



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 704

16

February
Februarie

2024

No. 50133



N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

ISSN 1682-5845



9 771682 584003

AIDS HELPLINE: 0800-0123-22 Prevention is the cure

IMPORTANT NOTICE:

THE GOVERNMENT PRINTING WORKS WILL NOT BE HELD RESPONSIBLE FOR ANY ERRORS THAT MIGHT OCCUR DUE TO THE SUBMISSION OF INCOMPLETE / INCORRECT / ILLEGIBLE COPY.

No FUTURE QUERIES WILL BE HANDLED IN CONNECTION WITH THE ABOVE.

Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS			
Water and Sanitation, Department of / Water en Sanitasie, Departement van			
4375	Water Services Act (108/1997): Water and Sanitation Services Policy on Privately Owned Land.....	50133	3

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF WATER AND SANITATION

NO. 4375

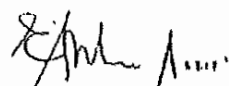
16 February 2024

WATER AND SANITATION SERVICES POLICY ON PRIVATELY OWNED LAND

I, Mr Senzo Mchunu, in my capacity as Minister of Water and Sanitation, and duly authorized by the Water Services Act, 1997 (Act No. 108 of 1997), hereby give notice of intention, to publish the Water and Sanitation Services Policy on Privately Owned as contained in the schedule hereto, for implementation.

All enquiries in connection with the Water and Sanitation Services Policy on Privately Owned Land can be directed to Mr Siboniso Ndlovu at NdlovuS2@dws.gov.za and/or Dr Luvuyo Jalisa at JalisaL@dws.gov.za

Yours sincerely



MR SENZO MCHUNU, MP
MINISTER OF WATER AND SANITATION
DATE: 07/02/24

WATER AND SANITATION SERVICES ON PRIVATELY OWNED LAND POLICY



WATER IS LIFE - SANITATION IS DIGNITY

South Africa is a water-scarce country, use water sparingly



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA



PREFACE



The *Mshengu and Others v Msunduzi LM and Others* case of 2019, is a sobering reminder of the injustices faced by people living on privately owned land in South Africa. It is a Triumph of redress of access to basic services. The Court reaffirms that access to basic water and sanitation is a fundamental human right enshrined in the Constitution therefore, ordering the Water Services Institutions to ensure the provision of basic water and sanitation services is realized. The Department of Water and Sanitation, therefore, takes immense pride in introducing the Water and Sanitation Services Policy on Privately Owned Land with the determination to ensure that every citizen enjoys the fundamental human right to clean water and adequate sanitation services.

This policy signifies a monumental stride forward in the unwavering commitment of the South African government to providing fair access to basic services for all citizens, especially those residing on privately owned land. It acknowledges the historically overlooked individuals on privately owned land so that they can be considered when water and sanitation services are provided. The Department of Water and Sanitation is resolute in rectifying this historical oversight.

Understanding the intricate nature of land ownership, the Department has carefully developed this comprehensive policy framework. This policy not only addresses the unique challenges faced by private

landowners and municipalities but also seizes opportunities for innovation and collaboration. The policy captures the Department of Water and Sanitation's vision for enhancing the management and delivery of water and sanitation services on privately owned land. This vision is rooted in an unwavering commitment to sustainability and the protection of our precious natural resources. One of the core objectives of this comprehensive policy is to establish an enabling regulatory environment for the provision of water services to residents living on privately owned land. It provides guidelines for the creation of a standard, conducive, and procedurally just administrative and institutional environment, aligning with existing legislation, to ensure the appropriate provision of water services to these residents.

Developed through extensive collaboration with stakeholders, experts, and the affected communities, this policy underscores the dedication of the South African government's dedication to an inclusive, efficient, and environmentally responsible approach. It outlines guidelines that foster partnerships between government agencies, local authorities, private landowners, and service providers. The Department of Water and Sanitation calls all stakeholders to actively participate in its implementation. Our shared responsibility is to ensure that every individual, no matter where they call home, can exercise their basic human right to access clean water and adequate sanitation.

MR SENZO MCHUNU, MP
MINISTER OF WATER AND SANITATION



PREFACE



The Water and Sanitation Services Policy on Privately Owned Land, shows the commitment of the South African government in ensuring equitable access to water and sanitation services for all, irrespective of land ownership. This policy is not merely a collection of policy positions; it is a dynamic plan, carefully designed to address the multifaceted challenges associated with water provision on privately owned land.

A cornerstone of this policy is the implementation of a national advocacy campaign, a proactive and essential initiative aimed at raising awareness about water services provision on privately owned land. Intensified awareness is key to bridging gaps in understanding, providing clear guidelines to private landowners and residents, and aiding municipalities in fulfilling their constitutional obligations in providing basic services in these areas. By fostering knowledge and cooperation, this campaign will serve as a catalyst for positive change, fostering a culture of shared responsibility and community engagement.

Additionally, this policy advocates for innovative funding mechanisms, recognising the need for creative solutions to ensure its successful implementation. By exploring avenues such as the Regional Bulk Infrastructure Grant (RBIG) and Water Services Infrastructure Grant (WSIG), the Department of Water and Sanitation aims to

mobilise resources effectively and efficiently. The Department acknowledges the need for flexibility in funding mechanisms and policies, including potential amendments to the Municipal Infrastructure Grant (MIG) formula. This flexibility allows us to adapt to evolving needs, ensuring that financial support remains responsive and adaptable.

Considering the limited practical experience in the field and the evolving institutional arrangements at the local level, this policy emphasises flexibility. Recognising the ever-changing landscape, our approach must be adaptable, allowing for continuous development and adjustment. Programs aimed at ensuring water services provision on privately owned land must be agile, capable of evolving with the shifting needs of our communities and the changing dynamics of land ownership.

I invite all stakeholders to engage actively with this policy, embracing its principles and contributing to its implementation. Together, we can transform challenges into opportunities, ensuring that every citizen, regardless of where they reside, enjoys the basic human right to clean water and proper sanitation. Let us work collaboratively, with flexibility and determination, to shape a future where no one is left behind.

MR DAVID MAHLOBO, MP
DEPUTY MINISTER OF WATER AND
SANITATION



PREFACE



In a world where access to clean water and adequate sanitation should be an undisputable right, we are acutely aware of the challenges faced by the most vulnerable members of our society – women and children. This policy stands as a testament to the South African government's unwavering commitment to addressing these pressing issues and ensuring a brighter, healthier future for all.

The plight of women and children, particularly those living on privately owned land, has been a matter of deep concern. Their struggle to access adequate water, sanitation, and hygiene facilities is a glaring reminder of the inequalities that persist in our society. It is our collective responsibility to eradicate these inequalities and create an environment where every individual, regardless of their background, can live a life of dignity and good health.

This policy must be seen as a beacon of hope and a catalyst for change. The Department of Water and Sanitation has carefully crafted this policy to specifically address the unique challenges faced by women and children in terms of accessing water and sanitation services. By placing a strong emphasis on their needs, the Department of Water and Sanitation is paving the way for a more inclusive and equitable society.

Furthermore, this policy does not stop at addressing immediate concerns. It is a

comprehensive framework that encompasses health and hygiene issues, ensuring that the well-being of our citizens remains at the heart of our initiatives. By promoting access to clean water and adequate sanitation, we are also safeguarding the health of our communities, preventing diseases, and promoting overall well-being.

I am confident that this policy will serve as a cornerstone for positive change, empowering women and children and enhancing their quality of life. As we embark on this transformative journey, I urge all stakeholders to join hands in its implementation.

MS JUDITH TSHABALALA, MP
DEPUTY MINISTER OF WATER AND
SANITATION



FOREWORD



The Water and Sanitation Services Policy on Privately Owned Land reflects the forward-looking approach of the Department of Water and Sanitation as we navigate the complex and ever-evolving

landscape of water and sanitation service provisions.

Water is a fundamental and finite resource, and its sustainable use is crucial for the well-being of our society and the protection of our environment. The challenges posed by climate change, population growth, and urbanization require us to be proactive and innovative in our policies and practices. This policy is a testament to our commitment to ensuring water security for all, while also respecting the rights of private landowners.

The Water and Sanitation Policy on Privately Owned Land encompasses some of the key reforms that the water sector is embarking on. It emphasizes the importance of equitable access to water and sanitation services, efficient water use, and integrated planning to ensure the long-term sustainability of our water supply.

This policy is not just a document; it is a roadmap towards a more resilient and inclusive water and sanitation provision. It recognizes the interdependence of water and sanitation and emphasizes the importance of holistic approaches to water and sanitation services on privately owned land.

Moreover, the Department of Water and Sanitation is committed to the efficient enforcement of this policy. Recognizing that policy formulation is just the initial step, we accentuate the importance of continual monitoring, evaluation, and adaptation for its success. Collaborating closely with stakeholders, such as private landowners and private land dwellers we are dedicated to ensuring the policy's effective implementation and its relevance in addressing emerging challenges. The Department of Water and Sanitation will employ all applicable legislative measures, including interventions in Water Services Authorities that do not comply with this policy, to guarantee its implementation.

I would like to express my gratitude to the dedicated professionals and experts who have contributed to the development of this policy. Their expertise and commitment are instrumental in shaping the future of water and sanitation in our nation.

The Water and Sanitation Services Policy on Privately Owned Land is a visionary step forward in our mission to access to water and sanitation services for all South Africans. Together, with the active engagement of all stakeholders, we can achieve a sustainable and prosperous future.

DR SEAN PHILIPS
DIRECTOR-GENERAL: DEPARTMENT OF
WATER AND SANITATION



Contents

PREFACE MINISTER	iii
PREFACE DEPUTY MINISTER	iv
PREFACE DEPUTY MINISTER	v
FOREWORD DIRECTOR-GENERAL	vi
1 EXECUTIVE SUMMARY	1
GLOSSARY OF TERMS	4
1 INTRODUCTION AND SUMMARY	9
2 PROBLEM STATEMENT	10
3 GUIDING POLICY PRINCIPLES AND LEGISLATIVE FRAMEWORKS.	12
3.1 Policy Principles	12
3.2 Constitution	13
3.3 Extension of Security of Tenure Act (ESTA), 1997 (Act No. 62 of 1997)	14
3.4 Water Services Act, 1997 (Act No. 108 of 1997)	14
3.5 National Water Act, 1998 (Act No. 36 of 1998)	15
3.6 Municipal Systems Act, 2000 (Act No. 32 of 2000)	15
3.7 Strategic Framework for Water Services 2003	16
4 POLICY PURPOSE	16
6 POLICY SCOPE	17



7	POLICY POSITIONS FOR WATER AND SANITATION SERVICES ON PRIVATELY OWNED LAND	18
7.1	Redress and Access	18
7.1.1	Problem Statement	18
7.1.2	Current Policy and Legislative Framework	18
7.1.3	Policy Positions	19
7.1	Right of Entry by Authorities	20
7.2.1	Problem Statement	20
7.2.2	Current policy and Legislative Framework	20
7.2.3	Policy Positions	20
7.3	Tenure	21
7.3.1	Problem Statement	21
7.3.2	Current Policy and Legislative Framework	22
7.3.3	Policy Positions	22
7.4	Advocacy, Awareness and Education	23
7.4.1	Problem Statement	23
7.4.2	Current policy and Legislative Framework	23
7.4.3	Policy Positions	23
7.5	Community Participation	24
7.5.1	Problem Statement	24
7.5.2	Current Policy and Legislative Framework	24
7.5.3	Policy Positions	25
7.6	Integrated Development Planning	25
7.6.1	Problem Statement	25
7.6.2	Current Policy and Legislative Framework	25
7.6.3	Policy Positions	26
7.7	Health and Environmental Impacts	27
7.7.1	Problem Statement	27



7.7.2	Current Policy and Legislative Framework	27
7.7.3	Policy Positions	28
7.8	Technical Considerations	28
7.8.1	Problem Statement	28
7.8.2	Current Policy and Legislative Framework	29
7.8.3	Policy Positions	29
7.9	Economically and Financially Sustainable Water and Sanitation Services on Privately Owned Land	31
7.9.1	Problem Statement	31
7.9.2	Current Policy and Legislative Framework	32
7.9.3	Policy Positions	33
7.10	Institutional Arrangements for Water and Sanitation Services on Privately Owned Land	35
7.10.1	Problem Statement	35
7.10.2	Current Policy and Legislative Framework	35
7.10.3	Policy Positions	36
8	IMPLEMENTATION APPROACHES	37
9	INFORMATION MANAGEMENT, MONITORING AND REGULATING PROVISION OF WATER SERVICES ON PRIVATELY OWNED LAND	38
10	ROLES AND RESPONSIBILITIES	40
10.1	Department of Water and Sanitation	40
10.2	Private Landowner/Water Services Intermediary	41
10.3	Department of Cooperative Governance and Traditional Affairs (COGTA)	41
10.4	Department of Employment and Labour (DEL)	42
10.5	Department of Agriculture, Land Reform and Rural Development (DALRRD)	42



10.6	Department of Human Settlements (DHS).....	42
10.7	Department of Public Works and Infrastructure (DPWI).....	42
10.8	Department of Science and Innovation (DSI).....	42
10.9	Department of Forestry, Fisheries and the Environment (DFFE).....	42
10.10	Department of Health (DOH).....	43
10.11	Department of Basic Education (DBE).....	43
10.12	Provincial Government.....	43
10.13	Water Services Authorities.....	43
10.14	Water Resource Management and other Water Services Institutions.....	43
11	OFFENCES AND INTERVENTION.....	44
12	BIBLIOGRAPHY.....	45

1 EXECUTIVE SUMMARY

This policy defines 'privately owned land' as any land that is not public land or controlled or leased by the State but is owned or is under the control of a single private individual or entity or group of individuals collectively. In most cases, these properties are located on the outskirts of urban settlements and outside of the bounds of the municipality services systems.

