- A water services authority may not deviate substantially from its WSDP.
- A water services authority must report annually on the implementation of the plan.

**A municipality that is not a water services authority** is not required to develop a water services development plan. Nevertheless, municipalities in this position will still need to integrate water related issues into their integrated development plan. There are two cases:

**Where a district municipality is not a water services authority**, the district should use the integrated development plan to address issues related to the co-ordination of water services between water services authorities in the district.

**Where a local municipality is not a water services authority**, the local municipality will need to summarise the implications of the district level water services development plan for its own area and integrated development plan.

### Linking planning and budgeting

The water services development plan offers critical input into the municipal budget, not only the capital budget but also the operating budget. The implications of investments for future operating costs are especially important. Budgets must provide for the costs of operating and adequately maintaining assets, including expenditure on initiatives to improve operating efficiency (for example, water management programmes to reduce water losses). Close co-operation between the manager of water services and municipal finance officials is required.

**Planning to provide services in unauthorised settlements.** The provision of services to people living on land without permission of the owner of the land poses a challenge to water services authorities. Water services authorities should seek to address the security of tenure issues expeditiously. In the interim, basic water services (including basic sanitation services) should be provided. In many cases, investments in Ventilated Improved Pit latrines will prove to be a more satisfactory, cost-effective and sustainable solution than reliance on temporary bucket collection systems or chemical toilets.

### 6.2.2 Planning by water services providers

**Business plans.** All water services providers must develop a water services provider *business plan*. This plan should show how the activities of the water services provider will support the achievement of the desired outcomes of the WSDP. The business plan should be used as the basis for the contract between a water services authority and a water services provider.

The requirement that all water services providers develop a business plan is new.

#### Where a water services authority is also the water services provider

Where a local municipality is both a water services authority and the sole water services provider in its area, the water services development plan can fulfil the function of the water services provider business plan and it is not necessary for the municipality to develop a separate business plan.

Where a water services authority contracts an external water services provider, the water services authority must ensure that the water services provider develops a water services provider business plan.

**Reporting.** Water services providers must report on progress in relation to the business plan at least annually and provide any information required by the water services authority for monitoring purposes on a monthly basis.

### 6.3 Technology and service levels

**Making choices.** The choice of technology and service levels can have a very significant impact on the financial viability and sustainability of services. Hence these choices are a critical component of water services development planning. It is especially important that these choices are made in an informed way, taking into account all of the relevant factors.

**The role of minimum standards.** National government has defined a set of compulsory minimum "norms and standards" in terms of the Water Services Act. The intention of these standards is to protect the interests of consumers by ensuring that certain basic minimum standards are met.

**Support versus regulation.** Where possible, water services authorities should strive both to meet and exceed these minimum standards. However, it is important to note that in the short term it will not be possible for water services authorities to meet some of the minimum standards in all cases as a result of very real resource constraints. In these cases, it is not the intention of national government to "punish" water services authorities for failure to meet these standards, but rather to *support* water services authorities in their efforts to meet these standards. However, where water services authorities *do* have the capacity to meet these minimum standards and fail to do so, then the regulatory function of national government becomes important in order to protect consumer and public interests. Policies related to monitoring, support and regulation are discussed in section 7.

**Technology innovation.** Technology innovation undertaken in the spirit of promoting the achievement of the policies set out in this white paper is encouraged.

**A duty to provide basic water services.** Every water services authority has a duty to ensure that at least a basic water supply and

sanitation service is provided to every household within its area of jurisdiction. This duty is subject to the availability of resources and to the "progressive realisation" of rights contemplated in the Constitution.

**A focus on services for all.** When developing an investment plan as part of the WSDP, a water services authority should aim to provide basic water services (as defined in this white paper) to all households within its area within a reasonable period (five years).

**Financing higher service levels.** Only where all households already have a basic level of water supply and sanitation service in a water services authority area may national funds be used to finance higher levels of service. Otherwise, service levels which are higher than basic must be funded or financed based on the associated user charges and/or other local taxes or tariffs.

**Full life-cycle costs.** When evaluating alternative technology options, water services institutions should, wherever practical, consider the full life-cycle costs of each option. For example, an assessment of the costs of waterborne sanitation should include not only the cost of the initial investment in sewers, but also the associated costs of providing wastewater treatment capacity and the necessary additional water supplies, as well as the future operating and maintenance costs of these systems.

**Design horizon.** Investment planning should take into account an appropriate planning horizon and realistic projections of population and income growth for design purposes so as to avoid the risk of over or under investment. DWAF, in consultation with other relevant departments, will provide guidance in this regard.

**Cost-effective design.** Design should be cost-effective and seek to meet best-practice benchmarks, taking into account operating and maintenance requirements.

**Affordability and sustainability.** When choosing technologies and developing infrastructure investment plans, the associated revenues and user charges/tariffs must be taken into account, making sure that the required tariffs are affordable to consumers and that the water services provider is able to raise sufficient revenues to cover its costs.

**Linking tariffs to service levels.** The tariffs and charges that a user pays should, wherever practical, be linked to the level of service

provided. Users with higher services should be required to pay more per "unit of equivalent service" compared to users with lower levels of service.

**Free basic water.** Wherever possible, provision should be made to enable provision of a free basic water supply in terms of national policy.

**Community consultation.** An important prerequisite for sustainable services is adequate consultation with, and involvement in planning by, local communities. Consultation should take place *prior* to investment in water services.

**Consumer choice: designing for mixed levels of service.** Wherever practical, infrastructure should be designed to accommodate mixed levels of service within communities, allowing consumers to elect a level of service which suits their needs and which is affordable to them.

**Use of controlled flow connections.** In the context of free basic water, water services providers should consider the benefits of offering households controlled flow connections that can provide a basic supply of water cost-effectively.

**Pre-payment meters in the context of free basic services.** Where pre-payment meters are installed, these must take into account the free basic water services policy and allow for access to a basic amount of water at zero tariff.

**Metering uncontrolled connections.** All unrestricted water connections must be metered. Where this is not the case, a plan must be put in place to either restrict the supply or to install a meter within a period of three years.

**Integrated planning of water and sanitation technologies.** Investments in water and sanitation services must be planned in an integrated way, taking into account the fundamental linkages between water and sanitation services.

**Design standards and non-domestic water demand.** When designing water systems, non-domestic water demand must be taken into account.

**Water for income generating activities.** Municipalities should plan not only to provide water services necessary for basic health and hygiene but also to support economic activities that support the economic development and well-being of communities. (See page 7.) The

provision of services which support commercial and industrial activities should be determined by economic demand, that is, the ability of users of the service to pay for the service. Where there are grounds to subsidise these services, the subsidies should not come from other water users, but rather from local or national taxes. Planning should also take into account the demand for water services to support economic activities.

**Grey water.** Where on-site sanitation systems are provided together with on-site water supplies, adequate consideration must be given to the disposal of grey water.

**Choosing between waterborne and on-site sanitation.** In general, on-site sanitation systems will be most appropriate in rural and peri-urban areas and waterborne or related systems will be most appropriate in more densely populated urban areas. This is because waterborne systems are very costly to install, operate and maintain where living densities are low. Exceptions to this general rule are rare. The potential threat of polluting the groundwater is often given as a reason for precluding on-site sanitation options. However, in the vast majority of cases, the cost of treating this ground water or obtaining water from an alternative source is more cost-effective than installing and operating a waterborne sanitation system. In this context it is important to note that studies have shown that the inadequate maintenance of waterborne sanitation systems poses a greater threat to the environment in South Africa than on-site sanitation systems.

**Eradication of bucket toilets.** The bucket system is generally considered to be an unsuitable and inappropriate level of service. Unless compelling evidence to the contrary is provided and there is consensus from the community, all municipalities must identify programs for the eradication of bucket systems and must set target dates to do this in accordance with government sanitation policy.

**Pit emptying.** Water services authorities must ensure that appropriate arrangements for the periodic emptying of pits (or appropriate alternative mechanisms) are put in place.

**Water conservation and efficiency.** Water efficient fittings, appliances and practices can have a major impact on conserving water and should be incorporated into design standards and practices wherever possible. Examples of these include: low volume shower heads, water efficient taps, low volume flush toilets, manual rather than automatic urinals, water-wise

gardening methods and water efficient washing machines.

**Domestic plumbing leak repair.** A common problem in many areas is leaking taps and toilets. Even where houses are privately owned, water services authorities should consider providing assistance for the repair of plumbing fittings as this can be a cost-effective intervention to reduce water services costs (both to the consumer and the water services provider).

**Pressure management and leakage control.** Water services providers should adopt a systematic approach to reduce water leakage, taking into account costs and benefits. Pressure management is a cost-effective way of reducing water losses and managing demand. Technical innovations in this area, such as “smart” pressure reducing valves that reduce pressures during off-peak periods, have been implemented successfully in South Africa.

**Management information systems** The effective management of any business relies on availability of relevant and timely information. Water services institutions should strive to implement effective *management* information systems.

## 6.4 Delivery of infrastructure

**Ownership of assets.** All water services assets within a water services authority area are owned by the water services authority, except where assets are owned by national government or national government-owned entities, and except where these assets are located on private land. In the case of assets on private land, ownership of assets may pass into the hands of the person owning the land in the following circumstances:

- where an “on-site” sanitation facility is provided to a household; and
- where assets are required for services to consumers served by a water services intermediary who owns the land on which the consumers reside and where that intermediary has made an appropriate contribution to financing the cost of the assets.

In other circumstances the water services authority must register a servitude across the private land where its assets need to cross private land. Unless there is compelling evidence to the contrary, this does not apply to trust or communal land.

**Asset management.** A water services authority must maintain a register of water services assets and put in place a system to manage these assets in terms of the maintenance and rehabilitation plan. (See section 6.2.1.)

**DWAF-owned schemes.** DWAF is in the process of transferring all of its water services schemes to water services authorities. This transfer is taking place as agreed between DWAF and SALGA and in terms of the following policy principles:

- The receiving municipality will be the WSA in whose area of jurisdiction the water services works are situated.
- The receiving municipality will be the district municipality that is the WSA, or those local municipalities that have been authorised by the Minister of Provincial and Local Government.
- WSAs without WSP capacity will appoint an appropriate WSP for schemes to be transferred.
- DWAF will support WSAs to identify appropriate WSPs for transferred schemes. This support will be negotiated as part of the transfer agreement.
- The extent to which schemes will be rehabilitated beyond meeting minimum safety requirements will be negotiated with the receiving WSA and will be dependent on funding from National Treasury.
- Transfer of staff will be in accordance with the relevant legislation and agreements reached at the PSCBC, and will be conducted in a fair, transparent and unbiased manner.
- Water services authority and water services provider capacity support will be provided by DWAF through the transfer process and will be negotiated between DWAF and the receiving WSA in terms of the transfer agreement. Institutional capacity support will be limited to capacity necessary for the ongoing sustainability of the schemes to be transferred.
- The transfer of water services schemes and related staff should not negatively impact upon the continued delivery of services.
- The levels of service that are currently being delivered by the DWAF-operated schemes should be maintained and where

possible improved over time. This includes the delivery of free basic services to indigent communities.