A privately owned land includes, amongst others, commercial farms, mine owned land, church owned land, privately owned enterprises, game parks, agricultural holdings, communal property association (CPA) and trust properties. Ownership of private land is a "bundle of rights" defining a relationship between private individual/s or entities regarding land, and not a direct relationship between private individual/s or entities and land. In common law, a 'real tangible immovable property' is a combination of interests on land (and improvements thereto) and 'real property' rights are rights relating to the land. These rights include ownership and usage. Private landowners can grant the usage and ownership rights to persons or entities in the form of leases, licenses and servitudes. It is therefore critical to highlight that this policy does not promote any form of land invasion.

Ensuring provision of water services to residents living on privately owned land involves provision of infrastructure to ensure access to potable water supply and safe disposal of human excreta. Health improvement is a broader process aimed at the individual, the household and the community – which must include health and hygiene education as well as sustainable improved toilet and water supply facilities.

A census survey must be conducted to determine how many people residing on privately owned land do not have access to a basic level of water service. Due to lack of this information, it has been difficult for Water Service Authorities (WSAs) to render appropriate water services to people living on privately owned land.

The Constitution enjoins municipalities to provide basic services such as sanitation and water supply. Where people are unable to access water and sanitation services directly, municipalities that are appointed as Water Services Authorities (WSA) must either provide these services directly or facilitate the delivery of such service provision via third parties, which the Water Services Act, 1997 (Act No. 108 of 1997) calls 'Water Services Intermediaries' and 'Water Services Providers'. Unfortunately, landowners who may want to fulfil the functions of a Water Services Intermediary or a Water Services Provider often do not receive sufficient guidance and/or support from the Water Services Authorities.

The Strategic Framework of Water Services (2003) provides that, "*Water Service Authorities have a responsibility to ensure that all people living within their jurisdiction (including those residents living*



on privately owned land) are progressively provided with at least basic water and sanitation services (first step up the ladder)". Many facets of the sustainable provision of water services to residents living on privately owned land are governed by existing water services and related free basic services legislation. Hence, this policy document should be read in conjunction with existing national Acts, policies, strategies and various sector guidelines.

Where a WSA cannot provide services directly to people living on privately owned land, it must enter into a service level agreement with an appropriate Water Services Intermediary or

Water Services Provider to do this on its behalf. For example, there may be people living on privately owned land owned by a farmer, but who do not work for the farmer. If the farmer agrees, the WSA can enter into a service level agreement with the farmer to provide water services to the people, as a Water Services Provider. The WSA or farmer will then bill and collect revenue from the people for the services provided, and the farmer (as the Water Services Provider) will provide and maintain the water services and receive funding for this from the WSA if the WSA does the billing. If the people were working for the farmer, then the WSA would give the farmer an instruction, as a Water Services Intermediary, to provide basic water services to the people.

This policy defines the obligations of the Department of Water and Sanitation (DWS) in regulating and supporting the provision of water services to residents living on

privately owned land. It also establishes basic principles to be applied to achieve access to water-related infrastructure, establishment of institutional arrangements, financial and internal and external coordination mechanisms, and implementation responsibilities.

As a holistic policy with the intention of unifying and simplifying the provision and regulation of sustainable and equitable water services to residents living on privately owned land, one of the core objectives of the policy is to establish an enabling regulatory environment for the provision of water services to residents living on privately owned land. This includes providing guidelines for creation of standards, conducive and procedurally just administrative and institutional environment – of which all must align with existing legislation.

The policy principles contained in the document should be applied across households (rural and urban), be it water services are provided for individual private land households or as a system for communities living on private land. These principles emphasise that basic water and sanitation services are a human right, must be equitable and sustainable, must embrace collaboration and integrated development principles (including community and stakeholder participation) and must promote improved health and environmental integrity.

As the sector leader, DWS is mandated to support and regulate the provision of water services to residents living on privately owned land. Therefore, it is the responsibility of DWS to communicate this policy to all relevant stakeholders and ensure that it is implemented at



national and regional levels, so that its objectives can be achieved.

Implementation of a national advocacy campaign to increase awareness regarding the provision of water services on privately owned land will be imperative to create heightened levels of awareness, to provide clear guidelines to private landowners and constituents, and to assist municipalities in fulfilling universal basic service obligations on privately owned land.

The policy also proposes that various funding mechanisms be explored and that some of current funding models (i.e., the Regional Bulk Infrastructure Grant (RBIG) and the Water Services Infrastructure Grant (WSIG) be amended to help with implementation of various policy positions. The application of this policy does not necessitate any changes in national sector legislation but may require changes to funding mechanisms and policies, e.g., the MIG formula. It must be noted that other sources of revenue (including municipal generated revenues) are available for Water Services Authorities to provide water and sanitation services and to perform operation and maintenance activities in terms of rehabilitation of infrastructure.

Given the limited practical experience in the provision of water and sanitation to people living on privately owned land (coupled with evolving institutional arrangements at local level), programmes aimed at ensuring water services provision on privately owned land must be flexible enough to develop and change over time.



GLOSSARY OF TERMS

The section below aims to outline some general terms, concepts and definitions relating to provision of water services to residents living on privately owned land. In instances where terms have already been defined in existing legislations or policies, these documents are referenced in the table below:

Term	Reference	Definition
"Basic Sanitation Facility"	SFWS (2003)	The infrastructure necessary to provide a sanitation service which is safe, reliable, private, protected from the weather, ventilated, keeps smells to the minimum, is easy to keep clean, minimises the risk of the spread of sanitation-related diseases by facilitating the appropriate control of disease-carrying flies and pests, and enables safe and appropriate treatment and/or removal of human waste and wastewater in an environmentally sound manner.
"Basic Sanitation Service"	SFWS (2003)	The provision of a basic sanitation facility which is easily accessible to a household, the sustainable operation of the facility, including the safe removal of human waste and wastewater from the premises where this is appropriate and necessary, and the communication of good sanitation, hygiene, and related practices.
"Basic Water Services"	SFWS (2003)	A basic water supply service and/or a basic sanitation service.
"Basic Water Supply Facility"	SFWS (2003)	The infrastructure necessary to supply 25 litres of potable water per person per day supplied within 200 metres of a household and with a minimum flow of 10 litres per minute (in the case of communal water points) or 6 000 litres of potable water supplied per formal connection per month (in the case of yard or house connections).



Term	Reference	Definition
"Basic Water Supply Service"	SFWS (2003)	The provision of a basic water supply facility, the sustainable operation of the facility (available for at least 350 days per year and not interrupted for more than 48 consecutive hours per incident) and the communication of good water-use, hygiene, and related practices.
"Commercial Farmer"	Local Government: Municipal Property Rates Act (2004)	A commercial farmer, for purposes of this policy document, means an owner of agricultural property in an area who is a <i>bona fide</i> farmer as reflected in section 15(2W) of the Property Rates Act, excluding a land reform beneficiary as defined in section 1(1) of that Act.
Consent	Extension on Security of Tenure Act	Means express or tacit consent of the owner or person in charge of the land in question.
Employee	Basic Conditions of Employment Act (1997)	The employee is any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive any remuneration; and any other person who in any manner assists in carrying on or conducting the business of an employer.
Dweller¹		A person who resides in a land that belongs to another person and has consent to do so.
"Farm Worker Household"		A farm worker household in terms of this policy document, means a household in which at least one member is a farm worker (as defined above).

¹Words such "Dweller", "Occupier", and "People living on privately owned land" will be used interchangeably as they mean the same thing within the context of this policy.



Term	Reference	Definition
"Farm Worker"		A farm worker, in terms of this policy document, means a farm worker employed by a commercial farmer (as defined above)
"Indigent"	National Framework for Municipal Indigent Policy	Indigent means lacking the necessities of life. The definition of indigent from the National Framework for a Municipal Indigent Policy outlines sufficient water and basic sanitation as one of the necessities of life. The National Treasury's definition of a 'poverty line' is also acknowledged to determine indigent.
Integrated Development Plan	Local Government Transition Act (1993)	A development plan which deals with the integration of different strategies and sector plans relating to development, such as economic, spatial, social, infrastructural, housing, institutional, fiscal, land reform, transport, environmental and water plans, to attain the optimal allocation of scarce resources in a particular geographic area and includes an integrated development plan as defined in section 10B of the Local Government Transition Act, 1993 (Act 209 of 1993).
Interim Water and Sanitation Services		An interim water and sanitation service is "a temporary water and sanitation service which serves as a measure to provide interim water and sanitation services while repairs and/or reconstruction of a water services failure/interruption/breakdown are in effect". This measure should ensure that interim water services are within a reasonable walking distance and comply with water quality standards (from a health point of view); and that interim sanitation services ensure privacy to the user, are readily accessible and are in close walking distance. It should also provide for safe disposal of human waste – including hygiene and end-user education".



Term	Reference	Definition
Labour Tenant	Land Reform Act (1996)	The definition of "labour tenant" in Section 1 of the Land Reform (Labour Tenant) Act No 3 of 1996 requires that a person asserting rights as a Labour tenant show that: • They reside on a farm or have a right to reside on a farm • They have cropping or grazing use rights, and in return for the rights to reside and use the land in provides labour or has provided labour to the owner or lessee of that owner; • A second or third-generation family member who has had such rights • on this farm or another farm. • This can include appointed successors as per Act.
Occupier / Dweller (define)	Extension of Security of Tenure Act (1997)	To qualify as an 'occupier' a person must be 'residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so.
"Privately Owned Land"²	DWA (2011)	Privately Owned land is any land that is not public land or land owned, controlled, or leased by the state but is owned or under the control of a single private individual or entity or group of individuals collectively. In most cases, these properties are far away from the municipality and its services systems.
"Water Services Authority"	SFWS (2003)	Any municipality that has the executive authority to provide water services within its area of jurisdiction in terms of the Municipal Structures Act 118 of 1998 or the Ministerial authorisations made in terms of this Act.

²This policy does not apply to land owned for residential purposes, such land that is commonly found in urban areas.