The question as to whether the ownership of assets can be transferred to an institution other than the water services authority is still to be clarified (for example in cases where the water services authority is either unable or unwilling to take transfer of the assets.)

**Planned projects.** All water services infrastructure must be developed in accordance with the water services development plan and in conformity with relevant standards and guidelines.

**Implementing agents.** An implementing agent is an organisation appointed by the water services authority, or by national government on behalf of the water services authority, to take responsibility for managing implementation of a number of projects throughout the project cycle, including feasibility, project planning, construction and operator training. The implementing agent may take responsibility for contracting and paying the individual contractors and consultants or its role may be limited to setting up the contracts for the water services authority to sign, and to authorising payments to such contractors and consultants.

Where a water services authority does not have adequate capacity to implement infrastructure programmes and/or projects, it may appoint an implementing agent to implement water services infrastructure on its behalf in terms of approved procurement procedures.

## 6.5 Operating water services

### 6.5.1 Separating the roles of authority and provider

Where a water services authority is also a water services provider, a clear distinction between the water services authority and the water services provider functions must be made. The primary water services authority functions are those of planning and regulation. (See sections 6.2 and 7.) The primary function of a water services provider is to operate the water services infrastructure. Policies related to this function are set out below. A water services provider may also manage the delivery of infrastructure ("capital projects") on behalf of the water services authority.

### 6.5.2 Performance management

All water services authorities are required to implement a performance management system in terms of the Municipal Systems Act. This system of performance management should be closely linked to the commitments of the water services provider in terms of its contract with the water services authority, whether such a contract is "in-house", in the case of a municipal water services provider, or with an "external" body. In either case the contract and its performance management implications must be consistent with the WSDP.

The requirements for a performance management system may be divided into "statutory" and "voluntary" components. In the former case the requirements to report on certain performance areas will be laid down by the water services authority while in the latter the requirements will be set by the water services provider itself in order to promote efficient and good service to consumers. In both cases the system must be based on key performance areas with key performance indicators set for each area. The water services provider must collect the necessary information to measure performance in relation to these indicators and must establish an appropriate reporting system for recording such performance. The water services authority will require reporting on certain of these performance indicators, in terms of the contract, to be used for monitoring purposes. (See section 7.3.)

### 6.5.3 Benchmarking and promoting best practice

The Department of Water Affairs and Forestry will play a leading role in developing a set of key performance indicators and best practice benchmarks for the purposes of:

- comparative evaluation of the performance of water services authorities; and
- comparative evaluation of water services providers.

A proposed minimum set of key performance indicators for water services authorities is presented in Annexure 1.

#### 6.5.4 Improving management

Good management is key to effective water services provision in South Africa. Where management capacity is lacking, the water services provider must develop a capacity building strategy that may be based on training, recruitment or contracting. The use of appropriate forms of management contracting as a means to improving the effectiveness of water services providers in South Africa is encouraged.

#### 6.5.5 Maintenance and rehabilitation

It is essential for water services authorities to protect their assets by ensuring that an appropriate maintenance plan is developed and implemented. This plan must be based on the principle of preventative maintenance in order to ensure, as far as this is practical, that damage to assets is prevented before it occurs.

The water services authority must ensure that the maintenance plan is part of the water services development plan and that this plan is implemented in terms of a contract with the water services provider. The water services provider must give the maintenance plan due management attention through the implementation of adequate maintenance procedures and practices.

Assets must be rehabilitated and/or replaced before the end of their economic life. This requires the planning and implementation of asset rehabilitation projects and ensuring that the necessary capital funds are made available.

#### 6.5.6 Community involvement

Adequate consultation, education and collective and individual accountability for services is prerequisite to cost recovery and effective management of service delivery.

#### 6.5.7 Consumer care

Water services authorities and providers should develop adequate consumer/customer care facilities and should adopt a customer-focused approach to service delivery.

#### 6.5.8 Proactive rather than reactive

Pro-active management is one of the key factors that characterise the differences between the operation and management of commercial enterprises compared to the

public sector. Water services providers should learn to be pro-active with respect to marketing, customer focus, preventative maintenance and management information systems.

### 6.6 Water conservation and demand management

Water resources need to be managed in an integrated manner. Historically, more emphasis has been placed in South Africa on water supply than water demand management. However, in the context of water scarcity and the unequal distribution of water resources in South Africa, water conservation and water demand management are becoming increasingly important. The important relationship between water supply and water demand is shown in the context of an Integrated Resource Planning Process in Figure 5 (with the traditional supply side planning shown in blue, and the water demand management and integrated resource planning components shown in yellow). Where appropriate planning has not been done, licence to abstract additional water may be denied in terms of the National Water Act.

Effective water conservation and demand management rests on an understanding of:

- water demand and, in particular, the *key factors influencing demand*;
- options to *reduce wastage* through improved management;
- options to *reduce inefficient water use* through technological innovation, financial incentives, changes in habits, institutional incentives and legislative changes; and
- options to *reuse water* through recycling and finding alternative uses for wastewater.

Water demand management is best promoted through a multipronged approach including the following:

- **Legislation and by-laws.** Key legislative interventions include the metering of unrestricted connections, the banning of automatic flushing urinals, and the setting of water-use efficiency standards for water fixtures and water-using appliances.