Term	Reference	Definition
Water Services Development Plan (WSDP)	Water Services Act 108 1997	A plan that must be developed and adopted by the WSAs within its area of jurisdiction, which include existing and future waters services projects
“Water Services Intermediary”	SFWS (2003)/ WATER SERVICES ACT (1997)	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 main object of that contract.
“Water Services Provider”	WATER SERVICES AUTHORITY (1997) SFWS (2003)	Water services provider” means any person who provides water services to consumers or to another water services institution but does not include a water services intermediary. A Water Services Provider (WSP) is: • Any person who has a contract with a Water Services Authority or another WSP to sell water to and/or accept wastewater for the purposes of treatment from that authority or provider; and/ or • Any person who has a contract with a Water Services Authority to assume operational responsibility for providing water services to one or more consumers or end users within a specific geographic area; or • A Water Services Authority that provides either or both above services itself.



1 INTRODUCTION AND SUMMARY

In terms of the Constitution and the Water Services Act, all South Africans have a right of access to basic water and sanitation services. However, there are many people living on privately owned land in South Africa who do not have access to basic water and sanitation services. This is because most Water Services Authorities (WSAs) do not have an official policy to guide the provision of basic water and sanitation services to people living on privately owned land. The purpose of this national policy is thus to guide WSAs as to how to go about putting in place customised local policies and bylaws to address this challenge.

A 2019 Pietermaritzburg High Court case (*Zabalaza Mshengu, Thabisile Ntombifuthi Ngema, AFRA versus uMsunduzi Local Municipality, uMshwathi Local Municipality, uMgungundlovu District Municipality, Department of Water and Sanitation, Department of Cooperative Governance and Traditional Affairs and others*) has set a precedent for protecting the rights of farm dwellers who were being denied access to basic water and sanitation services by farm owners. The Court ordered that the on-going and persistent failure by WSAs to provide communities living on privately owned land within their areas of jurisdiction with access to basic sanitation and sufficient water is inconsistent with the Constitution of the Republic of South Africa, 1996, particularly sections 9, 10, 24, 27(1)(b), 33, 152, 153, 195 and 237. The Court directed the farm owners to ensure that the farm occupiers and labour tenants have access to basic water and sanitation services.

In response to the challenges faced by people living on privately owned land, DWS has developed this holistic policy with the intention of simplifying the provision of sustainable and equitable water services to residents living on privately owned land.

One of the core objectives of this policy is to establish an enabling policy environment for provision of water services to residents living on privately owned land. This includes setting up standards and creating a conducive and procedurally just administrative and institutional environment for provision of sustainable water and sanitation services to residents living on privately owned land. These efforts should align with pertinent legislation towards creating a holistic policy that will serve as a blueprint for providing such services.

The Strategic Framework of Water Services (2003) provides a policy detail in reference to legal requirements of the Water Services Act. It states that "Water Service Authorities have a responsibility to ensure that all people living within their jurisdiction (including those residents living on privately owned land) are progressively provided with at least basic water and sanitation services (first step up the ladder)". Where people are unable to access water and sanitation services directly from a Water Services Authority (WSA), then the WSA must either provide these services directly, or facilitate the provision of such services via third parties, which the Water Services Act refer to as 'Water Services Intermediaries' and 'Water Services Providers'.



This means that, where a WSA cannot provide services directly to people living on privately owned land, it must enter into a service level agreement with an appropriate Water Services Intermediary or Water Services Provider to do this on its behalf.

There may be people living on privately owned land owned by a farmer, but who do not work for the farmer. Regarding this possibility (and if the farmer agrees), a WSA can enter into a service level agreement with the farmer to provide water services to the people, now as a Water Services Provider. The WSA will then bill and collect revenue from the people for services provided. The farmer (as the Water Services Provider) will provide and maintain the water services and receive funding for this from the WSA, if the WSA does the billing. If the people are working for the farmer, then the WSA would give the farmer an instruction (as a Water Services Intermediary) to provide basic water services to the people.

The draft policy covers all privately owned lands, not just farms. The policy defines a privately owned land as 'any land that is not public land or land owned, controlled or leased by the state but is owned or is under the control of a single private individual or entity or group of individuals collectively. In most cases, these properties are far away from the municipality and its services systems. The range of contexts of privately owned land includes, amongst others: a) Commercial farms; b) Mine owned land; c) Church owned land; d) Industrial owned land including privately owned enterprises; e) Game parks; f) Agricultural holdings; g) Communal Property Association (CPA); and h) Trust properties.

2 PROBLEM STATEMENT

There is no official record of people residing on privately owned land that do not have access to a basic level of water service. However, many of the people residing on privately owned land are also private land dwellers who are not employed by private landowners. Therefore, it is important that this policy distinguishes between an "employee of a private landowner" and a "dweller not working for a landowner".

In terms of employees, the landowner has a responsibility to provide water services to the employees and their families residing on the land in terms of their employment contract. The mechanism for enabling such provision is through the concept of 'Water Services Intermediary (WSI)' as defined by the Water Services Act (Act No. 108 of 1997). Unfortunately, the WSI concept has been narrowly adopted thus far because of a lack of a policy framework. Measures to capacitate private landowners who may want to fulfil their functions as Water Services Intermediaries (WSIs to their employees – as defined in the Water Services Act (Act No. 108 of 1997) – should be put in place by the relevant WSA.



There is a major challenge in terms of the WSA planning for and providing sustainable water services to these dwellers since the WSI mechanism is not well understood by both the WSAs and the landowners. In addition, the situation surrounding the level of security of tenure afforded to these dwellers could also be uncertain. In such instances, the legislative prescripts of a Water Services Provider (WSP) must be applied, meaning a WSA must ensure that the landowner or any other competent person or authority or body becomes a WSP through a contract to ensure that water and sanitation services are provided to those dwellers.

Residents living on privately owned land with inadequate water supply may be using unsafe sources of raw water. Those with inadequate sanitation services may be using the bucket system, unimproved pit toilets or open defecation. WSAs must address this problem through applying this policy.

The effects of the above-mentioned water supply and sanitation problems are as follows:

- *Health impact* - the impact of inadequate water services on the health of the poor is significant in terms of the quality of life, education and development potential of people;
- *Economic impact* - poor health keeps people in a cycle of poverty and lost income. The national cost of lost productivity, reduced educational potential and curative health care is substantial; and
- *Environmental effects* - inadequate water supply and sanitation facilities lead to dispersed pollution of water sources, which increases the cost of downstream water treatment and runs the risk of waterborne diseases for people who use untreated water.

The Water Services Act, 1997 (Act No. 108 of 1997) introduced the concepts of 'Water Services Intermediaries' and 'Water Services Providers' with the intention of creating a mechanism that would assist water services authorities in ensuring adequate, effective, efficient and affordable water services to all people within their areas of jurisdiction. This includes individuals residing on someone else's private property that do not have access to water services through a connection provided by a Water Services Authority. Water Services Intermediaries require a written (explicit) or verbal (implicit) contract with residents whilst a formal agreement must be in place between Water Services Providers and Water Service Authorities for services to be provided.

It is necessary to capacitate landowners who may want to fulfil the roles of Water Services Intermediaries or Water Service Providers as defined by the Water Services Act (Act No. 108 of 1997) by providing guidance through developing implementation guidelines with norms and standards. These guidelines will be put in place by DWS following the approval of this policy.



3 GUIDING POLICY PRINCIPLES AND LEGISLATIVE FRAMEWORKS

3.1 Policy Principles

The following policy principles should be applied across all households in privately owned land as defined by this policy:

- a) *Basic water and sanitation services are a human right* - Government, in fulfilment of its obligation, must create an enabling environment through which everyone can access basic water and services.
- b) *Basic water and sanitation services must be equitable* - A careful balance needs to be achieved between what is affordable to households, communities and the national economy. The limited national resources available to support the provision of basic services should be equitably distributed throughout the country according to levels of population and development. Beneficiaries of the water and sanitation management system shall contribute to the cost of its establishment and maintenance on an equitable basis. Indigent households will be provided with free basic water and sanitation services.
- c) *Basic water and sanitation services must be sustainable* - Water has an economic value and the way in which basic water supply and sanitation services are provided must consider the growing scarcity of good quality water in South Africa. The true value of these services must be reflected in a manner that does not undermine long-term sustainability which addresses the total life cycle operating and maintenance requirements and economic growth - this means that all basic water services must be affordable to the service provider.
- d) *Basic water and sanitation services provision must embrace principles of collaboration and integrated development* - Water services provision is not possible in isolation from other sectors since there is a direct relationship between water supply and sanitation and their combined impact on health, the environment and the economy and coordination is, therefore, necessary among different departments, all spheres of government and other stakeholders.
- e) *Basic water and sanitation services provision must include community and stakeholder participation* - Improvements in health through improved water services provision are most likely to be achieved when the beneficiary households are fully involved, and this must be emphasised through private land water service awareness programmes. Through the dissemination of appropriately compiled information, the hopes, and fears of specific target groups - intermediaries in particular - can be addressed and in turn, the increased involvement and participation of private land residents and owners in the gathering of data, implementation, maintenance, and monitoring of levels of water services provision will help to further enhance water services provision on privately owned land.



- f) *Basic water and sanitation service provision supports improved health* - water service provision is far more than the construction of "taps and toilets". The system is a process of infrastructural improvements which must be accompanied by promotional activities as well as health, hygiene and end-user education – the aim being to encourage and assist people to improve their own health and quality of life.
- g) *Basic water and sanitation service provision promotes environmental integrity* - the environment must be considered in all developmental activities, and appropriate protection of the environment must be applied, including, if necessary, prosecution under the law. Where identified activities are applicable to and triggered by developments in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998), Environmental Impact Assessment Regulations, Listing Notices, and Environmental Authorisation should be obtained. Similarly, any required permits or licences in terms of the specific environmental management Acts should be obtained, where required. Water supply and sanitation services which have negative impacts on the environment cannot be considered sustainable, and polluters must pay for mitigating the impact of their pollution, as it has an economic cost. Environmental integrity also should touch on the scarcity of water and that often protection of water sources may lead to sustainability but may not always lead to affordable access to all.

3.2 Constitution

With the adoption of the Constitution in 1996, the responsibility for delivery of basic services was decentralised to local government – with municipalities becoming the main drivers for delivery of water, sanitation and refuse removal. Sections 153, 193 and 273 of the Constitution compel municipalities to structure and manage their administration, budgeting and planning processes to prioritise the community's basic needs and thus promote the community's social and economic development.

The relevant constitutional rights (from the Bill of Rights) which talk to the provision of services to people living on privately owned land include:

- a) Section 9 – Right to Equality
- b) Section 10 – Right to Human Dignity
- c) Section 24 – Right to environment
- d) Section 25 – Right to Property
- e) Section 26 – Housing
- f) Section 27 – Right to access to sufficient food and water
- g) Section 33 – Right to just administrative action
- h) Section 36 – Limitation of the Rights



3.3 Extension of Security of Tenure Act (ESTA), 1997 (Act No. 62 of 1997)

ESTA was introduced by Government as an intervention to establish the balance between the opposing interests of farmers and farm workers and dwellers. The legislation was not aimed at stopping evictions but merely to regulate them, ensuring that all evictions were conducted in a legally valid manner – with a court hearing considering all relevant factors.

The following sections relate to this:

- a) Section 4 of ESTA provided options for long-term tenure security, for farm dwellers to benefit from land redistribution and to acquire land and housing of their own.
- b) Section 6(2)(e)(f) of the Extension of Security of Tenure Act ("ESTA"), 1997 (Act No. 62 of 1997) grants occupiers the right 'not to be denied or deprived of access to water' and the right 'not to be denied or deprived of access to educational or health services'.

ESTA makes it indefensible for landowners to prevent the municipality from taking steps to provide water, sanitation or refuse collection on their properties, and obliges the landowners to act reasonably in reaching agreements with the municipality regarding the provisions of services.

3.4 Water Services Act, 1997 (Act No. 108 of 1997)

As part of its obligation to take legislative measures to progressively realise the right to access water, the State passed the Water Services Act, in 1997. Not only does the Water Services Act aim to acknowledge the right to access water; it also explicitly aims to acknowledge the right to basic sanitation. These rights can be realised only through enforcement, monitoring and compliance to Section 9 on technical norms and standards and section 10 on water services pricing – and also to the following sections:

- a) Sections 3 (1) and (2) of the Water Services Act, 1997 (Act No. 108 of 1997) state that everyone has a right to access a basic water supply and a basic sanitation service. This section is related to section 27 of the Constitution.
- b) Section 9 of the Water Services Act, 1997 (Act No. 108 of 1997), gives the Minister of Water and Sanitation the power to prescribe compulsory standards.
- c) Section 11(1) provides that Water Services Authorities have a duty to consumers and potential consumers in their areas of jurisdiction to ensure efficient, affordable, economical, and sustainable access to water services.
- d) Section 22 provides the approval to operate as a water services provider and emphasises that water services providers must get approval from water services authorities.
- e) Section 24 provides for registration of water services intermediaries and that a water services authority may, in its bylaws, require the registration of water services intermediaries or classes of such intermediaries within its area of jurisdiction.