- Improved management.** Effective management of water services can greatly reduce water losses and improve billing and revenue collection, all of which will have a significant impact on water demand. Implementing appropriate water services provider contracts is probably the best means of promoting improved management.
- Technological innovation.** Changes in technology can have a significant influence on water demand. Choice of technology is usually a function of the prevailing set of prices. The appropriate pricing of water in terms of sound economic principles, especially for industrial water use, will go a long way to promoting technological innovation and hence managing water demand.
- Pricing.** In addition to promoting technological innovation (see above), the appropriate pricing of water will result in more effective and efficient water use by domestic and other consumers. (Water pricing policy is discussed in section 5.7.)
- Education.** Promoting public and consumer awareness of the preciousness of the water resource and the need to use it wisely is an essential strategy for water demand management.

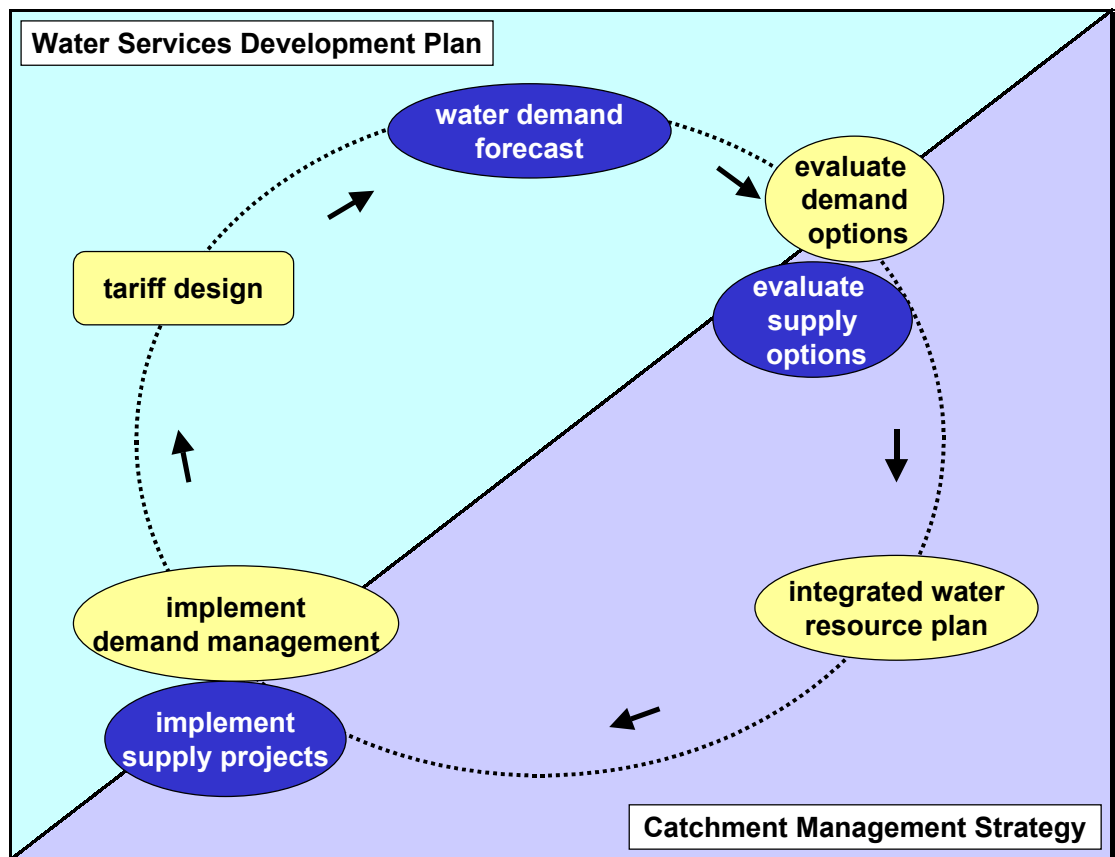


Figure 5: Integrated resource planning



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## 7. Support, Monitoring and Regulation

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### 7.1 Introduction: an approach to support and regulation

The purpose of support, monitoring and regulation is to facilitate the achievement of the sector goals and targets outlined in section 2 in the best manner possible.

**The need for balance.** In South Africa there are significant disparities in the capacity of water services institutions between and within regions. In this context, it is important to strike the appropriate balance between support (in order to develop capacity to meet sector objectives) and regulation (in order to ensure that policy objectives are met). On the one hand, national government will strive to assist local government and other water services institutions in their task of managing water services effectively. On the other hand, where adequate capacity exists, water services institutions will be held accountable for performance.

**A focus on support.** Over the next five or more years, national government will focus on supporting water services authorities and other water services institutions so as to promote the effective delivery of water services and the achievement of the sector goals and targets. A great deal can be achieved by helping to build the capacity of water services institutions and by encouraging the establishment of appropriate contractual relationships between water services authorities and water services providers. Nevertheless, it is still necessary to regulate water services authorities and to have oversight of the contractual relationships between water services authorities and water services providers. This is especially the case where there is adequate capacity, for example in the metropolitan areas.

## 7.2 Support

### 7.2.1 Methods of support

Government will provide support to water services institutions in the following ways:

- **General support** that is available to all water services authorities and other water services institutions, for example, water sector training and the development of guidelines and tools.

- **Targeted support** to specific water services authorities and public water services providers. Types of targeted support could include strategic advice as well as financial and other material support.
- **Interventions.** Where general and targeted support efforts are not successful, provincial and national government could intervene in order to protect the public interest. Interventions are a form of regulation and are discussed in section 7.4.

### 7.2.2 Building water services authority capacity

It is the responsibility of national and provincial government to support local government in the performance of its duties and responsibilities. Capacity needs to be developed in the following broad areas:

- planning (financial, technical, social, environmental and institutional);
- infrastructure delivery (managing "capital projects");
- establishment of water services provider arrangements;
- regulating water services providers and consumers (by-laws, contract management); and
- communication and education.

Capacity building will be accomplished by the following means:

**Financial assistance.** In future, financial assistance to water services authorities for the purposes of developing capacity will be channelled through the consolidated municipal capacity building grant.

**Training.** Use will be made of sector-based and other training initiatives including the Local Government SETA.

**Knowledge transfer.** One of the most effective mechanisms of capacity building is the appropriate transfer of knowledge and experience between water services authorities. The primary mechanisms for this are formal forums such as the South African Local Government Association (SALGA), the Institute of Municipal Financial Offices (IMFO), the Water

Institute of South Africa (WISA), the Institute of Municipal Engineering of Southern Africa (IMESA) and informal contacts between municipalities facilitated by these or other mechanisms, such as the Cities Network.

**Guidelines and tools.** As one component of support, the Department of Water Affairs and Forestry has developed, and will continue to develop, a suite of guidelines and tools to assist both water services authorities and water services providers. These guidelines and tools are available on the DWAF web-site ([www.dwaf.gov.za](http://www.dwaf.gov.za)).

**Direct strategic advice and institutional support.** This type of support is based on water services authority capacity assessments and the water services provider challenges that water services authorities are facing. The primary objective of this support is to ensure that water services authorities are able to address the different functional areas necessary to fulfil the authority function, such as the development of water services policies and by-laws, tariff determination and equitable share allocation, capacity to address infrastructure backlogs, water services development planning, decision making concerning water services provider institutional arrangements and contract management. Through developing water services institutional capacity, water services authorities are better able to engage with water services support programmes, as well as address major challenges such as free basic water, sustainability issues, transfer and the implications of the allocation of powers and functions between district and local municipalities.

**Co-ordination of national support.** Future support from the Department of Water Affairs and Forestry will be driven by the needs, priorities and challenges identified by water services authorities so that support is responsive to local government challenges. In this regard national government will develop an overall support strategy in consultation with local government to ensure co-ordinated support and optimal use of resources.

**Establishing water services provider arrangements.** Where water services authorities do not have the capacity to undertake the water services provision function themselves (either for the whole area or in parts of their area), they need to identify and appoint external water services providers. The process of establishing water services provider arrangements must follow the policies set out in this white paper. The Department of Water

Affairs and Forestry will provide general guidelines as well as targeted support to water services authorities to assist them in this process.

### 7.2.3 Building water services provider capacity

There is a wide disparity in the capacity of water services providers across the country from relatively well-resourced providers in metropolitan areas and many towns to very under-resourced and under-capacitated providers in many small towns and rural areas.

National government will provide support for the establishment of effective water services providers, especially where water services authorities are weak, where there are no effective water services providers in place and where national water services assets are transferred to water services institutions.

Developing water services provider capacity in these areas requires a multipronged strategy. DWAF will develop and implement a strategy to support the development of effective water services providers. Any direct financial support provided for the purposes of assisting the establishment of water services providers will be done in terms of a well-defined policy and transparent criteria.

National government will not provide direct financial support for the operation of water services except through the already established funding channels such as the equitable share. (See section 5.)

## 7.3 Monitoring

Monitoring is an essential tool needed for effective support and regulation. Relevant, timely and reliable information can make any support given more appropriate and effective by informing the nature and extent of support needed. Similarly, monitoring will help to identify instances where interventions are needed to protect the public interest.

*Consumers* are in the best position to monitor the effectiveness of water services provision. They are the first to experience the effects of poor, inadequate or absent services. Therefore, the most important and effective monitoring strategy for the sector is *strengthening the voice of consumers*, that is, providing appropriate communication channels for consumers to voice their concerns.

It is the responsibility of water services authorities to put into place mechanisms for facilitating, listening to and responding to

consumer and citizen feedback on the quality of services provided.

In addition to this, consideration should be given to supporting the development of *consumer organisations* representing the interest of water services consumers. These organisations should also have direct representation on the National Water Advisory Council.

*Water services authorities* must report annually on progress in relation to their water services development plans. This is also an important monitoring tool, both for consumers and citizens in the water services authority areas as well as for provincial and national government. While the *water services development plan* is primarily a planning tool for water services authorities, it offers an efficient instrument for national or provincial monitoring and regulation, requiring minimal additional effort if properly compiled.

*Water services providers* must report regularly to water services authorities on performance in relation to their business plans and the contract (service delivery agreement). This is an important monitoring tool for water services authorities.

## 7.4 Regulation

### 7.4.1 Objectives of regulation

The purpose of regulation is to ensure that government objectives are met. Within the water sector, government has the following key objectives:

- **Social objectives:** to ensure the provision of basic services (especially the extension of services to the poor), to ensure affordability of basic services, and to protect consumers (with respect to quality of service and health considerations).
- **Economic objectives:** to promote economic development through effective and financially viable water services institutions, adequate investment in infrastructure, the appropriate pricing of water and wastewater services, and the efficient use of water.
- **Environmental objectives:** to promote environmental sustainability and to protect the environment through the appropriate regulation and management of water resource abstractions and discharges, and through the promotion of water

conservation and demand management. (Water resources are regulated in terms of the National Water Act.)

Policies and regulation must seek to strike the appropriate balance between these objectives and must be developed in accordance with sound principles.

### 7.4.2 Principles of regulation

**Institutional clarity:** There must be a clear definition of the respective roles and responsibilities of those involved in regulation.

**Completeness and consistency.** The regulatory framework should be complete and apply consistently across the sector.

**Respect the executive authority of local government.** In terms of the Constitution, local government has executive authority to provide water and sanitation services.