- f) Section 25 expands on the duties of Water Services Intermediaries, including providing quality, quantity and sustainable water services that meet the minimum standards proscribed by the Minister of Water and Sanitation (and any additional minimum standards prescribed by the relevant water services authority). A Water Services Intermediary, in executing its duties, may not charge for water at a tariff which does not comply with any norms and standards prescribed under the Water Services Act and/or any additional norms and standards set by a relevant Water Services Authority.

3.5 National Water Act, 1998 (Act No. 36 of 1998)

The Act considers, amongst other factors, the following aspects (which directly support the provision of water for multiple uses):

- Promoting equitable access to water;
- Redressing the results of past racial and gender discrimination;
- Promoting the efficient, sustainable, and beneficial use of water in the public interest;
- Facilitating social and economic development; and
- Providing for the growing demand for water use.

3.6 Municipal Systems Act, 2000 (Act No. 32 of 2000)

The Municipal Systems Act is the enabling legislation which delineates the duties of Municipalities. It was enacted to: "provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities and ensure universal access to essential services that are affordable to all".

The following sections are of vital importance:

- a) Section 4 speaks directly to Section 27 of the Constitution, explicitly binding municipal councils to the progressive realisation of access to water within its jurisdiction.
- b) Section 5(1) of the Municipal Systems Act expressly guarantees communities the correlative right to meaningful engagement, involvement, and communication. It also guarantees "access to municipal services which the municipality provides, provided the duties set out in subsection (2)(b) are complied with".
- c) Section 26 provides that; to give effect to these duties and the progressive realisation of socio-economic rights, municipalities are also obligated to draft and produce integrated development plans (IDPs). These plans are supposed to map out how a municipality is to manage its resources in a way that develops its constituent communities and addresses those communities' needs.
- d) Section 73 obliges municipalities to ensure "that all members of the local community have access to at least the minimum level of basic municipal services".



- e) Sections 76-81 talk about the different mechanisms that can be used for the provision of services.
- f) Municipalities are therefore required to focus on the provision of these basic services and may not prioritise other services at the expense of basic services.

3.7 Strategic Framework for Water Services 2003

The driving force behind this policy document is the legal obligation placed on Water Service Authorities by the Strategic Framework for Water Services to ensure that the service needs of all people living within their municipal jurisdiction are addressed, even though the current status points otherwise. Where people are unable to access water and sanitation services directly, it is the duty of a Water Services Authority to either provide these services to the boundary of a stand, or to facilitate the delivery of such service provision via third parties.

Many facets of sustainable provision of water services to residents living on privately owned land are governed by existing water services and related free basic services legislation. Hence, this policy document should be read in conjunction with other national Acts, policies, strategies and sector guideline documents.

4 POLICY PURPOSE

The purpose of this policy is to articulate the government's policy intent for provision of water services to residents living on privately owned land and to provide a framework for the development of strategies to improve water services provision on privately owned land. Specific implementation strategies would have to be formulated at provincial, district and local municipal levels of government.

This policy seeks to improve the living conditions of the South African people living on privately owned land through the use of Water Services Providers and Water Services Intermediaries as stipulated in Chapter IV and Chapter V of the Water Services Act, respectively.

The policy is further supported by the Strategic Framework for Water Services which states that "*Water services authorities have a responsibility to ensure that all people living within their jurisdiction (including those residents living on privately owned land) are progressively provided with at least basic water and sanitation services (first step up the ladder)*".



5 POLICY OBJECTIVES

As a comprehensive policy that is intended to simplify the delivery and regulation of sustainable provision of water services to residents living on privately owned land, the objectives of the policy are to:

- g) Establish an enabling regulatory environment for provision of water services to residents living on privately owned land under DWS's mandate as a sector leader.
- h) Determine the internal mechanisms, resources and decision-making criteria required to regulate accessibility and entitlements to water resources and the associated services infrastructure required by the "private land" sector;
- i) Promote equity in the provision of water and sanitation services on privately owned land;
- j) Emphasise the need for conservation of water resources and the use of appropriate technologies to provide water and sanitation services on privately owned land in an environmentally responsible manner based on best management practices.
- k) Attain compatible integration of the use of water resources for provision of at least a basic level of water service to residents living on privately owned land with other water uses and balancing different uses.
- l) Emphasise the need for establishment of intergovernmental and cross-sectoral linkages, communication networks and cooperative governance arrangements. These linkages should straddle the public and private sectors and should lend towards clarification of roles of Water Service Authorities, Water Service Intermediaries and Water Services Providers.
- m) Allow for alignment of DWS policies and protocols with legislation of other departments in relation to provision of water and sanitation services on privately owned land.
- n) Identify internal mechanisms for dealing with information that relates to provision of water and sanitation services to residents living on privately owned land and ensure that DWS, in partnership with various sector departments and local government, become increasingly aware of this target group.
- o) Emphasise the need for a regular review of this policy.

6 POLICY SCOPE

This policy defines the water sector's obligations to regulate and support the provision of water services to residents living on privately owned land, taking advantage of the water services intermediary approach to ensure provision of these services. It establishes basic principles to be applied for achieving access to water infrastructure, for coordinating institutional arrangements, for establishing financial coordination mechanisms (internal and external), and



for implementing responsibilities. Therefore; to achieve sustainable and equitable provision of water and sanitation services to all residents living on privately owned land, this policy must be applied.

7 POLICY POSITIONS FOR WATER AND SANITATION SERVICES ON PRIVATELY OWNED LAND

7.1 Redress and Access

7.1.1 Problem Statement

Many people living on privately owned land are still deprived of access to basic water supply and sanitation services, even under this democratic dispensation. Basic access to water services and resources on privately owned land in South Africa can – in an integrated manner – contribute to local, regional and national economy, by: providing employment, inspiring rural food security, entrenching socio-economic development, increasing participation opportunities, creating business opportunities, giving chance to skills development and empowerment. The provision of water services and allocation of water resources must, however, take account of unique needs of socially and economically disadvantaged communities, not forgetting the previously disadvantaged sectors in terms of the South African demography.

7.1.2 Current Policy and Legislative Framework

The Bill of Rights in the Constitution gives everyone the right to sufficient water, dignity, privacy, equality, a safe environment, health and life. If people living on privately owned land are denied access to basic water and sanitation services, then these rights are violated.

The Water Services Act 108 of 1997 places an obligation on Water Service Authorities to ensure that the service needs of all people living within their municipal jurisdiction are addressed.

The Extension of Security of Tenure Act (Act No 62 of 1997) chapter two refers to the measures needed to facilitate long-term security of tenure for occupiers.

The Extension of Security of Tenure Act 62 of 1997 ("ESTA") was introduced by Government as an intervention to establish a balance between the opposing interests of farmers, farm workers, and dwellers. The legislation was intended to ensure that all evictions were conducted legally, with a court hearing ruling in favour of consideration of all relevant factors before these are conducted. Section 4 of ESTA provided options for long-term tenure security, for farm dwellers



to benefit from land redistribution and to acquire land and housing of their own. At the same time, section 6(2)(e)(f) of the Extension of Security of Tenure Act 62 of 1997 (the ESTA) grants occupiers the right 'not to be denied or deprived of access to water' and the right 'not to be denied or deprived of access to educational or health services.

The Spatial Planning and Land Use Management Act 16 of 2013 also seeks to address past spatial regulatory imbalances. Nevertheless, many people in South Africa continue to live and work in places defined (and influenced) by past spatial planning and land use laws and practices which are based on racial inequality, segregation and unsustainable settlements.

7.1.3 Policy Positions

In pursuit of redress and improving access to water services to residents living on privately owned land, DWS – in partnership with Water Services Authorities, Water Services Providers and Water Services Intermediaries – must endeavour to:

- a) Ensure that water use licences for commercial water users are reviewed to have a condition that compels farmers and landowners set aside for their employees and families a portion of water for basic services, and that which complies with national standards for drinking water.
- b) Give effect to the Strategic Framework for Water Services, which stipulates that Water Services Authorities must ensure that water services are provided to dwellers living on privately owned land (who are not employees of landowners) within their jurisdiction, either directly or using a water services intermediary or water service provider approach.
- c) Set up a system to evaluate the potential use of water resources and the associated water-related infrastructure for ventures that embrace equity, rural community upliftment, food security and public-private partnerships; and
- d) Accelerate assistance to other Government departments and non-governmental organisations in their equity and redress efforts through provision of water services to residents living on privately owned land by assisting with applications and authorisations for sustainable use of water, other natural resources and the associated infrastructure for domestic and livelihood purposes.

DWS, in partnership with other water services and other water resources management institutions, must cater for multiple water needs in their bulk water infrastructure projects, including water services to privately owned land residents.



7.1 Right of Entry by Authorities

7.2.1 Problem Statement

Water Services Authorities are often unable to access private properties to provide basic services to people living on private land. Landowners cite Sections 14 and 25 of the Constitution as the basis for denying water services institutions access to their land for purposes of providing basic services. This leads to people living on privately owned land being denied access to basic water and sanitation services, which violates their right to dignity.

7.2.2 Current policy and Legislative Framework

Section 36 of the Constitution discusses issues of 'limitation of rights' and the right to water supersedes the rights to privacy and property. Chapter 13 of the National Water Act, 1997 (Act No. 36 of 1998) addresses issues of 'access to' and 'rights over land'. The Act allows any authorised person to enter and inspect the property for several purposes associated with its implementation.

Section 80 of the Water Services Act deals with the issue of entry and inspection of the property, and gives any person authorised by the Minister, Province¹, or any Water Services Institution to enter any property and inspect water services works.

Section 2(d) of the Systems Act indicates that local community members have a duty to allow municipal officials reasonable access to their property for performance of municipal functions.

7.2.3 Policy Positions

- a) Any person authorised or any water services institution may – at any reasonable time and without prior notice – enter any property to conduct official duties, or after notifying the owner or occupier of the property.
- b) Any person entering the property must identify himself or herself and present his or her official authorisation or card to the owner of the property prior to conducting his/her official duties.
- c) Municipalities and other water service authorities must review their bylaws and add a legal prescript for them to have a right to enter any private land to provide basic services and other water and sanitation-related activities.

¹Means Member of the Executive Council



- d) The 'right of entry' in the bylaws of WSAs must indicate that there will be processes followed to ensure that the safety of landowners and dwellers is guaranteed. This includes officials and authorities making appointments prior to their visits and producing evidence of identity on arrivals.
- e) All regulations on the right of entry must be applied as indicated in Section 80 of the Water Services Act and Chapter 13 of the National Water Act.
- f) The requirements for appointments prior to visits to the private land will not be applicable in cases of emergency. However, proof of identity on arrivals will need to be produced even under such circumstances.
- g) The right to property must be read in conjunction with Section 6(2) (e) and (f) of the Extension of Security of Tenure Act, which alludes that the occupier shall have the right not to be denied or deprived of access to water, and not to be denied or deprived of access to educational or health services.
- h) Landowners must be cooperative in supporting the right of entry to their properties in the provision of basic services.
- i) In cases where the private landowner refuses any WSA entry to the property for provision of water and sanitation services, the WSA must institute other recourse – such as a court interdict against the landowner and/or other legal instruments and servitudes, including expropriation.
- j) Section 36 of the Constitution discusses the limitation of rights, and the right to water supersedes the right to privacy and property.

7.3 Tenure

7.3.1 Problem Statement

There is generally greater investment in water services infrastructure where people have secure tenure or own their dwellings. Owner-occupiers are also more likely to invest in additional improvements. Traditionally, private land residents do not own their property; in some cases, they do not pay rent and rely on rudimentary or hazardous methods of accessing water supply and disposing of human waste; or they rely on the government to provide at least basic access to water services infrastructure.