**Integrated with local government regulatory framework.** The regulation of water services must be integrated with the overall regulatory framework for local government.

**Representation of stakeholders.** Regulation must ensure that the interests of all stakeholders are adequately heard, whilst none of them should have excessive influence. The two primary stakeholders are consumers (households and businesses) and water services providers. Much of regulation is about balancing the respective interests of these two stakeholders.

**Capability.** The regulatory framework should be neither complex nor onerous and should be matched to the capabilities of water services authorities and water services providers.

**Flexibility.** A "one size fits all" regulatory approach is not appropriate in the South African context. The regulation of a large metropolitan water services provider poses an entirely different set of challenges compared to the regulation of a community-based water services provider managing local water and sanitation services in a small rural community.

**Regulating performance.** Wherever practical and appropriate, emphasis will be placed on regulating performance (in terms of contracts or agreed plans) rather than absolute compliance with stated regulations. In the context of developmental local government, this is a more flexible model and is more appropriate to the South African context.

**Balancing standards and costs.** An appropriate balance needs to be struck between desirable standards and the costs associated with meeting these standards.

**Support water resource management.** The regulatory initiatives in the water services sector should support and integrate with water resource management.

**Dispute resolution.** The primary mechanism for the regulation of water services providers is by contract. Wherever practical, contractual disputes should be resolved through existing arbitration mechanisms rather than relying on the costly and lengthy process of litigation.

**Support rather than punish.** Wherever practical, the regulatory emphasis will be placed on support rather than punishment. This is in the spirit of co-operative governance. This will be promoted through positive incentives for improved performance and by assisting institutions where performance is less than adequate.

### 7.4.3 What is regulated?

In light of both the objectives and principles of regulation set out above, the key things to be regulated in the water services sector are the following:

- **Access to services:** Are appropriate investments being made to extend services to the poor?
- **Technical standards.** Are minimum technical standards being met?
- **Quality of service:** Are water services provided in a reliable manner? Is the quality of water adequate? Are consumers able to exercise their rights?
- **Pricing:** Are water services appropriately priced so as to ensure the affordability of basic services but also to promote economic and environmental objectives and to ensure the financial viability of water services providers?
- **Investments.** Do investment decisions take into account the long-term implications for sustainability?
- **Efficiency of service.** Are water services provided efficiently?

### 7.4.4 The regulatory framework

The key elements of the monitoring and regulatory framework are set out in **Figure 6**.

#### National government is the sector regulator

Within the framework of the Constitution, national government is the overall regulator of the sector. This regulatory role takes four primary forms:

- the setting of national norms and standards, including the specification of certain planning requirements and the regulation of tariffs;
- the regulation of water services authorities in terms of these norms and standards;
- the regulation of contracts between water services authorities and water services providers; and
- the direct regulation of organs of state (for example, government-owned and controlled water boards).

The key elements of the regulation of water services authorities by national government are as follows:

- **Provision of basic services.** Water services authorities must take reasonable steps to realise the right of everyone to have a basic water supply and sanitation service, subject to certain limitations, including the availability of resources and the right to limit or discontinue the provision of water services if there is a failure to comply with reasonable conditions set for the provision of services.
- **Standards.** Water services must be provided in terms of any national norms and standards that may be prescribed from time to time relating *inter alia* to water quality, effective and sustainable use of water and operational efficiency and viability.
- **Tariffs.** The tariffs must be set in terms of national norms and standards. (See section 5.)
- **Planning.** Water services must be provided in terms of a water services development plan. (See section 6.)