Land Tenure is a challenge faced by many Water Services Authorities and water services institutions in relation to facilitating access to basic water supply and sanitation services for people living on privately owned land. Few water services institutions are willing to provide basic water and sanitation services to people living on privately owned land, because there are always delays in determining the people's tenure arrangements. Unless goal-directed initiatives are put in place to address the security of tenure and the provision of housing to the indigent, significant problems that frustrate attempts for provision of water services to residents living on privately owned land will remain a constant constraint to reaching the water services target.



7.3.2 Current Policy and Legislative Framework

Section 4 of Extension of Security Tenure Act 62 of 1997 provided options for long-term tenure security, for farm dwellers to benefit from land redistribution and to acquire land and housing of their own.

The Upgrading of Land Tenure Right Amendment Act 6 of 2021 seeks: to provide for application for conversion of land tenure rights to ownership; to provide for the notice of informing interested persons of an application to convert land tenure rights into ownership; to provide for an opportunity for interested persons to object to the conversion of land tenure rights into ownership; to provide for the institution of inquiries to assist in the determination of land tenure rights; to provide for application to the court by an aggrieved person for appropriate relief; to provide for the recognition of conversions that took effect in good faith in the past, and to provide for matters connected therewith.

7.3.3 Policy Positions

The promotion of secure tenure coupled with the provision of technical assistance must help to promote improved living conditions on privately owned land through improved infrastructure and housing development. These initiatives should be further incorporated into the development of strategies for sustainable economic development by water service authorities.

Municipal approaches to ensure that residents living on privately owned land have access to basic water supply and sanitation facilities must include the following:

- a) Providing access to land with secure tenure so that those private land residents who are not in position to receive basic water services via a Water Service Intermediary yet do wish to invest in their property and amenities with municipal assistance can do so.
- b) Encouraging the landowner (or intermediary/provider) to provide basic water services facilities and be guided by norms and standards around appropriate technical options and communal services (where and if applicable) as per their water services bylaws.
- c) Water Services Authorities and other water institutions must engage with Department of Agriculture Land Reform and Rural Development (DALRRD) to ascertain the status of the tenure arrangement for affected communities.
- d) While the DALRRD deals with tenure issues, the Water Services Authorities and other water services institutions must provide interim water and sanitation services.
- e) For the households whose tenure has been confirmed, the water services institutions must provide permanent water and sanitation services to those households.
- f) In cases where a written (explicit) or verbal (implicit) contract exists with the residents about residence (dwelling), a private landowner, through a contract with the Water Services Authority, can provide water services to dwellers as a water services intermediary.



- g) In cases where no contract exists between the landowner and the dwellers, the private landowner can provide water and sanitation services to those dwellers as a water services provider on behalf of the Water Services Authority. A contract will need to be entered into by the Water Services Authority and the Landowner.
- h) The Water Services provided should be in line with SANS: 241.

7.4 Advocacy, Awareness and Education

7.4.1 Problem Statement

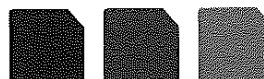
Most government policies, when approved, are not adequately advocated. Evidence shows a gap between policy advocacy and policy implementation. This could be due to inability by government institutions to communicate approved policies effectively. There is a need to change this approach and ensure that all approved policies are advocated throughout the country to ensure that the public is educated and well-informed about policies that exist so that they can also hold the government accountable.

7.4.2 Current policy and Legislative Framework

The Water Services Act calls for public awareness campaigns to be undertaken to promote water conservation and demand management. The National Sanitation Policy of 2026 emphasises that user education and awareness must be part of a comprehensive user-education programmes, which are implemented by government and other stakeholders in the water and sanitation space. It further states that education should be an on-going activity during implementation and emphasises that awareness must be provided to end-users.

7.4.3 Policy Positions

- a) DWS is tasked with advocating and communicating this policy to the water services sector – and shall do so in partnership with the following stakeholders: the South African Local Government Association (SALGA); Department of Cooperative Governance and Traditional Affairs (COGTA); Department of Mineral Resources and Energy (DMRE); Department of Agriculture, Land Reform and Rural Development (DALRRD); Department of Human Settlements (DHS); Department of Basic Education (DBE); Department of Health (DOH); Department of Forestry, Fisheries and the Environment (DFFE); Municipal Infrastructure Support Agent (MISA); Trans Caledon Tunnel Authority (TCTA); Water Research Commission (WRC); Private Landowners, and other essential stakeholders.
- b) Different stakeholders are required to develop an advocacy plan to ensure effective communication on this policy.



- c) Communication should be focused on creating an understanding of the regulatory and supportive role the sector plays towards achieving sustainable water services provision to residents living on privately owned land.
- d) Apart from the policy itself, the message that will be conveyed to all stakeholders is that the regulatory and support role played by the sector towards achieving sustainable water services provision to residents living on privately owned land will be governed and facilitated in accordance with all policy positions.
- e) Policy advocacy includes capacity development, relationship building, forming networks, and leadership development, as outlined in National Treasury report on the System of Capacity Building for Local Government Diagnostic Review of 2022. The general public plays a vital role in developing and implementing public policy to promote an informed, healthy and strong democratic society.
- f) The advocacy content should be translated to cover demographic language setups.

7.5 Community Participation

7.5.1 Problem Statement

People living on privately owned land who continue to live without having access to at least a basic level of water and sanitation services must be identified. People living on privately owned land often do not know their constitutional rights to basic services. Government often does not consult communities when implementing projects and thus plans without the benefit of input or buy in of the communities that are intended to benefit. There is a need to conscientize people living on privately owned land about their constitutional rights. When programmes are in place to provide them with services, they should participate in the planning and execution of those services so that they could have a sense of ownership in programmes provided.

7.5.2 Current Policy and Legislative Framework

The 2001 Regulations Relating to Compulsory National Standards and Measures to Conserve Water as prescribed by the Water Services Act state that the minimum standards of basic water and sanitation services must include "the provision of appropriate education."

One of the sector goals of the Strategic Framework for Water Services is that all people living in South Africa should be educated on healthy living practices (specifically regarding water and sanitation services) and about the prudent use of water. The definition of basic sanitation services in the Strategic Framework for Water Services also includes "the communication of good sanitation, hygiene and related practices." The National Sanitation Policy of 2016 promotes community participation in sanitation services through programmes such as hygiene education; end-user education; ownership of sanitation services; and gender, youth and the disabled in sanitation services. The importance of community participation in water services programmes is also alluded to in the 1994 White Paper on Water Supply and Sanitation.



7.5.3 Policy Positions

- a) Water Service Authorities must develop their capacity to involve people in local decision-making processes.
- b) In privately owned land contexts, existing bodies (such as local committees, unions or ward structures and community water and sanitation forums assisted by either local government or water boards where possible) should promote water service programmes on privately owned land. Such programmes will not succeed unless the wider community is involved. Also, water services programmes should look into special requirements of the disabled, elderly, and young children.
- c) Each community is responsible for safeguarding public health and must reach consensus with landowners (where appropriate) and Water Service Authorities regarding a water supply and sanitation system that is sustainable, affordable and acceptable to the local environment.
- d) Improvements that can be made to existing water services systems must be part of an ongoing-education process, and consideration must always be given to the locals for upgrading of water services infrastructure.

7.6 Integrated Development Planning

7.6.1 Problem Statement

The provision of water and sanitation services in South Africa, particularly on privately owned land, is still fragmented and quite uncoordinated, largely due to the vast array of institutions involved in providing these services.

7.6.2 Current Policy and Legislative Framework

The 1994 White Paper on Water Supply and Sanitation is underpinned by two principles related to universal access to water and sanitation, namely:

- **Basic services are a human right.** In terms of the Constitution, this should be interpreted as a right to a level of services adequate to provide a healthy environment. This is not meant to imply the right of an individual person or community to demand services at the expense of others.
- **“Some for All” rather than “All for Some”.** To give expression to the constitutional requirements, priority in planning and allocation of public funds will be given to those who are presently inadequately served.



- The Strategic Framework for Water Services provides that "Water Services Authorities have a responsibility to ensure that all people living within their jurisdiction (including those residents living on privately owned land) are progressively provided with basic water and sanitation services (first step up the ladder)". This policy thus defines responsibilities of WSAs in the provision of water services to residents living on privately owned land.

The National Sanitation Policy of 2016 reiterates that Water Services Authorities are obligated to provide services to people on privately owned land.

7.6.3 Policy Positions

Effective intergovernmental planning is vital to ensuring a progressive water service delivery to residents living on privately owned land. Instances of intergovernmental planning tools are listed below:

- a) The primary water services-related planning tool at the local authority level is the Water Services Development Planning (WSDP) and all processes driving its development and submission. As contained in the WSDPs, the information (including aspects related to provision of water services to residents living on privately owned land) should be extracted and monitored at the national level to ensure that coherent planning is taking place at local level.
- b) A generic protocol providing guidance in respect of pertinent procedures must be followed to ensure a Municipal Integrated Development Planning that enhances water service delivery to residents living on privately owned land.
- c) Such a protocol must guide decision-making, allocation of responsibilities (including underlying principles for water services delivery and a regulatory policy framework that informs it) and detailed procedures for water services delivery to residents living on privately owned land.
- d) Integrated WSDP processes make provision for sensible discussion and debate between water services role players (i.e., Water Service Authorities, Water Services Providers, Water Services Intermediaries) and communities they serve on their water service needs, and on how these needs can, most adequately and efficiently, be met.
- e) The planning frameworks must always comply with the District Development Model (DDM).
- f) In their programmes of interventions, national and provincial governments must ensure that they include such interventions on the DDM to ensure seamless planning.
- g) Implementation of this policy should align with both the Department of Human Settlements' National Housing Policy and Farm Resident Subsidies Programmes.



- h) While government in general does not support the provision of permanent water supply and toilet facilities in settlements where relocation could be required, it is essential that these planning frameworks must, in all instances, include interim services that comply with all regulations.
- i) Ownership of water and sanitation assets installed by WSAs will remain under the State. However, the landowner will have economic rights to the infrastructure once they become a provider, and those economic rights will be linked to the term of the contract.

7.7 Health and Environmental Impacts

7.7.1 Problem Statement

Living conditions, use of unsafe pit latrines and open defecation have adverse impact on the health of people living on privately owned land (and on the environment – thus leading to degradation of the quality of water resources).

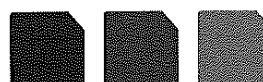
At present, significant investments are being made in the provision of safe water supplies to all; however, the health benefits that could result from this progress will be severely limited if adequate attention is not also paid to sanitation. Experience from national and international water and sanitation programmes has shown how essential it is to link water supply and sanitation with health and hygiene education. Real and lasting health benefits can only be realised only when all these efforts are in place.

7.7.2 Current Policy and Legislative Framework

Section 2 of the Water Services Act on basic water and sanitation services stipulates on acceptable minimum standards for provision of water and sanitation services.

The Occupational Health and Safety Act (OHSA) **provides** for health and safety of persons at work, and for health and safety of persons in connection with the use of plants and machinery; **advocates** for protection of persons other than persons at work against health and safety hazards arising out of (or are in connection with) the activities of persons at work; **stipulates** for establishment of an advisory council for occupational health and safety, and **pronounces** on matters connected therewith.

The National Environmental Management Act **provides** for cooperative environmental governance by establishing principles for decision-making on matters affecting the environment; **recommends** the establishment of institutions that will promote cooperative governance and **calls** for development of procedures for co-ordinating environmental functions exercised by organs of State.



7.7.3 Policy Positions

- a) The provision of water and sanitation infrastructure must always involve health, hygiene and end-user education.
- b) DWS (in partnership with the South Africa Local Government Association (SALGA), National Treasury; Department of Basic Education (DBE); Department of Human Settlements (DHS), and Department of Cooperative Governance and Traditional Affairs (COGTA)) must ensure that water services institutions incorporate health, hygiene and end-user education within their water services delivery programmes.
- c) The quality, quantity and sustainability of water services provided by Water Services Intermediaries and Water Services Providers must also meet all national minimum standards.
- d) Municipal water service contracts must therefore state that a Water Services Provider is required to undertake the following drinking water quality management activities on privately owned land:
 - i) Minimum drinking water quality monitoring and record-keeping (source-dependent, but at least monthly monitoring of *E. coli* and disinfectant residual)
 - ii) Comparison of results with SANS 241: 2006 for drinking water
 - iii) Communication of any health risks and provision of alternate water supplies if health risks are deemed to exist.
- e) Water supply and sanitation systems on privately owned land must always consider environmental sustainability – in both provision and ongoing maintenance.
- f) Water resources are often at risk of pollution by water supply and sanitation systems. Still, before any decision is made to invest in some water supply or sanitation technology, the costs of raw water and wastewater treatment (and of other environmental impacts) should be estimated. This can then be compared with the costs of water supply and sanitation improvement options phased over time (if necessary) to establish which course of action is the best now and in the future.
- g) All water services institutions must always use an appropriate water supply and sanitation technology to protect the integrity of the environment.

7.8 Technical Considerations

7.8.1 Problem Statement

Various water supply and sanitation systems are currently used in South Africa, with varying degrees of success. They impact differently on the environment and have widely differing costs and degrees of acceptability to the users.



People living on privately owned land are compelled to use water supply and sanitation facilities which are not adequate without consideration of appropriateness of such services. There is also an issue of other dwellers resisting change, making it difficult even for Water Service Authorities to perform their functions.

7.8.2 Current Policy and Legislative Framework

In terms of Section 11 (1) of the Water Services Act, Water Services Authorities have a duty to progressively ensure sustainable, efficient, affordable, and economical access to water services for all consumers or potential consumers in their areas of jurisdiction.

The Strategic Framework for Water Services guides in terms of technology choices that local government can make, indicating that the definition of sanitation does not define the technology to be used in providing such a service. This decision (which must be made by a Water Services Authority) is key to successful provision of basic water supply and sanitation services. The selection of the most appropriate technology is mainly dependent on settlement conditions.

The National Sanitation Policy of 2016 states that appropriate technical solutions must be based on subsidy levels while considering the settlement type and resource limitations.

7.8.3 Policy Positions

Technical considerations by water services institutions when deciding the most appropriate technology in provision of water services to privately owned land must consider the following:

- a) **Affordability:** The most critical factor influencing the choice of technology is affordability - at household, local and national levels. It must be clear who is willing to pay what amounts for a particular level of service or quality of product, and such a decision must be transparent. This is especially important when it comes to a need for regular payments for operations and maintenance. Various grants or subsidies may reduce the initial cost to an intermediary or a household. Still, there are often not yet free basic or tariff policies or sufficient revenue collection to cross-subsidise a reduction in running costs.
- b) **Institutional needs:** Complex water services technologies require substantial intermediary or community-level organisation and institutional support for delivery, operation and maintenance. Any water supply or sanitation improvement technology should include resources to develop necessary local institutional capacity to manage the day-to-day and future operational needs. In some circumstances, there may be considerable merit in engaging an intermediary to carry out certain functions on behalf of a local authority. Government encourages local authorities to consider various options in this regard, using guidelines and tools.



- c) **Environmental impact:** All water supply and sanitation systems should be designed to reduce adverse environmental impacts relating to unmanaged greywater and bad human waste disposal. Nevertheless, all systems will always have some bit of an adverse impact on the environment, particularly if they are not managed as intended. The general risk of environmental problems and any specific risks resulting from a system failure (and the likelihood of failure) must be considered at the time of technology selection.
- d) **Social issues:** Social and cultural practices and preferences vary considerably from area to area. These will affect a range of options acceptable to consumers – which must be catered for so that facilities are used effectively, and users gain health benefits.
- e) **Water supply service levels:** Water is a scarce (and is quite a costly resource in many parts of South Africa). Higher water supply service levels imply increased water usage and costs – and perpetuate a need for a sanitation system that must also facilitate wastewater disposal. Conversely, water-dependent sanitation systems should be discouraged in areas where water supplies are limited or unreliable. In keeping with water conservation and demand management strategies, DWS promotes the development and widespread use of a “water-saving” water supply and appropriate sanitation technologies. The level of service required on a privately owned land is a ‘basic water and sanitation service’. The settlement pattern and the population should inform the level of service required. AWSA has a discretion to decide on the best levels of service.
- f) **Reliability:** It is imperative that only proven technologies and designs should be adopted in the provision of water services. Before their adoption as parts of a service delivery programme, innovative and proprietary systems must be tested against performance criteria and be independently evaluated in terms of operational requirements, value-for-money and customer satisfaction. To this end, Government will identify appropriately qualified and objective bodies (such as the Water Research Commission and CSIR) to conduct such evaluations against agreed criteria.
- g) **Upgrading:** As water supply and sanitation improvement is a process, progressive upgrades to infrastructure may be necessary (for example, ‘borehole to yard connection’ or ‘VIP to septic tank’ sequences). Designs should be done accordingly within cost constraints – and in some cases, infrastructure up-grading should be considered at the planning stage (e.g., installing a reticulation network at a later stage).
- h) **Site-specific issues:** The geology, hydrology and topography of an area may influence the choice of technology, as these natural phenomena might affect water resource availability, ease of excavation, percolation rates and pipeline gradients, amongst other factors. Geo-hydrological testing must be undertaken before using on-site groundwater sources or sanitation systems.



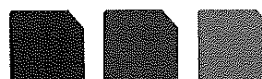
- i) **Use of local resources:** The local availability of materials and skills has an important bearing on the choice of technology or construction method. The design of water services facilities should maximise the use of these resources to stimulate local economic development and job creation.
- j) **Settlement patterns:** Density and layout of a settlement are important factors in selecting an appropriate technology. Reticulated water supply or sewage systems become more cost-effective in "formalised" denser areas with more linear layouts. In contrast, on-site systems are generally more viable where plots are larger and sparsely distributed.
- k) **Compliance with National Standards:** The provision of water and sanitation services must comply with the norms and standards for water services as they are enacted through Section 9 of the Water Services Act.
- l) **Ownership of the infrastructure:** The water and sanitation assets installed by the Water Services Authorities will remain under the State's ownership. However, the landowner will have economic rights to the infrastructure once they become a provider, and those economic rights will be linked to the contract term. For any investment by the State in the infrastructure of the Private landowner, the State will own the portion equivalent to the investment.
- m) **Operation and maintenance and capital development:** Operation and maintenance of infrastructure on privately owned land remain the responsibility of the property owners.

7.9 Economically and Financially Sustainable Water and Sanitation Services on Privately Owned Land

7.9.1 Problem Statement

There are no dedicated funding programmes initiated by water services institutions, including Water Services Authorities earmarked to provide water services to residents residing on privately owned land.

Throughout the entire water services process, Water Services Authorities are unable to fully recover economic and financial costs associated with providing water services. Consequently, the current water tariffs do not encompass the total expense incurred in delivering these services. Presently, most Water Services Authorities offer free basic water services to all residents within their areas of jurisdiction. This approach has a detrimental impact on their revenue collection capabilities. It has failed to influence consumer behaviour, as households have not been motivated to reduce or manage their water consumption despite the existing pricing structure.



The provision of water and sanitation services, particularly in rural areas, has been growing rapidly. The cost of providing basic services has increased significantly between 1994 and 2021. Water Services Authorities often lack economic viability to provide such services when their revenue collection does not meet their spending. Failure to implement sound revenue collection controls negatively affects operation and maintenance of the water service infrastructure.

The Municipal Infrastructure Grant (MIG) does not cover operations and maintenance as it is a capital grant. Operations and maintenance should be funded from revenue collected from sales and provision of water and sanitation services by Water Service Providers.

7.9.2 Current Policy and Legislative Framework

Section 153 of the Constitution states that a municipality must: **structure** and **manage** its administration and budgeting; **focus** its planning processes on prioritising basic needs of communities; **promote** social and economic development in communities, and **participate** in national and provincial development programmes.

The Strategic Framework for Water Services aims to place greater emphasis on a sustainable, financially viable and efficient water services sector. In terms of national norms and standards, Water Services Authorities are responsible for setting their own water services tariffs. Sanitation tariffs should be calculated based on volumetric usage of the service as opposed to the number of toilets per household. The SFWS further gives provisions on effective credit controls to ensure sustainable water services provision.

Water Services Authorities are also responsible for ensuring adequate investment in water services infrastructure, prioritising universal access to basic services. They must also ensure that investments are sustainable. The Municipal Infrastructure Grant (MIG) was identified as the financial mechanism for addressing universal access priorities. The key financial responsibilities of Water Services Providers are to: operate water services effectively and efficiently; Ensure financial viability, and honour services delivery agreements entered with Water Services Authorities.

Both the National Water Policy Review of 2013 (NWPR) and the National Sanitation Policy of 2016 ensure that free basic water services are only for indigent households.

The Municipal Systems Act and the Municipal Finance Management Act have laid down a robust framework for local government finance, dealing with financial management and accounting, revenue, expenditure and debt management, responsibilities of accounting officers and mayors, and oversight by national and provincial governments.



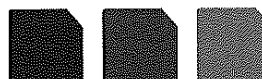
7.9.3 Policy Positions

Financial trade-offs are particularly critical in the choice of levels of service. For instance, the cost of a water services system must be measured against its health benefits: for example, from a public health point of view, there is no difference between a well-built, properly maintained VIP toilet and a water-borne sewerage, but financially these systems are very different. The economic and health benefits of installing more expensive water services systems, such as reticulated water supply and/or water-borne sewerage, may be minor, the only added benefit being increased convenience and a socio-economic status. There is a real risk of incurring economic losses where low-income households cannot afford the running costs of an expensive system, and extensive subsidies are then needed. Furthermore, environmental problems and clean-up costs may follow when operational costs are unmet due to consumer non-payments, ongoing subsidies or grant allocations.

Estimates of infrastructure needs related to residents living on privately owned land in South Africa have shown that very large capital investments would be needed to construct a reticulated water supply and a full water-borne sewerage system for all unserved households. Even if the capital funds were available, there would still be a problem, as large numbers of households would be unable to afford the regular running costs of such a system. They would need an ongoing subsidy on their use of reticulated water and sanitation services.

Therefore, the policy prescribes the following positions:

- a) The Water Services Authority's basic services budget must identify tariffs and funding mechanisms required for financial sustainability. These tariffs should be determined in keeping with tariff policies and approved services budgets.
- b) The formulae for both the Municipal Infrastructure Grant and the Local Government Equitable Shares (LGES) are population-driven and based on official statistics which account for all households in the country, including those on private land. What will be important is finding measures to ensure that poor households living on privately owned land are accurately captured in indigent registers of municipalities. Enforcement measures applicable to Water Service Provider arrangements will also need to be strengthened – particularly around financing infrastructure, ownership of assets and relating operations and maintenance.
- c) Financial planning and management must incorporate Municipal Infrastructure Grant budgeting and financial reporting, which addresses basic infrastructure development for the poor, including residents living on privately owned land. The current framework of the Municipal Infrastructure Grant must include a condition that sets aside a portion to cater for operation and maintenance.
- d) To address the needs of dwellers, the Municipal Infrastructure Grant can be used to provide basic water services infrastructure for indigent households living on private land, with servitudes that are subject to certain conditions.