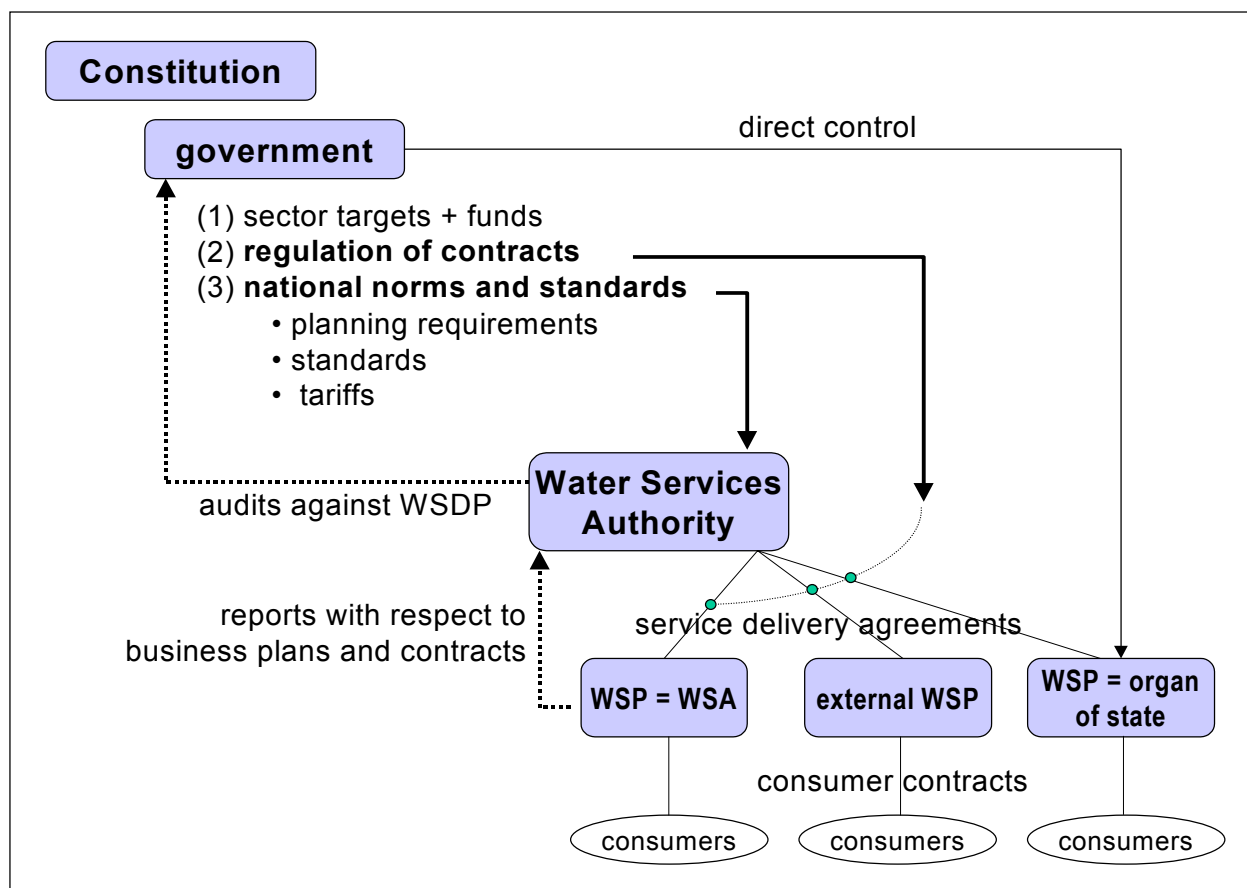


Figure 6: Water services monitoring and regulatory framework

- **Contracting with water services providers.** The process of contracting and the content of such contracts are regulated by national government.
- **Monitoring water services provider performance.** The water services authority must monitor the performance of any water services providers within its area of jurisdiction to ensure compliance with national norms and standards and the contract.
- **By-laws.** The minimum scope of the municipal by-laws related to water services provision is specified by national government.
- **Reporting.** There is a duty placed on water services authorities to report to national government on the performance of the water services authority as it relates to the water services development plan.

Water services authorities regulate the provision of water services

The key elements of the regulation of water services by water services authorities are as follows:

- **Accountability to citizens.** Democratic local government, as the water services authority, is ultimately accountable to its citizens for the effective delivery of services to meet its citizens' needs.
- **By-laws.** The municipality regulates water services within its area in terms of a set of by-laws that it must promulgate. These by-laws set out the general rights, duties and responsibilities of consumers with respect to the activities related to water services.
- **Water services provider contracts.** Where a municipality contracts with a water services provider, the municipality regulates the water services provider by contract. (Even where the municipality is itself the water services provider, the municipality must enter into a contract between the municipality as authority and the municipality as water services provider. See section 4.5.) Any contract developed must be consistent with national norms and

standards. All contracts are subject to national regulatory oversight.

- **Business plans.** All water services providers are required to prepare and report against business plans.
- **Consumer contracts.** All water services providers must enter into contracts with their consumers setting out the general and specific rights, duties and responsibilities with respect to the provision of water services to each consumer or group of consumers.
- **Reporting.** Water services providers have a duty to report regularly to water services authorities on operating performance vis-à-vis their contract and business plan.

#### 7.4.5 Enforcement of regulations

A critical question to be asked is: what happens if regulations are not adhered to? Or in other words, how can regulations be enforced? There are three different cases to consider:

1. A *consumer* breaks a by-law or fails to meet the contractual obligations with the water services provider.

This case is straightforward. The consequences and remedies must be provided for in terms of the relevant by-laws and consumer contract.

2. A *water services provider* fails to meet its contractual obligations.
  - The water services provider is a municipality (but not the relevant water services authority).
  - The water services provider is a municipal-owned entity.
  - The water services provider is a water board or government-owned entity.
  - The water services provider is a private company.
  - The water services provider is a community-based organisation.

These cases *should* be straightforward. A water services authority must have a contract (service delivery agreement) and this contract must specify the consequences and remedies where contractual obligations are not met.

3. The water services provider is the water services authority.

This case is dealt with below.

A *water services authority* fails to conform to legislative requirements.

Where a water services authority (or a water services authority acting as a water services provider) fails to conform to legislative requirements, then national and provincial government will, in the first instance, seek to remedy this situation through general and targeted support. (See section 7.2.) Where targeted support fails to achieve the desired results, then provincial and national government may intervene in terms of an intervention policy and strategy. (See below.)

#### 7.4.6 Interventions

**The regulation of one sphere of government by another.** In terms of the Constitution, local government is an independent sphere of government. The Constitution assigns to local government the executive authority for water supply and sanitation (water services), including setting tariffs and making by-laws. Provincial and national government may not take actions that undermine local government's ability to exercise this executive authority. This decentralised structure of governance relies on co-operation between the different spheres of government and means that a national regulator must respect the independent rights and duties of local government when regulating. Nevertheless, national government can enforce legislation provided due process is followed (see below).

**Enforcing legislation – inter-government issues.** National government and provincial governments are obliged to *support and strengthen* the capacity of municipalities and to *see to the effective performance* by municipalities of their functions, by regulating the exercise of this executive authority. In exercising these roles, national government must apply the principles of co-operative governance and intergovernmental relations as set out above and contained in Section 41 of the Constitution. These principles require all spheres of government (and all organs of state within each sphere) to co-operate with one another in mutual trust and good faith by assisting and supporting one another, avoiding legal action against one another; and making every reasonable effort to settle disputes and exhaust all other remedies before approaching a court to resolve a dispute.