- e) Water Services Authorities and water services institutions must conduct municipal surveys on privately owned land to ensure that relevant information is captured in Integrated Development Plans and Water Services Development Plans towards enhancing local infrastructure and financial planning.
- f) Capital expenditure programmes (like Water and Sanitation Infrastructure Grant (WSIG), Regional Bulk Infrastructure (RBIG) and MIG) must include detailed long-term affordability studies to establish the most appropriate programmes or projects for continued financial viability. Communities should have a responsibility to participate in choosing and implementing service levels that they desire, considering government policies and socio-economic realities.
- g) Water Services Authorities can use the Front-Loading Model of the Development Bank of Southern Africa for infrastructure. The purpose of front-loading is to accelerate the roll-out of infrastructure and increase access to services. The DBSA's front-loading is based on the following anticipated benefits:
 - i) Faster project completion
 - ii) Earlier delivery of services to communities
 - iii) Reduced project costs
- a) The provision of basic water and sanitation services to people living on privately owned land can be funded from the farm resident subsidies² from the Provincial Government's annual housing allocation received from the Minister of Human Settlements through the provisions of the Division of Revenue Act.
- b) Water Services Authorities must develop a funding framework on incentives and subsidies that must be applied when assisting the Water Services Intermediaries and Water Services Providers to fund the following initiatives: water services infrastructure projects, health and hygiene promotion, water quality improvements, and other similar initiatives. Such a funding framework should be influenced by factors such as the spatial distribution of beneficiaries (e.g., costs are lower for closely situated households), geological features, local costs of suppliers and contractors, the financial strength of the municipality, and the degree to which subsidies are concentrated in one or many different programmes.

² The farm residents subsidies cover the following programmes: a) Development by farm owner; b) subdivision of the farm and transfer thereof to farm residents; c) Development for beneficiaries who received individual farm land in ownership through Land Reform programme; d) Institutional Housing Subsidies; e) Accommodation for seasonal workers.



- c) Municipalities must make practical decisions about allocating and distributing funds and take responsibility for these decisions.
- d) On-going basic service provision can be funded by:
 - i) Equitable Share
 - ii) Municipal rates
 - iii) Cross-subsidised water services charges
 - iv) Water services revenue
 - v) Other sources
- e) Water Services Authorities can introduce property tax rebates and exceptions by way of creating subsidised incentives to assist intermediaries or providers in providing services on privately owned land, especially to those dwellers who are not their employees.
- f) DWS, through a water use license, can incentivise commercial water users to provide water and sanitation services to households living on private land, who may not be employees.
- g) The user-pays principle will apply. Those who can afford the services need to pay for services. A WSA or WSP must devise plans on how they will charge dwellers.
- h) Dwellers not registered as indigents must pay for services. All charges related to water and sanitation services by WSA or WSP must be in line with WSA approved tariff policy and DWS tariff norms and standards.

7.10 Institutional Arrangements for Water and Sanitation Services on Privately Owned Land

7.10.1 Problem Statement

There is currently a lack of effective regulatory capabilities between DWS, COGTA and Water Services Authorities, which has prolonged challenges in regulating the sector at a local level.

The ineffectual processes for interpretation and implementation of Section 78 of the Municipal Systems Act have contributed to municipalities primarily keeping the sanitation provision function in-house, even when the capacity to do so adequately was lacking. They are not appropriately implementing Section 78 provisions. Some Water Services Authorities are not responding to their key responsibilities in terms of both the legislation and the Strategic Framework for Water Services. Where a Water Services Authority has contracted a Water Services Provider to provide sanitation services, the responsibility of the two parties is not always clear in the contracts. There is a need for effective contract regulation.



7.10.2 Current Policy and Legislative Framework

Section 152 (1) of the Constitution gives different mandates to local government, whereas Section 154 gives the mandate to national and provincial governments to come up with support and regulatory instruments for local government businesses.

The Water Services Act, 1997 (Act No. 108 of 1997) (1997) introduced a concept of 'Water Services Authority' to the water services sector – defining a Water Services Authority as "any municipality (including a district or rural council, as defined in the Local Government Transition Act, 1993 (Act No. 209 of 1993)) responsible for ensuring access to water services". This legislation also includes a provision that regulates institutional arrangements between Water Services Authorities and Water Services Intermediaries.

The Department of Co-operative Governance and Traditional Affairs regulates Local Government through both the Municipal Systems Act and the Municipal Structures Act.

Section 77 of the Municipal Systems Act provides a municipality with the mandate to review and decide on appropriate mechanisms to provide municipal services. Through the process outlined in both Section 77 and Section 78 of the Act, a municipality may decide on appropriate internal mechanisms to provide services; or may decide to provide services through an external mechanism. These external mechanisms may include making use of a Water Service Provider.

The Strategic Framework for Water Services indicates that DWS is the custodian of water resources – and as the overall leader of the water sector, DWS has been mandated to play a central role in four areas concerning water services (i.e., Policy and Regulation, Support and Information Management). The Framework gives Water Services Authorities a responsibility to ensure access to, planning and regulating the provision of water services within their area of jurisdiction. It further states that Farmers, as employers, are responsible for their employees' housing and related services. Therefore, farmers are Water Services Intermediaries and are responsible for providing (at least) basic water services to farmworkers living on the farms and their families.

7.10.3 Policy Positions

- a) The institutional arrangements for promoting and providing effective water services for people living on privately owned land must be guided by the Constitution and other related policies and legislation.

**The farm residents subsidies cover the following programmes: a) Development by farm owner; b) subdivision of the farm and transfer thereof to farm residents; c) Development for beneficiaries who received individual farm land in ownership through Land Reform programme; d) Institutional Housing Subsidies; e) Accommodation for seasonal workers.*



- b) Although Local Government considers its reporting responsibility to be with CoGTA and not with DWS, the intergovernmental forums and Section 154 of the Constitution create direct accountability mechanisms to DWS on water and sanitation matters of concurrent nature. Additionally, DWS has access to other levers – such as grant allocations. This should aid DWS in fulfilling its constitutional responsibility of ensuring compliance and performance of WSAs.
- c) Water Services Authorities and other water services institutions must always apply intergovernmental coordination mechanisms or practices that seek to promote services on privately owned land. Such arrangements must be reflected in their planning, budgets and programmes. These institutional provisions will further be articulated in the next position of roles and responsibilities.

8 IMPLEMENTATION APPROACHES

The importance of a national advocacy campaign to increase awareness regarding the provision of water and sanitation services on privately owned land cannot be underestimated. A campaign of this nature is imperative to create heightened levels of awareness, provide additional information to private landowners and constituents, and assist municipalities in fulfilling their universal service obligation of ensuring access to basic services on privately owned land.

To intensify the delivery of basic services to residents on privately owned land, Water Services Authorities need to set up appropriate local mechanisms for engaging with private landowners to encourage enhanced networking and stakeholder participation. Though suitable municipalities would be able to advocate criteria for allocating incentives and subsidies to landowners who may be willing to enter into water service delivery contracts in terms of standards outlined in the municipality's water services bylaws.

Water use licences for commercial water users will have to be reviewed to have a condition that compels them to set aside a portion of water for basic services for their employees and families, and these services should comply with the national standards for drinking water.

Water Service Authorities must ensure that water services are provided to dwellers living on privately owned land (who are not employees of the landowners) within their jurisdiction either directly or using a water services intermediary or water service provider approach.

There may be people living on privately owned land owned by a farmer, but who do not work for the farmer. If the farmer agrees, the WSA can enter into a service level agreement with the farmer to provide water services to the people, as a Water Services Provider. The WSA and the farmer will subsequently determine who will invoice the consumers and manage revenue collection from them for the services rendered. The farmer will provide and maintain water services and receive funding from the WSA. If the people are working for the farmer, then the



WSA would give the farmer an instruction, as a Water Services Intermediary, to provide basic water services to the people.

To make basic water services a practical reality to many people that this policy is intended to serve, DWS will develop implementation support tools and guidelines, such as "Ensuring water services provision on privately owned land: Toolkits" and "Ensuring water services provision on privately owned land: A guide for municipalities". These tools will guide local government on provision of water services to residents living on privately owned land. The application of this policy should not necessitate any substantial changes in sector legislation but may require changes in terms of funding mechanisms and policies. It is also vital that relevant national government departments play a role in cooperative actions. This inter-sectoral cooperation is vital in building a multi-disciplinary approach essential for successful implementation of this policy.

9 INFORMATION MANAGEMENT, MONITORING AND REGULATING PROVISION OF WATER SERVICES ON PRIVATELY OWNED LAND

- a) DWS and Water Services Authorities must collect and maintain a standardised set of information regarding sustainable and efficient use of water by residents living on privately owned land.
- b) This information should stipulate the nature of the resource, the nature of water services provided to residents living on privately owned land, activities and conditions under which authorisations or entitlements are allocated (in line with administrative stipulations of both the Water Services Act and the National Water Act).
- c) Information on sustainable and efficient use of water resources for provision of water and sanitation services to residents living on privately owned land will remain a public domain. It must be kept orderly in accordance with legal obligations set for public administration and duties set to make information available to the public.
- d) Water Services Authorities are required to conduct their own surveys to ascertain the number of people living on privately owned land and be able to disintegrate the data to show how many have access to water and sanitation services, and how many do not have access to these services.
- e) To regulate effectively, Water Services Authorities must clarify water services institutional arrangements, promulgate bylaws and tariffs, and develop a dynamic performance management and monitoring system.
- f) Water Services Authorities must regulate water services provision to residents living on privately owned land through their municipal bylaws to ensure compliance with



minimum standards.

- g) Water Services Authorities and Municipalities must communicate this policy to all private landowners.
- h) DWS has developed a set of water services model bylaws that Water Services Authorities can utilise to assist in the process of developing and/or reviewing their own set of bylaws.
- i) Water Services Authorities must ensure that their municipal bylaws specify the following details:
 - i) Levels of services provided;
 - ii) Rights and responsibilities of: Municipalities, Water Services Intermediaries and/or Providers, Consumers – and of any applicable role players; and
 - iii) Rights and responsibilities of various parties regarding decision-making processes.
- j) Water Services Authorities must draft water services contracts with private landowners “Intermediaries” / “providers”, and provide clarity on the following: financial incentives and contributions; rights and responsibilities of all parties; valuable outcomes of consultation processes; terms and conditions for such contracts (which should be negotiated during consultation processes).
- k) Signing a contract could be a prerequisite for a Water Services Authority to provide funding to an intermediary or a provider; whereas Water Services Authorities should keep contracts short and simple and should take caution not to enter into lengthy contract negotiations with landowners, which could make the process too onerous for these intermediaries.
- l) DWS, in its model for water services bylaws, proposes that if a Water Services Intermediary and/or a Water Services Provider fails to perform its functions effectively, then the Water Services Authority may direct the intermediary/provider to rectify its failure by setting out:
 - i) The nature of the failure;
 - ii) The steps which must be taken to remedy the failure; and
 - iii) A reasonable time period within which those steps must be taken.
- m) If a Water Services Intermediary and/or a Water Services Provider fails to rectify its failure within the stated period, the Water Services Authority may take over the provision of water services function, but only after the intermediary/provider has been given a reasonable opportunity to make written submissions. However, in an emergency, a Water Services Authority is not obliged to give a reasonable opportunity for a Water Services Intermediary and/or a Water Services Provider to make written submissions.
- n) Where a Water Services Authority takes over the provision of water services or appoints another water services institution to act on its behalf, it may do the following:



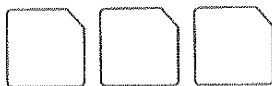
- i) Exercise all relevant powers and perform all relevant duties on behalf of the intermediary/provider to the exclusion of the intermediary/provider; and
 - ii) Use the infrastructure of the intermediary/provider to the extent necessary to perform those functions.
- o) As soon as the Water Services Intermediary or a Water Services Provider is able to resume its duties effectively, the Water Services Authority must stop exercising its powers to perform the duties on the intermediary's/provider's behalf.
- p) Water Services Authorities must recover all associated expenses incurred during the period for which it took over the provision of water services from the defaulting intermediary/provider.
- q) Provision of water and sanitation services to residents living on privately owned land must comply with National Norms and Standards.

(Given the limited practical experience in the field and the evolving institutional arrangements at local level, programmes aimed at ensuring water services provision on privately owned land must be flexible enough to develop and change over time. They must be built on lessons of experience and should reinforce the role of local government as the implementers of service provision (directly or through other appropriate local mechanisms).

10 ROLES AND RESPONSIBILITIES

10.1 Department of Water and Sanitation

- a) DWS is mandated as the sector leader to support and regulate the provision of water services to all South Africans, including residents living on privately owned land. It is therefore the responsibility of DWS to communicate this policy to all relevant stakeholders and ensure that it is implemented at national and regional levels, so that its aims and objectives are achieved.
- b) Based on preliminary consultations held during the drafting of this policy, all national government departments mentioned in the next sections below do, first and foremost, have a responsibility to uphold the regulatory oversight and support mandates of DWS over the water services and resources to be provided to residents living on privately owned land.
- c) If a Water Services Authority fails to implement this policy, the national department (with the support of the provincial department) can pursue other mechanisms, including intervention as outlined in Section 139 of the Constitution and Section 63 of the Water Services Act.



10.2 Private Landowner/Water Services Intermediary

- a) Private landowners must provide basic water services to their employees (and the families of employees) living on their land.
- b) Water Services Authorities must ensure that this policy is implemented and must identify, register and regulate water service intermediaries according to their bylaws and national norms and standards.
- c) Landowners must make an appropriate contribution to the capital cost of basic services.
- d) While water and sanitation assets, which Water Services Authorities install, remain under the ownership of the State, landowners will however have economic rights to the infrastructure once they become intermediaries, and those economic rights will be linked to a contract term.
- e) Operations and maintenance (and capital development of water and sanitation services on privately owned land) remain the responsibility of property owners.
- f) The private landowner is encouraged to enter into a contract with the Water Services Authority and perform the duties of a Water Services Provider as stipulated in Section 25(1) and (2) of the Water Services Act.
- g) Private landowners / Water Services Intermediaries/ Water Services Providers should:
 - i) Support the regulatory and support mandates of DWS over the water services and resources provided to residents living on privately owned land.
 - ii) Integrate and implement this policy in terms of their planning and implementation to ensure compliance with all relevant legislation concerning provision of water services on private land; and to
 - iii) Ensure that this policy is communicated to any person, party or organisation affiliated to the "private land" sector.
 - iv) The employer is responsible for providing water and sanitation services to its labourers/employees as per Section 8(1) of the Occupational Health and Safety Act (Act 85 of 1993).

10.3 Department of Cooperative Governance and Traditional Affairs (COGTA)

As a department that has an overall responsibility for the affairs of provincial and local government, **COGTA** must support DWS in communicating this policy to ensure that provincial and local governments recognise the policy in their involvement with water resources and the provision of water services on privately owned land.



10.4 Department of Employment and Labour (DEL)

- a) DLE must support the implementation and enforcement of this policy through its legislation and existing programmes.
- b) DEL must ensure that it advocates this policy to all private landowners who have employees through their existing programmes.

10.5 Department of Agriculture, Land Reform and Rural Development (DALRRD)

The role of DALRRD, as the lead department for the agriculture sector, is to integrate this policy with its existing policies and responsibilities in respect of land reform, equitable allocation of land, resettlement and rights to land tenure. DALRRD must also integrate this policy with its current initiatives and ensure that the policy is conveyed to respective provincial departments – and must use it in areas of common responsibility.

10.6 Department of Human Settlements (DHS)

As a department that is responsible for development and implementation of national housing policy, the role of the DHS is to integrate this policy with its responsibility of achieving housing access to private land residents in terms of permanent residential structures with secure tenure. This entails ensuring internal and external privacy, access to potable water, adequate sanitation facilities, and domestic energy supply.

10.7 Department of Public Works and Infrastructure (DPWI)

As a department that acts as the implementing agent on behalf of national government departments when facilities are constructed and developed, the role of DPWI is to integrate this policy with mechanisms currently in use for ensuring equitable access and use of publicly owned assets associated with water services and resources.

10.8 Department of Science and Innovation (DSI)

The role of DSI is to integrate this policy with its responsibilities of: (1) developing (and funding) water services and appropriate technology initiatives, and (2) disseminating related scientific, technological and innovative information.

10.9 Department of Forestry, Fisheries and the Environment (DFFE)

DFFE must integrate this policy with its responsibility to protect and conserve environmental resources, and to convey this policy to respective provincial departments for use in areas of common responsibility.



10.10 Department of Health (DOH)

DOH must integrate this policy with its responsibility to ensure public health related to domestic utilisation of these water resources. DOH must also determine a structured approach toward ensuring water services to clinics situated on privately owned land.

10.11 Department of Basic Education (DBE)

DBE must integrate this policy with its responsibility to determine a structured approach towards ensuring water services to schools situated on privately owned land.

10.12 Provincial Government

Provincial government should support the regulatory and support mandates of DWS over water services and resources to be provided to residents living on privately owned land and to integrate this policy with their respective provincial mandates related to water services and resources, policy and planning.

10.13 Water Services Authorities

- a) The role of the Water Services Authorities is to comply with the regulatory and support mandates of DWS over provision of water services and resources to residents living on privately owned land.
- b) Water Services Authorities must integrate this policy with their respective local mandates in terms of the Strategic Framework for Water Services.
- c) Water Services Authorities must ensure Water Service Providers perform their responsibilities, which include: Operation, maintenance and capital development of water and sanitation services infrastructure outside the boundary and/ or within the servitude/ of the end user.
- d) Water Services Authorities must identify, register, and regulate water service intermediaries/providers according to their policies, bylaws, national norms and standards.

10.14 Water Resource Management and other Water Services Institutions

The role of Water Resource Management Institutions (i.e., Water User Associations, Water Boards, and Irrigation Boards) is to:

- a) Support DWS's initiatives in communicating this policy to any person or party contemplating to be or is involved in provision of water services and resources associated with the institution.



- b) To support DWS's initiatives in communicating this policy to any person or party contemplating to be or is involved in water services and resources management within their catchment.

11 OFFENCES AND INTERVENTION

- a) Where a private landowner acts as a Water Services Provider and then fails to comply with the prescripts of the agreement entered with the Water Services Authority, the authority must intervene within the prescripts of the agreement.
- b) When a Water Services Authority fails to provide plans for provision of water and sanitation services to people living on privately owned land, whether through water services provider and/or water services intermediary mechanisms, the national and/or provincial government must intervene.
- c) The intervention needed in b) above will be in accordance with Section 63 of the Water Services Act and Section 139 of the Constitution.
- d) Offences will be administered in accordance with Section 82 of the Water Services Act.



12 BIBLIOGRAPHY

- DFFE, White Paper on Integrated Pollution and Waste Management for South Africa.
- DFFE, National Waste Management Guideline for South Africa.
- DHS, National Housing Policy and Subsidy Programmes (2010).
- DME, White Paper on Energy Policy for the Republic of South Africa (1998).
- DME, Electricity Basic Services Support Tariff Policy 2003 (Free Basic Electricity).
- DME, Electricity Act 41 of 1987.
- DME, Regulations under Section 28 of the Electricity Act as amended in 1988.
- DME, Policy Framework - Electrification of Farm Worker Houses 2002.
- DOL, Department of Labour Policy on Minimum Wages for Farm Workers.
- COGTA, 'Draft Municipal Infrastructure Support Strategy', 2007.
- COGTA, Local Government: Municipal Systems Act (Act 32 of 2000).
- COGTA, Local Government: Municipal Structures Act (Act 117 of 1998).
- COGTA, Framework for a Municipal Indigent Policy.
- COGTA, Guidelines for the Implementation of the National Indigent Policy on water, sanitation, electricity / energy and waste removal by Municipalities (2006).
- COGTA, Municipal Infrastructure: Roles and Responsibilities of National, Sector Departments, Provincial Counterparts and Municipalities (COGTA, 2006).
- COGTA, Local Government: Municipal Property Rates Act of 2004.
- DWS, Assessment of Financial Viability of Water Services Authorities 2006.
- DWS, Annual Report of the Department of Water and Sanitation for 2006/07.
- DWS, 'National Water Services Regulation Strategy', Final Draft, January 2008.
- DWS, The Strategic Framework for Water Services 2003.
- DWS, The National Water Act (Act 36 of 1998).
- DWS, The Water Services Act, 1997 (Act No. 108 of 1997).



DWS, The National Water Resources Strategy (2004).

DWS, The White Paper on Basic Household Sanitation (2001).

DWS, Free Basic Water Strategy and Free Basic Sanitation Strategy.

DWS, National Guideline for Water Quality Management in Dense Settlements.

DWS, Drinking Water Quality Management Framework for South Africa.

DWS, Compulsory National Standards for the Quality of Potable Water (2001, Regulation 5 of Section 9 of Water Services Act, 1997 (Act No. 108 of 1997)).

DWS, Ensuring Water Services to Residents on Privately Owned Land: A Guide for Municipalities.

DWS Water Services Intermediary Explanatory Guideline.

Eskom Act (Act 40 of 1987).

GOVERNMENT GAZETTE, The Refugees Act 130 of 1998.

GOVERNMENT GAZETTE, The White Paper on Disaster Management 1999.

HEALTH, The National Health Act (Act No. 61 of 2003).

HOUSING, The Housing Act (Act 107 of 1997).

NATIONAL TREASURY, System of Capacity Building for Local Government: Diagnostic Review (2022).



Specialist Unit: Water and Sanitation Services, Policy, Strategy and Evaluation
012 336 6740
178 Francis Baard Street
Ndinaye Building
Pretoria
0001
www.dws.gov.za

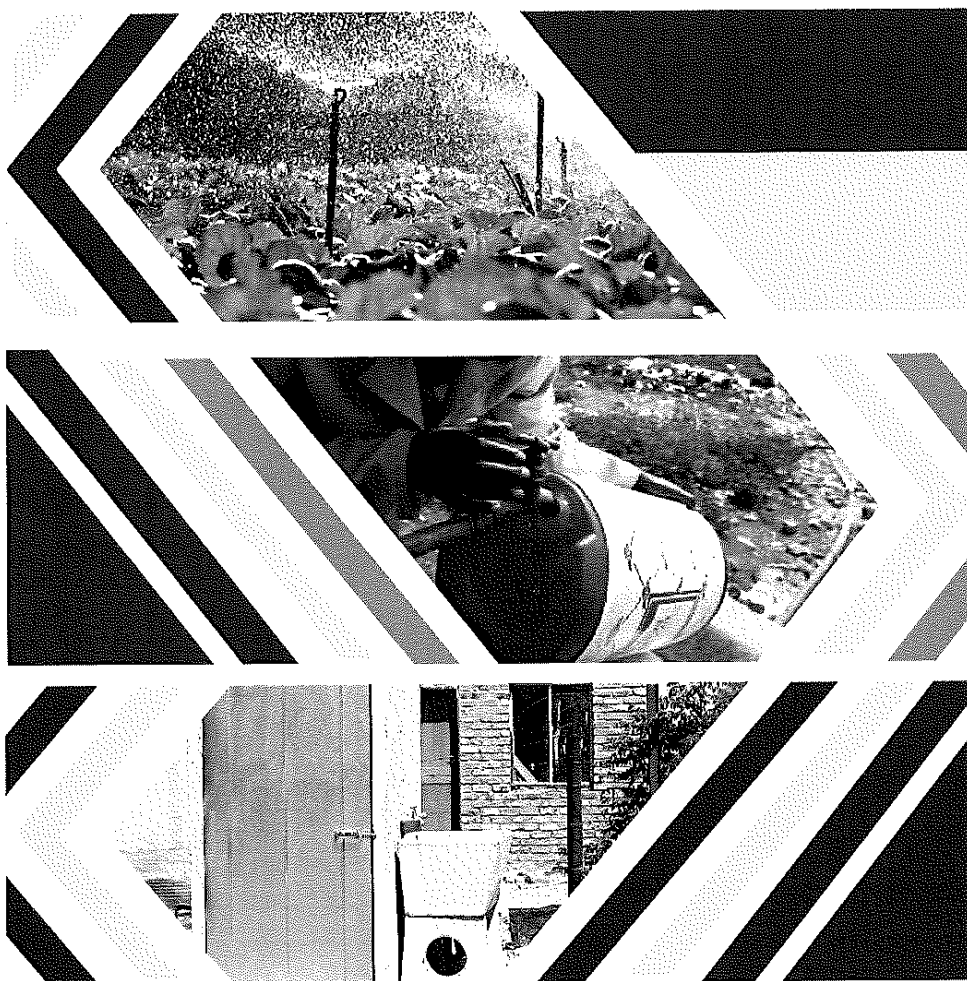


NOTES

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Layout and design

CD: Communication Services • Media Production



Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065