**Legal action.** National government must, in the first instance, support municipalities in addressing the situation that gives rise to non-performance. Notwithstanding the above, in specific circumstances national government will need a mechanism that will allow it to act more decisively in respect of municipalities. If, despite all efforts, the local authority refuses to perform (or is negligent in performing), national government may resort to legal action. It is likely that this action will be of a civil rather than criminal nature which will allow for a range of remedies that may prohibit municipalities from undertaking certain actions or oblige municipalities to take certain actions.

**Direct interventions.** Interventions can range from providing assistance with drafting by-laws to running of the water services for a limited period of time. Although intervention by national and provincial governments is supported by the Constitution and provided for in legislation (Constitution, Sections 100 and 139; the Water Services Act, the Municipal Systems Act and the draft Municipal Finance Management Bill), direct intervention should be a last resort. Where interventions are undertaken, these must be co-ordinated through provincial government and DPLG. Section 63 of the Water Services Act needs to be reviewed to improve its effectiveness.

#### **7.4.7 Regulatory policy issues still to be resolved**

Although much of the overall regulatory framework as set out above is quite clear, there are a number of specific policy issues that still need to be resolved. These are discussed below.

**The regulation of water boards.** While water boards (as water services providers) will increasingly be regulated in terms of contracts with water services authorities, the specific approach and detail will depend on the future

institutional model for water boards (see section 4.6) as well as the broad framework for the regulation of state-owned enterprises.

**Regulatory independence.** Currently, the national regulatory function lies with the Minister of Water Affairs and Forestry and is exercised through DWAF. During the first round of consultations, many stakeholders expressed the view that an independent regulator would be preferable. However, in the short to medium term, there are no plans to take the regulatory function out of DWAF but rather to develop the function within DWAF. In the longer term the possibility of an independent regulator outside government should be reconsidered.

**Regulation of management contracts.** It is possible for water services providers to enter into management contracts which are significant both in terms of the value of the contract and the number of consumers affected. These management contracts are not directly regulated at present. There is a case to be made for direct national regulation (or at least regulatory oversight) of these contracts.

**Economic regulation.** The current regulatory framework provides no practical guidance on a number of key aspects of economic regulation including the following: how to determine efficient costs, what a reasonable rate of return on assets is, how depreciation should be calculated, how to value assets, and whether prices should be regulated based on rate of return of assets, cost-plus regulation, price cap or a cap on profits. Further work regarding this is to be done, and the basic management capacity of water services institutions is currently being developed.

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## 8. The Way Forward

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This is a draft white paper. Some key policy issues remain unresolved, including:

- the *ownership of assets* (should all water services assets be owned and controlled by water services authorities?);
- the future *role of water boards* (regional government-owned entities versus water services authority-owned entities);
- some aspects of the *regulatory framework*, particularly with respect to the regulation of water boards and policies and guidelines

with respect to economic regulation (the regulation of tariffs); and

- the policies governing the *transfer of DWAF-owned and controlled assets* to water services authorities.

This draft white paper will be used as the basis of a final round of consultation with all stakeholders. After this consultation process, a final white paper will be prepared for submission to Cabinet before the end of the year.



## Annexure 1

### Proposed minimum set of key performance indicators

(To be reported by water services authorities in terms of the annual water audit)

Name	Description	Definition
<b>Access to services</b>		
Access to water		% of households with at least a basic water service
Access to sanitation		% of households with at least a basic sanitation service
Free basic water		% of households with access to free basic water
Free basic sanitation		% of households with access to free basic sanitation
<b>Water management</b>		
WSP arrangements	Existence of WSP arrangements	% of the WSA area with WSP arrangements
Water losses	Unaccounted-for water	(Bulk water supplied less water sales) / (bulk water supplied)
Water is tested		Frequency of sampling for testing
Safe water	Water supplied is safe to drink	% of samples meeting standard
<b>Operations</b>		
Reliability of supply	Supply interruptions	Number of days in year during which supply is not available to consumers
Staffing	Adequacy and efficiency of staffing	Staff per 1000 water and sanitation connections
<b>Financial</b>		
Maintenance	Adequate expenditure on maintenance	Proportion of expenditure spent on maintenance
Depreciation	Income statement reflects cost of depreciation of assets	Depreciation charge as % of replacement cost of assets
Use of subsidies	Subsidisation of water services to the poor	% of equitable share spent on subsidising water services to poor households
Payment levels	Payment levels by consumers that are expected to pay	% payment rate by consumers that are expected to pay

## **Annexure 2**

### **List of Relevant Policies and Legislation Relating to Water Services**

#### **White Papers**

White Paper on Basic Household Sanitation – September 2001  
White Paper on Municipal Service Partnership – April 2000  
South Africa's National Housing Policy – March 2000  
White Paper on Environmental Management Policy – April 1999  
White Paper on Local Government – March 1998  
Transformation of the Health System White Paper – April 1997  
Water Policy White Paper – April 1997  
Water Supply and Sanitation Policy White Paper – November 1994

#### **Legislation**

The Division of Revenue Act 5 of 2002  
The Draft Health Bill, 2001  
The Local Government Financial Management Bill, 2000 (in Parliament)  
The Local Government: Municipal Systems Act 32 of 2000  
The Public Finance Management Act 1 of 1999  
The Local Government: Municipal Demarcation Act 27 of 1998  
The Local Government: Municipal Structures Act 117 of 1998  
The National Water Act 36 of 1998  
The Water Services Act 108 of 1997  
The Intergovernmental Fiscal Relation Act 97 of 1997  
The Local Government Transition Act 97 of 1996  
The Constitution of the Republic of South Africa Act 108 of 1996  
The Health Act 63 of 1977